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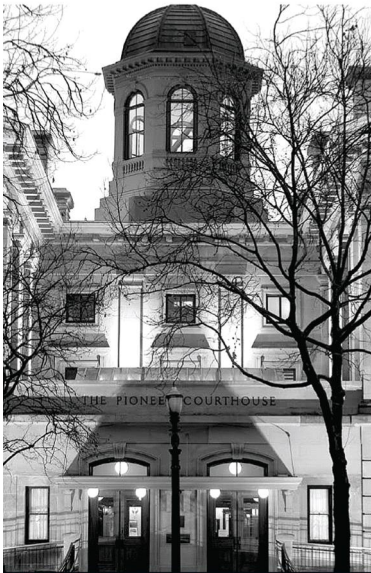
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**STATE OF HAWAII**

**LAND USE COMMISSION**

Hearing held on December 22, 2021

Commencing at 9:30 a.m.

Held via Zoom by Interactive Conference Technology

**I. CALL TO ORDER**

**II. ADOPTION OF MINUTES**

November 10, 2021 Minutes

November 23, 2021 Minutes

**III. Tentative Meeting Schedule**

**IV. ACTION-DR21-73 HONOIPU HIDEWAY, LLC (Hawaii)**

To Consider Petition for Boundary Interpretation for certain land consisting of approximately 17,5470 acres situated at 56-102 Old Coast Guard Road, Tax Map Key No. (3)5-6-001-074, Kapaa-Upolu, North Kohala, County of Hawaii, State of Hawaii

**V. RECESS**



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**BEFORE :**

1 APPEARANCES BY VIDEOCONFERENCE:

2

3 COMMISSIONERS PRESENT:

4 Jonathan Scheuer

5 Nancy Cabral

6 Dawn N.S. Chang

7 Lee Ohigashi

8 Dan Giovanni

9 Arnold Wong

10

11 COMMISSIONERS EXCUSED:

12 Edmund Aczon

13 Gary Okuda

14

15

16 STAFF PRESENT BY VIDEOCONFERENCE:

17 Daniel Orodener, Executive Officer

18 Linda Chow, Deputy Attorney General

19 Scott Derrickson, Chief Planner

20 Riley Hakoda, Staff Planner

21 Natasha Quinones, Program Specialist/Chief Clerk

22

23

24

25

1 Hearing held on December 22, 2021

2 Commencing at 9:30 a.m.

3 Held via Zoom by Interactive Conference Technology

4

5 **COMMISSIONER SCHEUER:** Aloha mai kakou and  
6 good morning. This is the December 22, 2021, Land  
7 Use Commission meeting which is being held using  
8 interactive conference technology linking  
9 videoconference participants and other interested  
10 individuals of the public via the Zoom Internet  
11 conferencing platform, of course, to comply with the  
12 ongoing state and county operational directives  
13 during this still ongoing COVID-19 pandemic.

14 Members of the public are able to view the  
15 meeting via the Zoom webinar platform.

16 For all meeting participants, I want to  
17 stress the importance of speaking slowly, clearly,  
18 and directly into your microphone. Before speaking,  
19 it is helpful if you state your name and identify  
20 yourself for the record. Also, please be aware for  
21 all meeting participants, this meeting is being  
22 recorded. Your continued participation is your  
23 implied consent to be part of the public record for  
24 this event. If you do not wish to be part of the  
25 public record, you should leave the meeting now.

1 This Zoom conferencing technology allows  
2 the parties and each participating commissioner  
3 individual remote access to the meeting via our own  
4 personal digital devices. Because of that, due to  
5 matters often entirely outside of our own control,  
6 occasional disruptions to connectivity may occur.  
7 If this does occur, please let us know and please be  
8 patient as we try to restore audiovisual signals to  
9 we may conduct business during the pandemic.

10 For any members of the public attending  
11 who wish to testify on any matters where public  
12 testimony is allowed, if you're calling in by phone,  
13 you can use the --9\* key sequence to raise your  
14 hand. Otherwise, members who are accessing this  
15 Zoom software can use your raise hand function.

16 We will take breaks from time to time,  
17 approximately 10 minutes every hour.

18 My name is Jonathan Scheuer and I  
19 currently have the ongoing honor and pleasure of  
20 serving as the Land Use Commission Chair. We  
21 currently have eight seated commissioners of a  
22 possible nine. Along with me, Commissioner Don  
23 Chang, Commissioner Arnold Wong, our LUC Executive  
24 Officer Dan Orodener, our Chief Planner Scott  
25 Derrickson, our Staff Planner Riley Hakoda, our

1 Chief Clerk Natasha Quinones, and our Deputy  
2 Attorney General Linda Chow are on the island of  
3 Oahu. Commissioner Nancy Cabral is on Hawaii  
4 island. Commissioner Lee Ohigashi holds it up for  
5 us on Maui, and Commissioner Dan Giovanni is on the  
6 island of Kauai. Court reporting transcriptions are  
7 being done from this Zoom recording.

8 I will note for today regarding  
9 attendance, Commissioners Okuda and Aczon are  
10 excused from today's meeting.

11 Our first order of business is adoption of  
12 the November 10 and 23, 2021 minutes.

13 Ms. Quinones, has anybody submitted  
14 written testimony regarding adoption of the minutes?

15 **MS. QUINONES:** Good morning, Chair. This  
16 is Natasha. No. There is -- no written testimony  
17 has been received on the minutes.

18 **COMMISSIONER SCHEUER:** Okay. Thank you.

19 Is there any member of the public who  
20 wishes to testify on adoption of the minutes? If  
21 so, use the raise your hand function.

22 Seeing none, commissioners, are there any  
23 comments or corrections on the minutes?

24 If not, is there a motion to adopt?

25 Commissioner Wong?

1           **COMMISSIONER WONG:** Chair, this is  
2 Commissioner Wong. I move that we adopt the  
3 minutes, both minutes.

4           **COMMISSIONER SCHEUER:** Okay. Commissioner  
5 Cabral?

6           **COMMISSIONER CABRAL:** I'll second that  
7 motion for both of the minutes.

8           **COMMISSIONER SCHEUER:** Thank you. The  
9 motion has been made by Commissioner Wong and  
10 seconded by Commissioner Cabral to adopt both sets  
11 of minutes from the November 10 and 23 meetings.

12           Any discussion?

13           Seeing none, Mr. Orodener, please poll  
14 the commission.

15           **MR. ORODENKER:** Thank you, Mr. Chair.  
16 The motion is to adopt the minutes.  
17 Commissioner Wong?

18           **COMMISSIONER WONG:** Aye.

19           **MR. ORODENKER:** Commissioner Cabral?

20           **COMMISSIONER CABRAL:** Aye.

21           **MR. ORODENKER:** Commissioner Chang?

22           **COMMISSIONER CHANG:** Aye.

23           **MR. ORODENKER:** Commissioner Giovanni?

24           **COMMISSIONER GIOVANNI:** Aye.

25           **MR. ORODENKER:** Commissioner Ohigashi?

1           **COMMISSIONER OHIGASHI:** Yes.

2           **MR. ORODENKER:** Chair Scheuer?

3           **COMMISSIONER SCHEUER:** Aye.

4           **MR. ORODENKER:** Thank you, Mr. Chair. The  
5 motion passes unanimously with six votes.

6           **COMMISSIONER SCHEUER:** Thank you.

7           Our next agenda item is the tentative  
8 meeting schedule.

9           Again, Mr. Orodenker?

10          **MR. ORODENKER:** Thank you, Mr. Chair.

11          Tomorrow, we will once again be meeting to  
12 hear a continuation of this matter if necessary and  
13 to hear the Kekaha Agriculture Association IAL  
14 matter.

15          I should let the commissioners know that  
16 due to high COVID counts that we recently have been  
17 subjected to that, it is our intention at least  
18 through the end of January to hold meetings via  
19 Zoom.

20          **COMMISSIONER SCHEUER:** Mr. Orodenker,  
21 you're breaking up a little bit. I'm not sure why.

22          **MR. ORODENKER:** On January 5th, we will be  
23 having a presentation from the OPS, the  
24 sustainability coordinator. On January 6th --

25          **COMMISSIONER SCHEUER:** Whoa, whoa, whoa,

1 whoa. Somebody is moving papers next to a  
2 microphone or something. Sorry. It was kind of  
3 deafening. Sorry. I apologize, again, Dan.

4 **MR. ORODENKER:** Thank you, Mr. Chair.

5 On January 6th, we will be taking up the  
6 Oahu IAL matter.

7 On January 19th, we have SB21-413 which is  
8 New Century Public Charter School Special Permit.  
9 We will also be hearing that matter on January 20th  
10 wit possibly DR21-72, a Motion for Reconsideration  
11 of the Church Matter.

12 On February 2nd, we will have a hearing on  
13 -- once again, we'll have the New Century Public  
14 Charter School matter and if possible, and if  
15 necessary, a continued hearing on the Oahu IAL  
16 matter.

17 The same for February 3rd. And on  
18 February 16th, we will be having a hearing on the  
19 acceptance of the FEA for Pulama Lanai Miki Basin.  
20 And on February 17th, we will also be taking up that  
21 matter as well as Kaukonahua Ranch.

22 On March 9th, we will be hearing DR21-72,  
23 which is the Church-Hildal matter. On March 10th,  
24 we also have set aside if necessary a continuation  
25 of the Oahu IAL matter and the Kaukonahua Ranch



1 matter.

2 On March 23rd, we will be taking up the  
3 Waiawa Solar Farm matter, and on the 24th, we will  
4 be taking up the FEIS acceptance for A037-39, which  
5 is the Kanaha Hotel.

6 On April 13th we have a continuation of  
7 the Waiawa Solar Farm matter and we also have that  
8 as tentative for April 14th if necessary.

9 And then that takes us through the end of  
10 April. From there the calendar is tentative.

11 Thank you, Mr. Chair.

12 **COMMISSIONER SCHEUER:** Thank you. And I  
13 believe you said at the beginning when your audio  
14 was a little bit off that due to the increase in  
15 case counts we're intending to meet virtually at  
16 least through the end of January; is that correct?

17 **MR. ORODENKER:** That's correct, Mr.  
18 Chairman.

19 **COMMISSIONER SCHEUER:** Okay.  
20 Commissioners, are there any questions?

21 Seeing none -- oh, Commissioner Giovanni?

22 No? Okay.

23 Any other questions or any questions,  
24 commissioners?

25 Seeing none. Thank you very much, Dan.

1 Our next agenda item is an action item  
2 regarding Docket No. DR21-73, Honoipu Hideaway, LLC  
3 (Hawaii) to consider a petition for a boundary  
4 interpretation for certain lands consisting of  
5 approximately 17.5470 acres situated at 56-102 Old  
6 Coast Guard Road, Tax Map Key 35-6-001-074 Kapaa-  
7 Upolu, North Kohala, County of Hawaii, State of  
8 Hawaii.

9 Will the parties please identify  
10 themselves for the record, beginning with the  
11 petitioner?

12 **MR. CHIPCHASE:** Good morning, Chair,  
13 Commissioners.

14 Cal Chipchase, Chris Gooding, and Molly  
15 Olds for the petitioner, Honoipu Hideaway.

16 **COMMISSIONER SCHEUER:** Thank you.  
17 County of Hawaii, you're with us?

18 **MS. CAMPBELL:** Yes. Jean Campbell, Deputy  
19 Corporation Counsel of the County of Hawaii.

20 **COMMISSIONER SCHEUER:** Okay. Thank you,  
21 Ms. Campbell.

22 Ms. Kato?

23 **MS. KATO:** Alison Kato, Deputy Attorney  
24 General for the Office of Planning and Sustainable  
25 Development. Also here are Lorene Maki and Mary

1 Alice Evans from the Office of Planning and  
2 Sustainable Development. Thank you.

3 **COMMISSIONER SCHEUER:** Thank you very  
4 much.

5 Let me next update the record.

6 On June 25, 2021, we received a petition  
7 for a declaratory order for a boundary  
8 interpretation, a verification of the petition,  
9 petitioner's Exhibits 1-26, and a certificate of  
10 service.

11 On June 28th, the Commission received the  
12 petitioner's filing of a cashier's check for \$1,000.

13 On September 8th, the petitioner filed the  
14 survey of the subject property reflecting the  
15 location of the conservation district boundary line  
16 along the edge of the road.

17 On September 14th, the county of Hawaii  
18 filed a statement of no position and notice of  
19 nonappearance.

20 On September 15th, the LUC staff sent an  
21 errata letter to the petitioner.

22 On October 11th, the Commission received  
23 the petitioner's response to the errata letter.

24 On December 6th, the commission received  
25 the petitioner's supplemental memorandum in support

1 of the petition for declaratory order, a declaration  
2 of Nathan Eggen and Miles Horrea (phonetic),  
3 Exhibits 1-32, and a certificate of service.

4 On December 13th, the Office of Planning  
5 and Sustainable Development filed its position on  
6 the petition for declaratory order, Exhibits 1-4,  
7 and a certificate of service. Also on that date,  
8 the Commissioner mailed an email, the meeting agenda  
9 for the December 22 and 23, 2021 meetings to the  
10 parties in this docket and to our statewide and  
11 county mailing lists.

12 On December 16th, the petitioner filed a  
13 supplemental exhibit list, Exhibits 33-34 and a  
14 certificate of service.

15 And this morning, the commission received  
16 a petitioner's late filing of a supplemental exhibit  
17 list, Exhibits 35-39 and a certificate of service.

18 Have I left anything out, petitioner?

19 **MR. CHIPCHASE:** Chair, the only exhibit  
20 that you left out I believe was filed this morning.  
21 It's Exhibit 40.

22 **COMMISSIONER SCHEUER:** Okay. It's hard  
23 when they're last minute, counselor.

24 **MR. CHIPCHASE:** I understand, Chair. I  
25 absolutely do.

1           **COMMISSIONER SCHEUER:** It does create a  
2 burden for the staff and the commissioners.

3           **MR. CHIPCHASE:** I respect that as well.

4           **COMMISSIONER SCHEUER:** Let me briefly now  
5 run over our procedures for the docket. First, I'll  
6 give the petitioner an opportunity to acknowledge  
7 the commission's policy governing reimbursement of  
8 hearing expenses. Then, I'll acknowledge any  
9 written testimony that has been submitted in this  
10 matter. I'll then allow for any public testimony  
11 from members attending. After the completion of  
12 testimony, I will -- from the general public, I will  
13 allow the county and then the state to offer any  
14 testimony if they will. Following their testimony,  
15 I will call on the petitioner to make their  
16 presentation. After that, I will ask for any  
17 questions from the commissioners.

18           If there is time available, I may offer  
19 the commissioners to ask any further clarifying  
20 questions from the county or the state and any  
21 opportunity to rebut or further clarify from  
22 counsel. And finally, based on the information  
23 received today, the commission will determine  
24 further action.

25           Are there any questions on our procedures

1 for today?

2 Mr. Chipchase?

3 **MR. CHIPCHASE:** No, Chair.

4 **COMMISSIONER SCHEUER:** Okay. Ms.

5 Campbell?

6 Ms. Campbell, it is an audio recording of  
7 this record so you're shaking your head even  
8 vigorously.

9 **MS. CAMPBELL:** No questions. Thank you.

10 **COMMISSIONER SCHEUER:** Thank you.

11 **MS. KATO:** No questions. Thank you.

12 **COMMISSIONER SCHEUER:** Thank you. Okay.

13 So to move on, Mr. Chipchase, can you  
14 acknowledge that you've reviewed Haw. 15-15-45.1  
15 with regard to the reimbursement of hearing expenses  
16 and state your client's position on the matter?

17 **MR. CHIPCHASE:** Yes, chair. Reviewed,  
18 acknowledged, and accepted.

19 **COMMISSIONER SCHEUER:** Okay. Thank you.

20 Ms. Quinones, is there any written  
21 testimony submitted on this matter?

22 **MS. QUINONES:** Yes, Chair. We received  
23 written testimony from Marcelle Lauren (phonetic).  
24 And Linda and Marty Falbrater (phonetic).

25 **COMMISSIONER SCHEUER:** Okay.

1           **MS. QUINONES:** Also, we received testimony  
2 from Qesera and Stephen Smith (phonetic).

3           **COMMISSIONER SCHEUER:** Thank you. And are  
4 those posted to the website now?

5           **MS. QUINONES:** The first two are. The  
6 last one is not posted yet but I will post it later  
7 on today.

8           **COMMISSIONER SCHEUER:** Thank you.

9           Starting with the individuals who filed  
10 written testimony, if they want to file any  
11 supplemental oral testimony raise your hands.

12           If not, are there any members of the  
13 public who wish to provide oral testimony on this  
14 matter? If so, use the raise your hand function. I  
15 am able to see that nobody is calling in so just the  
16 raise your hand function in software.

17           Okay. I am seeing no public testimony  
18 from the general public on this matter.

19           I will now invite the county to share any  
20 testimony that they wish.

21           Ms. Campbell?

22           **MS. CAMPBELL:** Good morning, Chair and  
23 commissioners.

24           I am Jean Campbell, deputy corporation  
25 counsel at the County of Hawaii. You've previously

1 received the county's statement of no position with  
2 regard to this matter. It's the county's belief  
3 that a determination regarding changes to state land  
4 use boundaries is the jurisdiction of the LUC and  
5 not the county. Thus, we believe that this matter  
6 is properly before the LUC for your determination.  
7 The county will defer to your determination. I am  
8 simply attending today's hearing to be able  
9 available to answer any questions should you have  
10 any. Thank you.

11 **COMMISSIONER SCHEUER:** Thank you very  
12 much.

13 Are there any questions for Ms. Campbell  
14 at this time from the commissioners?

15 Seeing none.

16 Ms. Kato from the Office of Planning and  
17 Sustainable Development.

18 **MS. KATO:** Thank you, Chair. I do have  
19 comments. It should only take about five minutes or  
20 so.

21 **COMMISSIONER SCHEUER:** Please proceed.

22 **MS. KATO:** Thank you.

23 The Office of Planning and Sustainable  
24 Development does not support petitioner's requested  
25 declaratory order determining that the location of



1 the state land use district boundary line was  
2 incorrectly secluded by the LUC's boundary  
3 interpretation. Petitioner argues that the LUC  
4 should determine the boundary line as located along  
5 a currently existing paved road that curves through  
6 the property. OPSD does not, however, find  
7 sufficient reason to believe that the current  
8 official boundary is incorrect or that petitioner's  
9 alternate interpretation is instead the correct one.

10           The official map -- sorry -- the official  
11 map establishing the location of the conservation  
12 district boundary for this particular property was  
13 adopted by the LUC in 1969, and this is the  
14 currently existing boundary that's on the LUC's  
15 boundary interpretation. It's identical.

16           Subsequently, a report from the 1969 LUC  
17 boundary review was completed, which was not adopted  
18 by the LUC, but it does include a record of the  
19 LUC's actions and information on how boundaries were  
20 set.

21           The boundary review report did not clearly  
22 state or map out a detail where the boundary for any  
23 particular land was located. Instead, the report  
24 contains broad descriptions of large sections of the  
25 coastline. For this particular area, the report

1 states that the areas marked by numerous historic  
2 artifacts in a variety of conditions that should be  
3 included in the conservation district. So it was  
4 pretty inclusive.

5 The report also contains poor conditions  
6 that guided the setting of the boundaries. Three of  
7 the conditions describe physical boundaries that can  
8 be used such as a road or vegetation line marking  
9 the edge of agricultural use. So, in other words,  
10 where there was some physical feature dividing the  
11 agriculture use and the non-agricultural use. And  
12 the last condition was a general 300-foot setback.

13 Petitioner has provided evidence that a  
14 road and some buildings were constructed on the  
15 petition area in 1961 as part of major Coast Guard  
16 station reconstruction and that these are not  
17 present on 1969 LUC map.

18 But OPSD is not convinced that the  
19 unmapped road is relevant determination of the  
20 boundary line. The boundary line appears to run  
21 across the property behind the Coast Guard buildings  
22 that were constructed mauka of the paved road. So  
23 OPSD does not know the specific reason for the  
24 current location of the boundary line, whether it  
25 was due to road or vegetation line, the Coast Guard

1 station, or some other identifiable boundary, or the  
2 300-foot setback.

3 The boundary on the 1969 LUC map was the  
4 result of various sources of input and the official  
5 action of the LUC in 1969. OPSD assumes that the  
6 present location of the boundary that was adopted by  
7 the LUC in 1969 is correct unless proven otherwise  
8 and relies on the records and findings of the LUC.

9 Adjusting petitioner's statements that the  
10 paved road meets condition one and should have been  
11 used to draw the boundary. The fact is that the  
12 boundary was not drawn there. It was clearly drawn  
13 inland and not based on any dirt road running  
14 through the property. As the pre-1961 dirt path  
15 mentioned in the petition did not even run through  
16 the property parallel to the coast which is shown in  
17 OPSD's Exhibit 4 where the location of that dirt  
18 road actually went into the property. It kind of  
19 went along the side.

20 Even if the paved road had been shown on  
21 the LUC map, condition one is a road that marks the  
22 end of agricultural use and this road does not  
23 appear to be at the edge of agricultural use as  
24 there are Coast Guard crew housing buildings built  
25 mauka of the road. So OPSD has not seen clear

1 evidence that mauka of the road there was  
2 agricultural use. OPSD does not believe there is  
3 sufficient support to determine that the boundary  
4 shown in the 1969 LUC map and the LUC's boundary  
5 interpretation number 01-20 are not accurate but  
6 that should be changed.

7 For these reasons, OPSD does not support  
8 this petition for declaratory order for boundary  
9 interpretation. Thank you.

10 **COMMISSIONER SCHEUER:** Thank you very  
11 much, Ms. Kato.

12 Commissioners, are there questions for the  
13 Office of Planning and Sustainable Development?

14 Commissioner Ohigashi?

15 **COMMISSIONER OHIGASHI:** Thank you, Mr.  
16 Chair.

17 I was just wondering, your Exhibit 4, can  
18 you tell me, because my glasses are a little bad  
19 today, what's the source of Exhibit 4? I think I  
20 know.

21 **MS. KATO:** Okay. The source of Exhibit 4  
22 is basically we asked GIS to show a comparison on  
23 the USGS topographic maps dated in 1957 on  
24 petitioner's current survey map. So it's basically  
25 a combination of the two maps. That's why the lines

1 are a little off. They didn't exactly meet  
2 precisely.

3 **COMMISSIONER SCHEUER:** For the audio  
4 transcript, Ms. Kato, you said -- you asked whom to  
5 do this?

6 **MS. KATO:** GIS.

7 **COMMISSIONER SCHEUER:** GIS. Thank you.

8 **MS. KATO:** Office of Planning.

9 **COMMISSIONER SCHEUER:** Thank you. Sorry  
10 to interrupt.

11 **COMMISSIONER OHIGASHI:** This Exhibit 4  
12 shows a pink paved road, and that is the 1982 paved  
13 road according to the 1982 topographical map. I'm  
14 not sure if I'm making it pink or --

15 **MS. KATO:** Sorry. Yes.

16 **COMMISSIONER OHIGASHI:** I think it's --  
17 there's a solid blue line showing the conservation  
18 agricultural district boundary.

19 **MS. KATO:** Yeah.

20 **COMMISSIONER OHIGASHI:** And the green line  
21 is the 1957 dirt road.

22 **MS. KATO:** Yeah.

23 **COMMISSIONER OHIGASHI:** And that is shown  
24 --

25 **MS. KATO:** Right. Yeah, that's

1 (indiscernible) three.

2 **COMMISSIONER OHIGASHI:** That's shown in  
3 the topographical map of 1957.

4 **MS. KATO:** Yes, that's my understanding.

5 **COMMISSIONER OHIGASHI:** As there -- I  
6 think I recall, and I don't have it all written down  
7 in front of me to ask that question but I was  
8 wondering, are any of the so-called maps utilized by  
9 the petitioner in this matter exhibited on this --  
10 on your Exhibit 4? In other words, in any of the  
11 specific maps? I think it was a 1964 --

12 **MS. KATO:** Sorry, I'm not sure which maps  
13 exactly you're referring to. The USGS maps that we  
14 used for this map are used by GIS. I'm not sure if  
15 petitioner used them or not.

16 **COMMISSIONER OHIGASHI:** I don't have any  
17 questions more. I just wanted to --

18 **COMMISSIONER SCHEUER:** Thank you,  
19 Commissioner Ohigashi.

20 Commissioners, further questions at this  
21 time for OPSD?

22 Commissioner Chang?

23 **COMMISSIONER CHANG:** I raised my hand.

24 This may not be -- I'm not sure if this is  
25 relevant or not. I couldn't find any information in

1 the record. But Ms. Kato, is there any evidence  
2 that this -- that the dirt road is an old government  
3 road?

4 **MS. KATO:** We actually could not determine  
5 what this dirt road was or that it even was a road  
6 exactly. Petitioner provided a map that indicates  
7 that it might be a Jeep road but we're not sure what  
8 it was or that it actually existed. At first we  
9 thought it wasn't a road but --

10 **COMMISSIONER CHANG:** Yeah. I'm just  
11 wondering, you know, pursuant to the Highways Act of  
12 1892, if this was an old government road, then  
13 actually, the State of Hawaii may still own that.  
14 So, and it may have cut through this property. But  
15 I just could not find any information in the  
16 documents that were provided to confirm the date of  
17 the road or get any maps old enough to show, you  
18 know. So, okay. I was just curious whether this  
19 was an old government road that ran mauka to makai.  
20 Okay, all right, thank you.

21 **COMMISSIONER SCHEUER:** Thank you,  
22 Commissioner Chang.

23 Commissioners, further questions at this  
24 time for OPSD?

25 Seeing none, we're good for now, Ms. Kato.

1 Thank you --

2 **MS. KATO:** Thank you.

3 **COMMISSIONER SCHEUER:** -- for your  
4 presentation.

5 We'll now move on to the petitioner's  
6 presentation.

7 Mr. Chipchase, are you ready to proceed?

8 **MR. CHIPCHASE:** I am, Chair. I just need  
9 to share my screen if that's all right.

10 **COMMISSIONER SCHEUER:** Yes, please.

11 **MR. CHIPCHASE:** All right. Good morning,  
12 again, commissioners. Cal Chipchase for the  
13 petitioner. And Happy Holidays.

14 Commissioner Ohigashi, Commissioner Chang,  
15 we'll address your questions in our presentation.  
16 I'll go over Exhibit 4 in particular, and  
17 Commissioner Chang, I'll do my best to address your  
18 question now.

19 The road that was constructed in 1961 was  
20 built by the federal government. The older road  
21 that is shown on the maps, I do not know its origin.  
22 We also looked for that but were unable to determine  
23 conclusively when or who that road was developed.

24 We are here, as you heard, for  
25 consideration of our petition for a district



1 boundary interpretation. The petition asks the  
2 commission to determine the location of a district  
3 boundary line that runs through our property. This  
4 is a recognized process that is set by established  
5 commission rules.

6 In 1969, the commission conducted a  
7 comprehensive review of the land use district  
8 boundaries, and that's when the conservation  
9 district boundary for this property was first  
10 mapped. Prior to 1969, the conservation district  
11 line had not been mapped for this property.

12 As the commission explained in that  
13 review, that 1969 review that led to the mapping of  
14 the conservation district boundary on this property,  
15 future commissions should "continually strive to  
16 improve and to clarify the district regulations and  
17 district boundaries so that the inconsistencies and  
18 ambiguities are removed when identified rather than  
19 waiting for the five-year program."

20 And so the commission when it did this  
21 really comprehensive, wide-reaching work, recognized  
22 that the work would not be perfect. That there  
23 would be inconsistencies. That there would be  
24 ambiguities. And in its own report, encourage  
25 future commissioners to address those. Consistent

1 with that commission's recommendations in 1969, the  
2 rules are set up so that this commission, future  
3 commissions, can make those corrections. Can make  
4 those adjustments.

5 Our petition comes to you having followed  
6 that process. We first worked with LUC staff to  
7 both correct the interpretation and to identify the  
8 correct procedure for bringing this matter to you if  
9 we were unable to correct the interpretation at a  
10 staff level. To do so we requested a staff boundary  
11 interpretation. We ultimately received two of them.  
12 Both interpretations put the boundary line in the  
13 same place on the map. Both interpretations  
14 followed the same line but the reasons given for  
15 putting the line in that same location were  
16 inconsistent. One reason was given on the first  
17 interpretation. A different reason was discussed or  
18 provided in the second interpretation. We discussed  
19 those interpretations with staff. Very grateful for  
20 their time both in working on the interpretations  
21 and in meeting with us and we discussed the best way  
22 to correct what we believe to be a mapping error  
23 from that 1969 review, what we believe to be the  
24 kind of ambiguity and mistake or regularity that the  
25 commission was talking about.

1           Ultimately, a petition for declaratory  
2 relief was determined to be the appropriate process.  
3 That process is set out in Haw. 15-15-22(f) and 15-  
4 15-98(a). Section 22(f) provides that "whenever  
5 subsections A, B, C, D, or E, cannot resolve  
6 uncertainty concerning the location of any district  
7 line, the commission, upon written application or  
8 upon its own motion, shall determine the location of  
9 those lines. And of course, section 98 is the basic  
10 declaratory relief section. We'll talk about those  
11 provisions later in our presentation.

12           As we are set to begin, Chair, I would ask  
13 that the commission accept our Exhibits 1-40 into  
14 evidence, and additionally, we will provide this  
15 PowerPoint presentation to the commission and would  
16 label it Exhibit 1. I ask that the commission  
17 receive that exhibit into evidence as well.

18           **COMMISSIONER OHIGASHI:** Mr. Chair, I  
19 haven't received Exhibits 39 or 40.

20           **COMMISSIONER SCHEUER:** Yes. I was going  
21 to bring that up. Some of these were received very  
22 late. So it's the commission's pleasure, chair  
23 ultimately, but I defer to the commission on whether  
24 or not to accept all of these exhibits.

25           What's the commissioner's pleasure?

1 Mr. Ohigashi?

2 **COMMISSIONER OHIGASHI:** Well, I'm inclined  
3 to receive up to 38 which -- which I can review, but  
4 I'd like to review 39 and 40 at least before  
5 accepting -- before formally accepting them.

6 **MS. QUINONES:** Can you --

7 **COMMISSIONER OHIGASHI:** I'm not sure if  
8 fighting it means --

9 **COMMISSIONER SCHEUER:** Natasha?

10 **MS. QUINONES:** Hi. Yeah, Chair. This is  
11 Natasha. I think there's some confusion. I do not  
12 think we received Exhibit 40. We did receive  
13 Exhibit 39 -- no, 35 to 38, and then also 39  
14 separately, but they're so late. And it's a quite  
15 large exhibit, so I couldn't load it, and I'm trying  
16 to figure that out as we speak. But Exhibit 40 was  
17 not received, so maybe there's some confusion there.

18 **COMMISSIONER SCHEUER:** Okay. Sorry, are  
19 you still speaking to us, Natasha?

20 **MS. QUINONES:** No, I'm not. I'm done.

21 **COMMISSIONER SCHEUER:** Okay. We're  
22 picking up your audio, however.

23 Mr. Chipchase, is your arguments today  
24 dependent on having all of your exhibits?

25 **MR. CHIPCHASE:** Chair, if I may make a

1 correction. Actually, Ms. Olds is correcting me.

2 We -- staff is correct. It's Exhibits 1 through 39.

3 **COMMISSIONER SCHEUER:** Okay. You

4 corrected me earlier that you said you had a 40th.

5 So 1 through 39?

6 **MR. CHIPCHASE:** My fault entirely, Chair.

7 **COMMISSIONER SCHEUER:** Okay.

8 **MR. CHIPCHASE:** One through 39. Thirty-  
9 nine is a copy of that 1969 Commission Review, so it  
10 is a state record.

11 **COMMISSIONER SCHEUER:** Hold on, counselor.  
12 I'm, sorry, looking at my list again.

13 The timely filings that we received were  
14 from -- one moment -- through Exhibit 34. On  
15 December 16th, we received Exhibits 33 through 34.  
16 Now, we've received Exhibits 35 through 39. Are you  
17 able to stop screensharing on your presentation --

18 **MR. CHIPCHASE:** Yes, Chair.

19 **COMMISSIONER SCHEUER:** -- and screen share  
20 what those exhibits are.

21 **MR. CHIPCHASE:** Thirty-five through 39,  
22 Chair?

23 **COMMISSIONER SCHEUER:** Yes, please.

24 **MR. CHIPCHASE:** Yes. If you'll give us a  
25 moment we'll pull those up.

1           **COMMISSIONER SCHEUER:** Mr. Chipchase?

2           **MR. CHIPCHASE:** Mr. Goodman is just about  
3 to share it, Chair.

4           All right, Chair. On the screen I've put  
5 our exhibit list, the supplemental. It lists 35  
6 through 38. We can scroll down and view those as  
7 well if you'd like, Chair.

8           **COMMISSIONER SCHEUER:** Yes, please.

9           So read out the Exhibits 35 through 38.

10          **MR. CHIPCHASE:** Yes, Chair.

11           Exhibit 35, 1969 Review, Agricultural Uses  
12 Map TMK overlay excerpt.

13           Exhibit 36, 1969 Review, Agricultural Uses  
14 Map TMK overlay.

15           Exhibit 37, 1954 USGS Aerial Excerpt TMK  
16 overlay.

17           Exhibit 38, 1954 USGS Aerial TMK overlay.

18           And Chair, if I'm not mistaken, and Ms.  
19 Olds can correct me if I am, it happens, these were  
20 prepared in response to OP's comments that some of  
21 the locations of the property on these larger maps  
22 was not sufficiently clear.

23           Chris, if you would scroll down, please.

24           All right. So this is Exhibit 35, Chair,  
25 the excerpt that we identified.

1 Keep going, Chris. Keep going.

2 Exhibit 36, Chair. Again, from the 1969  
3 review.

4 Exhibit 37, Chair.

5 And Exhibit 38, Chair.

6 **COMMISSIONER SCHEUER:** Okay. If you'd  
7 stop screensharing for a moment, please.

8 So unlike some recent filings, OPSD filed  
9 on December 13th. I really believe, at least on  
10 appearances, there was more than adequate time to  
11 respond to it in a timely way.

12 Do you have some sort of extraordinary or  
13 compelling reason, Mr. Chipchase, that these  
14 exhibits were filed so late?

15 **MR. CHIPCHASE:** Ms. Olds informed me that  
16 we received -- we filed them when we received them  
17 from the surveyor, Chair.

18 **COMMISSIONER SCHEUER:** So the dilemma --  
19 so this is to tell the commission my inclination but  
20 I want further feedback from them. The very late  
21 filings puts us in a very awkward position. If we  
22 accept them and say we rule against you, you can  
23 always argue that we perhaps didn't fully take into  
24 account the information that was provided to us.  
25 It's my inclination to not accept them because

1 honestly, receiving them at the last minute, we  
2 don't have a chance to fully review them in light of  
3 the record.

4 What is the commissions inclination?

5 Commissioner Ohigashi?

6 **COMMISSIONER OHIGASHI:** I support the  
7 chair.

8 **COMMISSIONER SCHEUER:** Commissioner  
9 Giovanni?

10 **COMMISSIONER GIOVANNI:** I support the  
11 chair's inclination.

12 **COMMISSIONER SCHEUER:** Commissioner Chang?

13 **COMMISSIONER CHANG:** I, too, support the  
14 chair's inclination. I think if it was dispositive  
15 to the petitioner's case, knowing Mr. Chipchase, he  
16 would have included it in his original exhibits. So  
17 I support the chair.

18 **COMMISSIONER SCHEUER:** Okay. I'll allow  
19 you another chance to respond, Mr. Chipchase, before  
20 I determine acceptance.

21 **MR. CHIPCHASE:** Very good, Chair. And I  
22 appreciate that opportunity.

23 I would say this, Chair. Obviously, we  
24 would waive the argument that you hadn't had  
25 sufficient time to consider the exhibits if you deny



1 our petition. I can make that representation on the  
2 record and at least resolve that portion of the  
3 chair's concerns. As far as the documents  
4 themselves, we will review them in the PowerPoint  
5 presentation and so there will be an opportunity to  
6 see and to study the exhibits which I acknowledge  
7 the late filing, but ultimately, the quest here is  
8 to determine the facts and to have as much evidence  
9 before the commission as possible in determining  
10 those facts. We believe those filings are relevant  
11 and are responsive to comments that OP made. And we  
12 filed them as soon as we were able to after we  
13 received them from the surveyor which, of course,  
14 would take some time to prepare. So while I  
15 completely understand and respect the burden and the  
16 position that it puts both the commission and staff  
17 in while we file late exhibits, it does happen  
18 sometimes. And I believe in this case the reasons  
19 are sufficient and the exhibits themselves are  
20 material to the commission's determination.

21 **COMMISSIONER SCHEUER:** Is Exhibit 37 and  
22 38 the same as your Exhibit 9 except with the  
23 overlay?

24 **MR. CHIPCHASE:** Yes, Chair.

25 **COMMISSIONER SCHEUER:** I'm inclined to

1 accept exhibits through Exhibit 30 -- let me get  
2 this right to be really clear -- to not accept the  
3 late exhibits but to accept exhibits through Exhibit  
4 34.

5 Commissioner Chang?

6 **COMMISSIONER CHANG:** Mr. Chair, if I may,  
7 those additional exhibits for the late filing, is it  
8 possible to consider them after Mr. Chipchase has  
9 presented --

10 **COMMISSIONER SCHEUER:** Yeah, I would  
11 entertain -- I would entertain a motion after his  
12 presentation to include them.

13 **COMMISSIONER CHANG:** Yeah. Because I do  
14 want to give him the full opportunity to present his  
15 case in his best light since he's the petitioner.  
16 So that's my thought to you. Thank you, Mr. Chair.

17 **COMMISSIONER SCHEUER:** Okay.

18 **MR. OHIGASHI:** So essentially, you're  
19 reserving ruling on those particular exhibits?

20 **COMMISSIONER SCHEUER:** That's correct.

21 Commissioner Cabral?

22 **COMMISSIONER CABRAL:** Yes. Thank you for  
23 -- I think we're resolving this. I find that I'm a  
24 very visual person and I find the maps most  
25 interesting for me with my experience and

1 background. So I appreciate the ability to be able  
2 to look at those and hope that they won't be then --  
3 if you folks could work it out, you lawyer types, to  
4 where they don't become a liability to us for us not  
5 having had them earlier because I printed all my  
6 little maps in color so I could see all this stuff.  
7 So I appreciate that. That's what I like to see, so  
8 I want to know all the information I can visually.  
9 So I appreciate the ability to work through this.  
10 Thank you.

11 **COMMISSIONER SCHEUER:** Okay. So I'm  
12 accepting through Exhibit 34 and I'll let you bring  
13 a motion for the additional ones at the end of your  
14 presentation, Mr. Chipchase.

15 **MR. CHIPCHASE:** Very good, Chair.

16 **COMMISSIONER SCHEUER:** Are you ready to  
17 continue?

18 **MR. CHIPCHASE:** I am.

19 **COMMISSIONER SCHEUER:** And we'll go for --  
20 about how long is your presentation, Mr. Chipchase?

21 **MR. CHIPCHASE:** The total presentation,  
22 Chair, is about two hours.

23 **COMMISSIONER SCHEUER:** I did not notice  
24 any inflection of joking in your voice.

25 **MR. CHIPCHASE:** If only that were true,

1 Chair. It is about two hours.

2 **COMMISSIONER SCHEUER:** Okay.

3 **MR. CHIPCHASE:** Including the testimony of  
4 one witness.

5 **COMMISSIONER SCHEUER:** Okay. So why don't  
6 you go to -- why don't you go for about 10-15  
7 minutes and then we'll take our first break.

8 **MR. CHIPCHASE:** Will do, Chair.

9 So as we were running through the rules,  
10 15-15-22 and -98(a), I noted that we'll talk about  
11 those in a little more detail later in the  
12 presentation. Right now we'll start with the  
13 location of the property, putting these things into  
14 context.

15 Petitioner owns the subject property  
16 located at 56-102 Old Coast Guard Road in North  
17 Kohala. The property is about 17 acres. And as you  
18 can see, the property abuts the shoreline.

19 On the screen we've put up on the left a  
20 recent GIS aerial of the property and on the right  
21 is an overlay of the conservation district in the  
22 larger area. To the north of the property, the  
23 conservation district boundary line follows the edge  
24 of the road that runs along the coast except in  
25 areas of historical, recreational, or other

1 significance. Generally, the land mauka of the road  
2 is in the agricultural district and the land makai  
3 of the road is in the conservation district.

4 The boundary line separating the  
5 conservation and agricultural districts in this area  
6 as I mentioned was first drawn in 1969 and this  
7 brings us to the maps. Commissioner Ohigashi had  
8 mentioned the maps that we had cited. This brings  
9 us to the five maps that we will focus on most  
10 through our discussion today.

11 The first map is the 1957 USGS map for the  
12 quadrangle. And Commissioner Ohigashi, it is on  
13 that map that the road appears. The road obviously  
14 existed before the map. It wasn't built in 1957.  
15 That date on OPSD's Exhibit 4 refers to the date of  
16 the map. That 1957 USGS map served as the base map  
17 for the 1964 LUC H3 map for the quadrant and that's  
18 the second map that we've put up on the screen.  
19 This was the map that the commission used, the 1964  
20 commission used to draw the agricultural land use  
21 district.

22 The 1964 map was then used in the 1969 LUC  
23 map to draw the district boundary line separating  
24 the conservation and the agricultural districts.  
25 And as you can see, this 1969 map was the first time

1 that the boundary line for the conservation district  
2 was drawn on our property and in the surrounding  
3 area.

4 Generally, this line, this conservation  
5 district line follows roads where they exist within  
6 a reasonable proximity to the shoreline. Land mauka  
7 of those roads is in the agricultural district.  
8 Land makai of those roads is in the conservation  
9 district.

10 The fourth map is the 1974 LUC H3 map for  
11 the same quadrangle. This map is a republication of  
12 the 1969 map for the lines separating the  
13 conservation and ag districts. In other words, the  
14 location of the boundary line on the property did  
15 not change from 1969 to 1974. The commission just  
16 republished the map.

17 And the final map is the 1982 USGS map for  
18 the same quadrangle. This map shows the road that  
19 we will discuss today in the current location or  
20 through the current location of the property. This  
21 road to Commissioner Ohigashi's question earlier  
22 with respect to OPSD's Exhibit 4 was not built in  
23 1982. As we'll explain today, it was built in 1961  
24 but it was depicted on the USGS map from 1982. And  
25 that's where that date comes from. We've generally

1 circled here you can see the location of our  
2 property on the map in relation to that 1961 road.

3 We've put up the current survey of the  
4 property on the screen for the commission. The  
5 property is about 17 acres and this survey depicts  
6 staff's interpretation of the conservation district  
7 boundary line. And that's the dash line that we  
8 indicate here. That's the current --

9 **COMMISSIONER SCHEUER:** So I'm just going  
10 to interject here, Cal.

11 **MR. CHIPCHASE:** Yes.

12 **COMMISSIONER SCHEUER:** If you really are  
13 going to use a full two hours, it would greatly  
14 benefit at least this commissioner that you lay out  
15 what the overview of your presentation is going to  
16 be so I know where we are. You will close me.

17 **MR. CHIPCHASE:** Understood, Chair. And I  
18 believe -- is that our next -- two slides from that,  
19 Chair, I was just trying to give an overview of the  
20 property.

21 **COMMISSIONER SCHEUER:** Okay. Why don't we  
22 go through your overview of the presentation and  
23 then we'll take a break.

24 **MR. CHIPCHASE:** Very good, Chair.

25 So if I can just finish up with this

1 slide, Chair, and then we'll quickly get to the  
2 overview.

3           The survey also shows the road running  
4 through the property that we looked at on those  
5 other maps. We've indicated that here with the  
6 arrow. As I mentioned, this road was developed in  
7 1961, eight years before the boundary was  
8 established by the LUC. We asked for staff's  
9 interpretation of the boundary line and staff's  
10 first interpretation concluded that the boundary  
11 line followed a trail or roadway. Following a trail  
12 or roadway as OPSD mentioned today was one of the  
13 LUC's guidelines in the 1969 review. Indeed, as  
14 we'll see, it was the very first guideline.

15           The LUC staff then set the boundary along  
16 the roadway following or using the shoreline survey  
17 of the property and the district boundaries map for  
18 the H3 quadrangle. That 1969-1974 quadrangle that  
19 we looked at. We agreed with staff that the  
20 commission, the 1969 commission had intended to  
21 follow a roadway in setting the boundary. We  
22 believe that the commission in 1969 simply used an  
23 outdated map. It didn't have a current map locating  
24 the roadway in its then-existent location and that  
25 if it had the current map since it was following



1 roadways, it would have mapped it along the then-  
2 existing roadway which is shown on the right-hand  
3 side of the screen just makai of where staff has  
4 drawn the district boundary line. So the line was  
5 simply in the wrong place.

6 After we had filed the petition to correct  
7 the line to follow the then-existing line, staff  
8 reinterpreted the boundary. And when staff  
9 reinterpreted the boundary, we put that up on the  
10 screen, it put the line in exactly the same location  
11 as it had in the prior interpretation. The line did  
12 not move. Instead, staff just changed the basis for  
13 the interpretation saying that the boundary line was  
14 not actually based on a road but based on a 300-foot  
15 setback from "the line of wave action."

16 And so although the reasons for the  
17 location of the boundary changed from interpretation  
18 to interpretation, first following a road and second  
19 following 300 feet from the shoreline, the location  
20 of the boundary didn't move. And we have them both  
21 up on the screen so that the commission can compare  
22 the two interpretations that we received. The line  
23 is exactly in the same place. We believe, and we  
24 believe we'll show today, Chair and commissioners,  
25 that the LUC staff's first reason, first basis for

1 the interpretation was correct. That the LUC 1969  
2 intended to follow a roadway. They simply got the  
3 location of the roadway wrong. We believe, and we  
4 believe we will show today as well, that staff's  
5 second basis for the line, the 300 feet from the  
6 shoreline basis is incorrect. That that basis is  
7 not supported by the evidentiary record. And we  
8 believe that that record shows the following.

9 That the maps do not support a 300-foot  
10 setback when we look at where the line is. That the  
11 text of the commission's 1969 boundary action does  
12 not support a 300-foot setback. And that the scaled  
13 overlays that we have prepared and that are part of  
14 the record as part of that initial set of exhibits  
15 do not support a 300-foot setback.

16 We believe instead that the record will  
17 show that the commission intended to follow the  
18 general pattern of roadways running along the coast.  
19 That a roadway ran through our property when the  
20 commission mapped the conservation district in 1969.  
21 And that the boundary should be corrected to follow  
22 that roadway.

23 And my final sort of background  
24 orientation, I believe, Chair --

25 **COMMISSIONER SCHEUER:** Sorry. One moment,

1 Mr. Chipchase.

2 Commissioner Giovanni?

3 **COMMISSIONER GIOVANNI:** Yeah. When do we  
4 get to the overview? I'm confused. These sound  
5 like arguments to me.

6 **MR. CHIPCHASE:** Commissioner, as I said,  
7 only trying to orient.

8 Chris, can you jump ahead to the --

9 Okay. Commissioners, thank you for your  
10 patience. It was my next slide.

11 As we'll see today, the commission should  
12 interpret the boundary as running along the road  
13 that existed in 1969 and that still exists today.  
14 Our presentation will proceed in six parts.

15 First, we will explain that the commission  
16 did not use 300 feet from the shoreline as the basis  
17 for the boundary in 1969.

18 Second, we will review the history of the  
19 property, including the agricultural use of the  
20 property and the construction of the road that  
21 exists on the property today.

22 Third, we will review the LUC maps and  
23 apply the commission's rules and standards in light  
24 of the property and its history.

25 Fourth, we will review the public

1 testimony that has been submitted in support of this  
2 petition by our neighbors.

3 Fifth, we will hear from the applicant  
4 about his current and planned uses on the property  
5 and his reasons for bringing this petition.

6 Sixth, and finally, we will close by  
7 discussing the commission's precedent and the  
8 standards in applying that precedent for the facts  
9 of this matter. And then, of course, as the chair  
10 mentioned, we'll be available for any questions from  
11 the commission.

12 That's the order of our presentation  
13 today, Chair. Thank you.

14 **COMMISSIONER SCHEUER:** Okay. So as you  
15 well know, Mr. Chipchase, this is not an evidentiary  
16 hearing; right? So I'm a little interested in your  
17 idea of bringing in a witness.

18 With that said, we're overdue for a break.  
19 I'm going to ask you to bring that slide back up  
20 when we reconvene at 10:35 and then I'm going to ask  
21 the commissioners to sort of -- the first chance to  
22 sort of ask you some questions about the  
23 organization of your presentation before we proceed.

24 It's 10:25. We're going to recess for 10  
25 minutes until 10:35.

1 (Recess taken from 10:25 a.m. - 10:36

2 a.m.)

3 COMMISSIONER SCHEUER: It's 10:36. We're  
4 back on the record.

5 Mr. Chipchase, would you put up your talk  
6 out line. And I just want to make a space for the  
7 commissioners to ask any questions or seek any  
8 clarification at this time.

9 Commissioners?

10 Commissioner Wong?

11 COMMISSIONER WONG: Thank you, Chair.

12 Mr. Chipchase, I know you were going over  
13 the prestation and all these issues. What is the  
14 request -- sorry. I just want to make sure I'm  
15 getting it correct because you're going over all  
16 these issues and I just want to make sure what --  
17 try to put it in plain English.

18 MR. CHIPCHASE: I'll do my best,  
19 commissioner.

20 The current boundary line, we believe, is  
21 mauka of where the line should be set as corrected.  
22 We believe that the line should be interpreted as  
23 following the makai road that existed in 1969 when  
24 the line was mapped and that ran through the  
25 property at that time.

1           **COMMISSIONER CHANG:** Okay. Just want to  
2 make sure I got what I was reading on all the  
3 exhibits is correct because, yeah, just wanted to  
4 make sure I got everything correct, sir.

5           **MR. CHIPCHASE:** I understand,  
6 commissioner.

7           **COMMISSIONER CHANG:** Yeah. So I'm just  
8 going to ask some questions later, Chair, so I  
9 reserve that right.

10          **COMMISSIONER SCHEUER:** Of course.

11          **MR. CHIPCHASE:** Thank you.

12          **COMMISSIONER SCHEUER:** Commissioners,  
13 anything else?

14                 If not, so Mr. Chipchase, I want to be  
15 really clear. I want you to have full opportunity  
16 to provide all the information that you believe the  
17 commission needs in order to rule on this but it's  
18 December 22nd. Not all of us have all our shopping  
19 done.

20          **MR. CHIPCHASE:** I totally understand,  
21 Chair. And I am one of the people who doesn't have  
22 their shopping done. I will say that the length of  
23 the presentation is in part a reflection of OPSD's  
24 comments that we hadn't provided sufficient evidence  
25 so I wanted to make sure that we walk through what

1 we believe the evidence does show but I am  
2 incredibly sensitive to your time and to everybody's  
3 time and we will do it as quickly as possible.

4 **COMMISSIONER SCHEUER:** Commissioner  
5 Giovanni?

6 **COMMISSIONER GIOVANNI:** Thank you, Chair.

7 Mr. Chipchase, I'm trying to interpolate  
8 from these six points really what is the essence of  
9 your petition. I don't think that you're before us  
10 today just as a matter to correct errors that might  
11 have been made by a former commission 60 years ago.  
12 What is the motivation of your client for this  
13 petition and this declaratory order and where in  
14 these six things do we learn of his motivation?

15 **MR. CHIPCHASE:** You will hear directly  
16 from Mr. Eggen, a member of the petitioner, as to  
17 his motivations. I'll summarize them for you,  
18 commissioner. I think it's entirely an appropriate  
19 question to ask.

20 There are a couple of things that I'll  
21 focus here on. One is that the district regulations  
22 are inconsistent between the county and the state  
23 land use district boundary. So under the county,  
24 his home mauka of the road is within the  
25 agricultural district. On the commission's map,

1 that area as we have outlined is in the state  
2 conservation district. That creates an additional  
3 level of regulation with respect to the home and the  
4 surrounding property and he would like to be subject  
5 to a single set of regulations, the agricultural  
6 district regulations at least for the main portion  
7 of his property. Makai of the roadway, of course,  
8 would remain in conservation.

9 The second is that Mr. Eggen wishes to  
10 expand the agricultural uses of the property, in  
11 particular near the home, to include obtaining  
12 income from agricultural activities which he  
13 understands, and I believe is correct, is not  
14 permitted in the conservation district. Those I  
15 would say would be the two principal motivations  
16 but, of course, commissioners, I understand and  
17 respect that you may have additional questions for  
18 Mr. Eggen.

19 **COMMISSIONER SCHEUER:** Commissioner Chang?

20 **COMMISSIONER CHANG:** Thank you.

21 Commissioner Giovanni, have your answers  
22 been responded to? Okay.

23 I, too, am struggling, Mr. Chipchase. I  
24 generally give you extremely great deference as  
25 you've always come to us with very credible



1 arguments. There's a few things factually that, and  
2 maybe you're going to cover this, but it will help  
3 me as I consider your motion.

4 One, when did your -- because I could not  
5 find this or else I missed it in the findings --  
6 when did your client buy this property?

7 **MR. CHIPCHASE:** I don't know offhand,  
8 commissioner, what the answer to that is. It was  
9 several years ago. But certainly not before 1969.

10 **COMMISSIONER CHANG:** Okay. And he bought  
11 the property knowing where the lines were drawn;  
12 right?

13 **MR. CHIPCHASE:** Yes, commissioner.

14 **COMMISSIONER CHANG:** Okay. Could you tell  
15 me, what is his current -- it's the Honoipu  
16 Hideaway, LLC. Could you please explain what is  
17 that?

18 **MR. CHIPCHASE:** Absolutely. It is a  
19 family LLC. Mr. Eggen and his wife and some family  
20 members are members of that. As he will explain,  
21 the put the property in an LUC -- or an LLC, I'm  
22 sorry, for inheritance and transfer purposes among  
23 those family members. He is a software engineer and  
24 then also owns a small business on the Big Island, a  
25 milling -- millwork and cabinetry company.

1           **COMMISSIONER CHANG:** And this is something  
2 that I've not been able to, again, not been able to  
3 find. What is the difference -- can you quantify  
4 exactly what is the difference between the  
5 conservation and the ag district that you're asking?  
6 What exactly is that? If you've got a map that can  
7 show me what is the quantification of the difference  
8 you're asking.

9           **MR. CHIPCHASE:** Yes, commissioner. It's  
10 1.8 acres. It was actually the slide right before  
11 this that I was going to cover. I'll go back to  
12 that slide.

13           **COMMISSIONER CHANG:** Okay.

14           **MR. CHIPCHASE:** And we'll take a look at  
15 it.

16           And if I just may say, commission, I do  
17 appreciate the respect and the attention the  
18 commission has always show, and I don't regard today  
19 any differently. We'll put our evidence before the  
20 commission and I understand it's your obligation to  
21 make the decision.

22           **COMMISSIONER CHANG:** Okay. Thank you. I  
23 appreciate that.

24           Now, what is he currently using the  
25 property for?

1           **MR. CHIPCHASE:** So it is currently, the  
2 portion that includes his home is used as his home.  
3 Surrounding that is an area that he uses for  
4 agriculture, for family consumption only. And then  
5 mauka of that, a portion of the property is in  
6 pasture. He owns about 10 cows.

7           **COMMISSIONER CHANG:** Ten cows. Okay.  
8           And his residence is currently on the area  
9 that's zoned conservation; is that right?

10          **MR. CHIPCHASE:** Yes, that's right, Chair -  
11 - or that's right, commissioner.

12          **COMMISSIONER CHANG:** And you are -- you  
13 are using this administrative procedure rather than  
14 doing a district boundary amendment?

15          **MR. CHIPCHASE:** That is correct. We  
16 believe, as we looked at the history, that the  
17 commission intended to utilize this process. That  
18 the precedent utilize this process and that the  
19 rules are set up to utilize this process.

20          **COMMISSIONER CHANG:** Okay. Does he use  
21 this property in any way for a vacation rental?

22          **MR. CHIPCHASE:** No, commissioner. And as  
23 he'll testify, his SMA permit expressly prohibits  
24 that use.

25          **COMMISSIONER CHANG:** All right. And is

1 the SMA line drawn through the ag or is it at the  
2 boundary of the conservation; do you know?

3 **MR. CHIPCHASE:** I don't know offhand. I'm  
4 sure we can get that before the end of my  
5 presentation.

6 **COMMISSIONER CHANG:** Okay. That would be  
7 helpful.

8 **MR. CHIPCHASE:** Very good.

9 **COMMISSIONER CHANGE:** Thank you.

10 Thank you, Mr. Chair. I appreciate Mr.  
11 Chipchase's response to my questions as that helps  
12 me sort of get a better grasp on the facts here.

13 And I'm hoping we're not going to take two  
14 hours, Mr. Chipchase but I appreciate the overview.  
15 Thank you.

16 **MR. CHIPCHASE:** You're welcome.

17 **COMMISSIONER SCHEUER:** Anything further,  
18 commissioners, at this time?

19 I'll just clarify, the petitioner is an  
20 LLC, correct, Mr. Chipchase?

21 **MR. CHIPCHASE:** Yes, Chair.

22 **COMMISSIONER SCHEUER:** So what is the  
23 LLC's preferred pronoun?

24 **MR. CHIPCHASE:** I would say it.

25 **COMMISSIONER SCHEUER:** Because we keep

1 saying he.

2 **MR. CHIPCHASE:** Oh, the "he" I reference  
3 is Mr. Eggen.

4 **COMMISSIONER SCHEUER:** Okay. When we're  
5 referring to the petitioner we should be using "it."

6 **MR. CHIPCHASE:** That would be fine, Chair.

7 **COMMISSIONER SCHEUER:** Okay. Please  
8 proceed.

9 **MR. CHIPCHASE:** Thank you.

10 Chris, if you could take us back just to  
11 give that comparison of what we're asking here.  
12 Okay.

13 So commissioners, we've put up on the  
14 screen those two maps that I briefly talked about  
15 with Commissioner Chang. The map on the left shows  
16 the road on the 1982 USGS map. That road is shown  
17 in green. And we'll circle the property. It's  
18 right there. And you can see that the road as it  
19 existed in 1969, it was built in 1961, runs through  
20 the property. The yellow dash line represents the  
21 current boundary interpretation for the conservation  
22 district. And Chris is pointing to that there.

23 And so if you look at the blue line next,  
24 the blue line that Chris is pointing to represents  
25 the road that existed in 1969 and our, what we

1 believe to be the correct interpretation of the  
2 boundary line. And so Commissioner Chang's  
3 question, if you look at the difference between the  
4 yellow line and the roadway, which is in green and  
5 also noted with the blue dashes, that is the  
6 difference. That is the request here to interpret  
7 the line which we believe is consistent with the  
8 commission's intent in 1969, to follow along the  
9 roadway rather than the current location.

10 **COMMISSIONER SCHEUER:** Commissioner  
11 Ohigashi?

12 **COMMISSIONER OHIGASHI:** Are you referring  
13 to an exhibit so I can see it more clearly?

14 **MR. CHIPCHASE:** Yes, commissioner.

15 **COMMISSIONER SCHEUER:** No, I'm not seeing  
16 a blue line.

17 **COMMISSIONER OHIGASHI:** Yeah.

18 **MR. CHIPCHASE:** I'll get the exhibit  
19 number for you.

20 **MR. OHIGASHI:** Boundary line.

21 **MR. CHIPCHASE:** While we're waiting, I'll  
22 just explain the map on the right and we'll get the  
23 exhibit number for you for that map as well.

24 The map on the right, again, is the survey  
25 of the property. I'll point to the existing

1 interpretation here. That's where the line is  
2 currently interpreted to be. As you can see, it's  
3 mauka of the roadway and the homes. The roadway  
4 that existed in 1969 is shown here.

5 **COMMISSIONER SCHEUER:** Are you moving a  
6 cursor?

7 **MR. CHIPCHASE:** Chris is moving a cursor  
8 on another screen.

9 **COMMISSIONER SCHEUER:** I'm not seeing it.

10 **MR. CHIPCHASE:** Do you not see the line  
11 that has come up? We were pointing the arrow  
12 directing to the roadway.

13 **COMMISSIONER SCHEUER:** I see yellow arrow  
14 on the two maps.

15 **MR. CHIPCHASE:** That's right, Chair. So  
16 on the right-hand map, the makai set of arrows point  
17 to the roadway that existed in 1969 and that we  
18 believe is the correct location of the land use  
19 district boundary.

20 **COMMISSIONER SCHEUER:** Okay.

21 **MR. CHIPCHASE:** I'm sorry, Commissioner  
22 Ohigashi, I don't have the exhibit numbers ready  
23 right now. Rather than keep you waiting I'll move  
24 on and as soon as I have them I'll identify them for  
25 you.

1 Commissioner Ohigashi, the exhibit that  
2 you're referring to or that we referred to on the  
3 left-hand side is Exhibit 20.

4 All right. As I mentioned in my outline,  
5 staff has interpreted the boundary as being set by a  
6 metric of 300 feet from the coast. On the left-hand  
7 side is the 1964 LUC map on which the 1969 map was  
8 based. Roads running from north to south are  
9 clearly shown on the map and we've highlighted them  
10 with the blue arrows. Some roads are marked by a  
11 solid line. Other roads are labeled Jeep trail in  
12 some locations and marked by dash lines.

13 This is the portion of the 1969 map south  
14 of your property. As you can see, the boundary line  
15 is that thick black line. This boundary line  
16 follows roads running north to south. We see the  
17 same thing on the portion of that 1969 map showing  
18 our property which we've circled down there. And as  
19 you can see, the 1969 map follows what the  
20 commission believed to be a roadway running just  
21 north of our property into our property and then  
22 curving mauka. And that's the dashed line that runs  
23 along what would be the northern boundary of our  
24 property. That roadway previously entered our  
25 property on the north side and ran mauka from there.



1 The commission in its 1969 mapping followed the  
2 roadway that it believe existed north of our  
3 property and then into our property.

4 The commission followed these roadways  
5 even when the road was very close to the shoreline.  
6 The only exceptions in this portion of the mapping  
7 is for areas of historical or cultural significance.  
8 And so as we can see in this 1969 map north of our  
9 property, the road -- the conservation line is  
10 nearly touching the shoreline because the road ran  
11 very far makai.

12 Nothing in these maps suggests that the  
13 commission in 1969 drew the boundary at any point  
14 that was 300 feet from the coast. In many places,  
15 the distance is more than 300 feet, and in many  
16 places the distance is less than 300 feet.

17 The commission in 1969 recorded its  
18 actions and intent in drawing the conservation  
19 district line. This 1969 review recorded the  
20 specific actions that the commission took for each  
21 region. Where the commission intended to follow a  
22 300-foot setback and it did so in other portions of  
23 Hawaii island, it said so expressly. And we've put  
24 one of those examples up on the screen. The  
25 commission explained from Hilo to Kapoho the shore

1 is rocky with only occasional beaches such as at  
2 Haena. It is the unique product of recent lava  
3 flows running directly into the sea. The  
4 conservation district should include the shoreline  
5 and it is recommended that it be extended from the  
6 high water mark to align which is approximately 300  
7 feet mauka of that line. That's the kind of comment  
8 that the commission made when it intended to use 300  
9 feet from the shoreline as the basis for the  
10 conservation district line.

11           When we look at the text from the review  
12 of the portion of the island that includes our  
13 property, we don't find any commentary that even  
14 suggests a 300-foot setback was used. As you can  
15 see on the map, the property is located in the Aha  
16 quaha (phonetic) of Honoipu which is near what the  
17 1969 review calls the north point of Hawaii island.  
18 The 1969 review describes the action taken by the  
19 commission in drawing the boundaries in this area  
20 and the way that we put up on the screen. The  
21 commission said the shoreline from Kawai around  
22 north point to Pololu Valley is marked by numerous  
23 historic artifacts, such as King Kamehameha, the  
24 first birthplace, and a variety of different  
25 conditions, such as rocks, steep pali, and

1 occasional beaches. The land should be recognized  
2 by inclusion in the conservation district.

3 As you can see for this area, there's no  
4 discussion of a 300-foot setback from the line of  
5 wave action. Instead, the commission focused on  
6 different physical conditions such as those --

7 **COMMISSIONER SCHEUER:** Mr. Chipchase?

8 **MR. CHIPCHASE:** Yes. Yes, sir?

9 **COMMISSIONER SCHEUER:** Commissioner Chang?

10 **COMMISSIONER CHANG:** I'm sorry, Mr. Chip -  
11 - Mr. Chipchase, you -- how do I express this. You  
12 are -- you are surmising the LUC's intention and  
13 you're using these excerpts from this report. But  
14 do you have the specific -- I guess I would call it  
15 like a specific record documenting what the  
16 commission did for each of these -- these are large  
17 swaths of area. Kawai to north point of Palolo.  
18 So, but there could have been some unique  
19 circumstances that we're not aware of at the time  
20 the LUC acted but your presentation to us is couched  
21 in the way that you are essentially saying that this  
22 is what the commission intended. If not, they would  
23 have said so. My difficulty is taking your -- you  
24 are interpreting the LUC's intention back in 1969  
25 where I don't have the direct testimony of the LUC.

1 So you're asking me to accept your interpretation of  
2 LUC's intention. That's my difficulty I will share  
3 with you with your presentation and your argument.

4 **MR. CHIPCHASE:** Allow me to confess a  
5 little bit of confusion. I'm going on or presenting  
6 the actual record from the 1969 review. So this is  
7 documented in the LUC's 1969 review. And while it  
8 didn't review or comment at a parcel level as to its  
9 actions and what it did, it commented at a regional  
10 level. And at the regional level it described what  
11 it did generally in that region.

12 **COMMISSIONER CHANG:** And that's exactly my  
13 point. It generally described what it did. You are  
14 --

15 **COMMISSIONER SCHEUER:** If I may --

16 **COMMISSIONER CHANG:** I'm sorry. Go ahead.

17 **COMMISSIONER SCHEUER:** Mr. Chipchase,  
18 would you go back to a couple slides to where you  
19 showed the road around the parcel?

20 **MR. CHIPCHASE:** Yes.

21 **COMMISSIONER SCHEUER:** Because I had the  
22 same questions as Commissioner Chang.

23 And what I heard you indicate -- what I  
24 heard you say, I don't have the transcript in front  
25 of me, of course -- was that -- so what the LUC did

1 was it moved -- it put the line where it believed  
2 the road to be. So I took that as a statement of  
3 what you believed the commission's intent was in  
4 this particular parcel at that time.

5 **MR. CHIPCHASE:** I would say it's two  
6 things, Chair. We can actually physically see what  
7 the commission did.

8 **COMMISSIONER SCHEUER:** Correct.

9 **MR. CHIPCHASE:** We see them following the  
10 road that they believe existed. That much is clear.

11 **COMMISSIONER SCHEUER:** You can see where  
12 they put the line.

13 **MR. CHIPCHASE:** Yes. And we can see the  
14 road running along the same area. And so it doesn't  
15 take a great leap of faith to say since the line  
16 follows the roadway as we go north and as we look  
17 south, the commission followed a roadway except  
18 those cutouts that you see such as Kamehameha, the  
19 first birthplace. That action, the physical thing  
20 that we see on the map is consistent with their  
21 description of what they did, intending to follow  
22 physical features and to respect areas of  
23 recreational, historical, or cultural significance  
24 such as Kamehameha's first birthplace.

25 **COMMISSIONER SCHEUER:** But if I may and,

1 you know --

2 **MR. CHIPCHASE:** Of course.

3 **COMMISSIONER SCHEUER:** -- I'll let  
4 Commissioner Chang go at it, but you expressed you  
5 were confused by her statement so I thought I would  
6 jump in. I think if you simply said it's consistent  
7 with I wouldn't have had the same question. But you  
8 said this is what the commission intended and so I  
9 was wondering to myself like, hmm, I'm not sure that  
10 you know exactly what the commissioner intended as  
11 to this particular parcel.

12 Commissioner Chang, I will let you  
13 continue. Thanks for indulging my interruption.

14 **COMMISSIONER CHANG:** No, no, no. I mean,  
15 that is my challenge with this petition, Mr.  
16 Chipchase. That line that you have, the roadway,  
17 they used a very thick marker. So, I mean, I've  
18 done surveys, worked with the surveyor. So, but  
19 what I'm hearing you -- the way that you're  
20 describing the commission's actions and intentions,  
21 you are extrapolating from these descriptions of the  
22 report but we don't know how the commission applied  
23 that to each particular parcel. That was generally  
24 what they did. They followed it along but there  
25 could have been some nuances that we're not aware

1 of. So I have a real difficult time second guessing  
2 other than to rely upon the map. So that's my real  
3 challenge is your whole presentation is based upon  
4 you saying that this is what the commission intended  
5 when I don't know if that's what these reports show  
6 for this particular parcel. But you are making a  
7 conclusory statement that this is what the  
8 commission intended.

9 **MR. CHIPCHASE:** If I may, commissioner, I  
10 think what I'm doing is piecing together the  
11 historical evidence that we have. And I think  
12 that's what we do in any historical review, whether  
13 it's at the legislative level or at the commission  
14 level or the socioeconomic or historical level;  
15 right? You piece together the different information  
16 that you have and look at the patterns that emerge.  
17 And if we look at the patterns that emerge from the  
18 Land Use Commission's own words, when they intended  
19 to follow 300 feet, they said so. When they  
20 intended to follow physical areas, they said so.  
21 And they certainly said so over wider geographic  
22 areas. But they noted what they did in those areas.  
23 And we can see from the record, and we could comb  
24 the full couple hundred pages of the 1969 review. I  
25 know the chair is cringing when I say that. But we

1 could comb that entire record and we would see that  
2 where they meant to do or where they did follow 300  
3 feet they said so for a region. Where they followed  
4 physical boundaries, they said so in a region. And  
5 in our region they said they followed physical  
6 boundaries. That statement of their intent -- in  
7 their own words, not mine -- is consistent with the  
8 map that they produced.

9 **COMMISSIONER SCHEUER:** So I'm going to  
10 sort of, you know, at the end of your presentation,  
11 after all questions and any further questions for  
12 the county or OPSD and any further statements from  
13 you, we will accord to, you know, everything you  
14 presented the weight it deserves so, you know, you  
15 can take Commissioner Chang's statement as her  
16 inclinations at this time and I hope you will  
17 proceed with alacrity.

18 **COMMISSIONER CHANG:** Thank you, Mr. Chair.  
19 I think Mr. Chipchase understands my angst here. So  
20 I'll let you continue on.

21 **MR. CHIPCHASE:** I appreciate that, Chair  
22 and Commissioner Chang. I certainly do understand  
23 your angst and I am trying my best to address it.

24 All right, Chris. Can we go forward?  
25 Okay.



1 So we've seen the commission's expressed  
2 intent for the area that includes our property. And  
3 the review generally explains that four conditions  
4 were used in drawing the conservation district  
5 boundary line. And the first condition provides  
6 that where a plantation road, farm, accessway, or  
7 public road exists at the edge of the agricultural  
8 uses within reasonable proximity to the shoreline,  
9 it was used as the boundary between the agriculture  
10 and conservation districts. That's what the  
11 commission followed.

12 Two of the other four conditions were also  
13 based on physical boundaries.

14 The fourth condition states, "Where no  
15 readily identifiable physical boundary such as any  
16 of the above could be determined, a line 300 feet  
17 inland of the line of wave action was used." That's  
18 the standard that the commission and the standards  
19 that the commission followed. And this 300-foot  
20 line was only invoked when there was no readily  
21 identifiable physical boundary.

22 Unlike physical boundaries, it's  
23 arbitrary. It's 300 feet from the coast. And so in  
24 the commission's own list is it's last option where  
25 it cannot find those physical features that more

1 easily and better designate shoreline conditions  
2 from adjacent agricultural uses in districts.  
3 That's what the commission said when it couldn't  
4 find those physical features, it more readily divide  
5 agriculture from conservation, it used the setback.  
6 And as I noted above, when the commission applied it  
7 within a region, they said they were applying it.

8           We know from the commission's own words  
9 and its own report that in no place for the review  
10 of the quadrangle that includes this property did  
11 the commission say or suggest that they were using a  
12 300-foot setback at any point.

13           And when we overlay what 300 feet from the  
14 shoreline would look like, it's clear that that's  
15 not the line they drew. So we've put up on the  
16 commission's site our survey showing the current  
17 conservation district line labeled there and in  
18 yellow, and what a 300-foot setback line would look  
19 like if that had been the commission's intent or had  
20 been the line that the commission used.

21           As you can see, the conservation district  
22 line that they drew does not follow 300 feet from  
23 the shoreline. Both lines start, the blue and the  
24 current line from where the old road was located.  
25 On the north side of our property, that yellow line

1 is exactly where the old road was located. At that  
2 point, the lines diverge and the blue line, the 300  
3 feet from the shoreline cuts a jagged dash through  
4 the property at an angle towards the shoreline. We  
5 know from the commission's map which is reproduced  
6 here that that's not the line the commission drew.  
7 The line cuts a steady smooth line through the  
8 property.

9           When we look at 300 feet from the  
10 shoreline more broadly down the coast in both ways,  
11 north and south of our property, we can see that  
12 that's not the line the commission drew. On the  
13 screen is that 1982 USGS map for the larger area.  
14 Our property is marked out there in black. We've  
15 circled it to make it a little easier to see. The  
16 currently interpreted boundary line is shown in  
17 yellow. The 300-foot setback is marked by the blue  
18 dashed line.

19           As you can see, the 300-foot setback does  
20 not align with the currently interpreted boundary on  
21 our property, to the north of the property, or to  
22 the south of the property. Instead, the currently  
23 interpreted line follows what the commission  
24 understood at the time to be a location of the  
25 roadway. And as you can see from the double solid

1 line, it is makai of the roadway in places. The  
2 road had been realigned before the commission drew  
3 its map. And that is the heart of the difference.  
4 The commission's map shows that it intended to  
5 follow the roadway. It simply didn't know where the  
6 roadway was.

7           And if we look towards the south, towards  
8 the bottom arrow, we see that 300 feet is  
9 considerably makai of the current boundary line.  
10 That is because the commission was following  
11 roadways, physical features, and not 300 feet. If  
12 we look all the way down to what Chris has now  
13 circled, that area actually did not have a roadway  
14 running through it at the time. Instead, there's a  
15 roadway just south of that area just as the roadway,  
16 the old road stopped just inside our property and  
17 turned mauka. All the commission did is connect  
18 those two points. But as you can see from the blue  
19 line, the commission did not connect them using 300  
20 feet. If it did, the line would have been in most  
21 places considerably mauka of where it was. Instead,  
22 the commission connected these two then, as the  
23 commission believed, two existing roadways using  
24 clean, smooth lines.

25           Go ahead, Chris.

1 This map shows the current boundary line  
2 again in yellow. It also shows the roads that the  
3 commission believed existed at the time in blue. So  
4 that blue dashed line and that yellow line where the  
5 commission actually drew the boundary are co-  
6 extensive, except at the top around to the north,  
7 Kamehameha, the first birthplace, and then when the  
8 line turns -- the roadway I should say turns mauka  
9 into our property, the commission simply continued  
10 that line, the yellow line from the end point of  
11 what it believed to be the location of the roadway  
12 south and connected it with another roadway that  
13 existed at the time to the south of the property.

14 And so coming back to Commissioner Chang's  
15 questions, we don't have to guess at what the  
16 commission intended to do. We can see that it  
17 followed what it believed to be the roadway that  
18 existed at the time all the way into our property.

19 So, this record of the commission's  
20 actions shows that the commission -- that the  
21 current boundary line follows the roads where they  
22 are mapped. The review that the commission  
23 conducted and prepared expressly states every  
24 example that we can find where it intended to use  
25 300 feet from the coastline as the metric. Nothing

1 in the description of the action for our region  
2 indicates that the commission used 300 feet for any  
3 portion of the region. We know from the  
4 commission's own words in its report that it favored  
5 physical conditions and that a 300-foot setback was  
6 not a favored condition. And we know that a 300-  
7 foot setback when scaled through our property or  
8 over the broader area to the north and the south  
9 does not follow 300 feet from the shoreline.

10 So, if the commission did not use a 300-  
11 foot setback as its metric, what metric did it use?  
12 We believe that the evidence shows that the  
13 commission followed a road where a road was mapped  
14 within a reasonable proximity of the shoreline. And  
15 that is consistent with the commission's order of  
16 conditions and its preference for mapping the line  
17 between conservation and agriculture.

18 As we can see from this map, if you look  
19 to the north, the commission follows the roadway.  
20 If you look to the south, the commission follows the  
21 roadway. In between, the commission simply connects  
22 those two points following the general contour of  
23 the shoreline. The commission connected these two  
24 roadways even where the line closely abutted the  
25 shoreline. We see this on the 1969 map. And if we

1 look at all of the mapping for the entire quadrant,  
2 this is the consistent pattern.

3           Going back to the commission standards,  
4 the boundary followed a roadway at the edge of an  
5 agricultural use within a reasonable proximity to  
6 the shoreline. That's the commission's first  
7 condition. When the roadway ended or turned mauka  
8 as it did at the north portion of our property, the  
9 commission simply continued the approximate line of  
10 the roadway. As we can see from the mapping, the  
11 line at the north portion of our property, the  
12 boundary line at the north portion of our property  
13 is exactly where the commission believed the roadway  
14 to be.

15           On the screen is an aerial of the Mahukona  
16 area in 1954. Even from this vantage we can see the  
17 property that we have had outlined with the TMK  
18 number in black. Zoomed in we can see the property  
19 as it existed in 1954. The records for this  
20 property indicate that it was in agricultural use.

21           These two documents, and they're Exhibits  
22 33 and 34, show the property and the land -- show  
23 that the property and the land and its vicinity was  
24 being used for ag in 1959. Exhibit 34 is a Coast  
25 Guard speed letter discussing the purchase of the

1 land in which its station was to be located. The  
2 letter explains that authority had been granted to  
3 cut pathways in sugar cane if necessary to mark out  
4 the boundaries for the Coast Guard station property.

5 Exhibit 33 is an office memorandum  
6 regarding land valuations based on tax assessments  
7 for this area dated March 17, 1959. Paragraph two  
8 discusses the land valuation for this parcel, the  
9 parcel that we're discussing, which was owned by  
10 Bishop Estate at the time and where the Coast Guard  
11 station was eventually located. With respect to  
12 this very parcel, the author of this memorandum  
13 notes, "Our land seems to fall within the medium  
14 pastureland category."

15 Those records, the Coast Guard's own  
16 internal records of the property are consistent with  
17 the 1969 review. That review confirmed that the  
18 property was used for pastureland at the time the  
19 boundary lines were drawn. A map of Kauai Island is  
20 included in the 1969 review and it records the ag  
21 uses occurring at the time. As shown on this  
22 screen, the property is located in North Kohala.  
23 And the lands in dark green are labeled cultivated  
24 lands. Lands in lighter green are labeled lands  
25 presently used for grazing. Our surveyor has marked



1 the approximate location of the property on the  
2 right.

3 As you can see, the property falls in the  
4 lighter green area. This is what the Coast Guard's  
5 own internal memo characterized as medium grazing  
6 lands and the 1969 review records show as being  
7 actively used for grazing.

8 The recordation of ag uses on the parcel  
9 and throughout the area supports the conclusion that  
10 the commission would have applied the same rule  
11 based on ag uses throughout the area and that's the  
12 rule that we've discussed. We follow a roadway  
13 where a roadway exists.

14 And that's what the -- coming back to  
15 Commissioner Chang's points, that's what the LUC  
16 tells us was its intent, to follow roads where they  
17 existed at the edge of the agricultural uses within  
18 reasonable proximity to the shoreline.

19 So, based on this record, or these  
20 records, we know that the area was used for ag and  
21 we know that a road existed on the property, both  
22 before 1961 and after 1961. The critical point is  
23 the location of the road. And we know from the  
24 historical record that prior to 1969 when the LUC  
25 first mapped the conservation district line that the

1 road moved. Prior to 1969 there was a dirt road in  
2 the area. That dirt road rounded out towards the  
3 shoreline and turned mauka at a 90 degree angle just  
4 inside the boundary of the property. The road ran  
5 along the northern boundary of the property as shown  
6 in the photo and we've outlined that, right there.  
7 That's the location of the road prior to 1961. And  
8 you can see it entering the property. If we think  
9 back to the earlier maps we know that that line is  
10 co-extensive with the land use district boundary  
11 that the commission drew.

12 This is the old road that was mapped on  
13 the 1957 USGS.

14 Chris, would you --

15 If we look up there toward the north, the  
16 top of the map, we see where our property is and we  
17 see again that road.

18 Zoomed in we can more clearly see the old  
19 road that curved toward the shoreline before turning  
20 mauka. And again, that road entered our property.

21 Go ahead, Chris.

22 So then shown on the screen is a  
23 comparison of the 1954 aerial and the 1957 USGS map.  
24 As you can see, the curvatures of the roadway  
25 entering our property match on both maps and are

1 consistent with the conservation district line.

2           While that roadway was accurately mapped  
3 in 1957, it no longer reflected the actual physical  
4 conditions when the map was ultimately adopted by  
5 the commission in 1964 or when the conservation  
6 district line was drawn in 1969. Between 1957 and  
7 1964, a new road was built to the north of the  
8 property and through the property.

9           Go ahead, Chris.

10           On the left-hand side is an aerial of the  
11 property in 1954. As you can see, the road does not  
12 curve along the property or hug the shoreline. On  
13 the right is an aerial photograph of the property  
14 from 1965. And as you can clearly see in that  
15 photograph the road cuts through the property and  
16 hugs the shoreline.

17           This road was built in 1961. We put up on  
18 the screen a newspaper article that documents when  
19 the road was constructed. As the article explains,  
20 this new road took the place of the old road that  
21 ran not only through our property but to the north  
22 and it was mapped on the 1957 USGS.

23           We have up on the screen actual Coast  
24 Guard photographs of this road that was built in  
25 1961, and they depict it here as a newly graded

1 road.

2 On the left we have the 1964 map with that  
3 90 degree turn at the edge of our property. On the  
4 right we have the 1965 aerial. And you can see that  
5 the road has been moved, extended south. It's  
6 changed to the north as well. And now has a rounded  
7 turn. Our property is now completely within this  
8 rounded area.

9 So the result is that while the commission  
10 believed it was following roadways when it drew its  
11 maps, the roadway was not in the right location  
12 through our property or to the north of our  
13 property. And the result is simply a mistake that  
14 places buildings and roadways that existed at the  
15 time within the conservation district.

16 On the right is the 1982 USGS map that  
17 does correctly depict the roadway. And this  
18 petition simply asks the commission to interpret the  
19 location of the district boundary line along the  
20 actual location of the roadway that existed in 1969.

21 This is the road then and this is the road  
22 today. It's the same exact road in the same  
23 location through time.

24 As we know that the commission intended to  
25 follow roadways and that it did so to the north of

1 our property and into our property as far as it  
2 believed the road went, we can conclude that if the  
3 commission had the correct map of the property it  
4 would have done what it said it was doing and what  
5 its mapping indicates it was doing and that's follow  
6 the roadway. On the right is a corrected survey of  
7 our property. On our property, the interpretation  
8 is represented by the black dashed line that runs  
9 along the contour of the roadway. That we believe  
10 is the correct interpretation of the conservation  
11 district boundary. It results in a small, but  
12 important correction, 1.813 acres mauka of the  
13 roadway as being interpreted as falling within the  
14 agricultural district.

15           Although not at issue in this petition  
16 because it only concerns the property, we wanted to  
17 show the commission the effect of the interpretation  
18 on other properties in the area. And as you can  
19 see, to the south of our property, the correct  
20 interpretation meets up with the current  
21 interpretation at the southern boundary. The  
22 current interpretation is in dash yellow. The  
23 correct interpretation we believe following the road  
24 that existed at the time is shown in green. They  
25 meet up at the southern portion of the property.

1 To the north of our property, we can see  
2 that the commission believed it was following the  
3 roadway that existed at the time. And we see that  
4 up towards the top third of the map where the road  
5 that did exist, and does exist, is entirely co-  
6 extensive with the conservation district boundary.  
7 The problem is just south of that, approximately  
8 where the sea is, where the roadway previously  
9 existed exactly where the commission mapped it but  
10 before the commission drew its line had been moved  
11 mauka and its alignment changed. Even if other  
12 petitioners were to come in and seek clarification,  
13 the changes are not significant. It's simply  
14 following the road that existed at the time only in  
15 those locations where the roadway, where the  
16 commission in 1969, simply didn't have current  
17 information about the physical conditions in those  
18 properties.

19 To the north of our property is a DHHL  
20 parcel. That is the bulk of the area to the north  
21 of our property. DHHL has been advised of this and  
22 has not expressed any opposition to the petition.

23 Go ahead, Chris.

24 I'd like to at this point allow the  
25 petitioner's member to speak with the commission,

1 and I believe that will enable the commission to ask  
2 questions. It might be best put to the applicant  
3 rather than the attorney.

4 Chair, I believe you're on mute.

5 **COMMISSIONER SCHEUER:** Why don't you stop  
6 screen sharing.

7 **MR. CHIPCHASE:** Very good.

8 **COMMISSIONER SCHEUER:** I'm sorry, you  
9 know, and I apologize if this is something I missed  
10 in the written materials. So DHHL is a client of  
11 mine. I did not know until this moment that they  
12 were the adjacent boundary member. I've never  
13 discussed this matter with them but I just want to  
14 disclose that and give you the opportunity to object  
15 to my continued participation in this hearing.

16 **MR. CHIPCHASE:** No objection, Chair.

17 **COMMISSIONER SCHEUER:** Okay.

18 Commissioners, we're fine from hearing  
19 from Mr. Eggen?

20 Okay. Let me swear him in.

21 Oh, he has to be admitted; right? His  
22 hand is up. I'm going to promote you to be a  
23 panelist. You can now enable your audio and video.

24 **MR. EGGEN:** Thank you.

25 **COMMISSIONER SCHEUER:** So I'm going to

1 swear you in because our quasi-judicial proceedings,  
2 in general we do this.

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

5 **MR. EGGEN:** Yes, I do.

6 **COMMISSIONER SCHEUER:** Okay.

7 Now, Cal, had you fashioned this as having  
8 some direct examination with him?

9 **MR. CHIPCHASE:** Very brief direct, Chair.

10 **COMMISSIONER SCHEUER:** Please proceed.

11 **MR. CHIPCHASE:** Mr. Eggen, would you  
12 please just introduce yourself to the commission?

13 **MR. EGGEN:** Sure. My name is Nathan  
14 Eggen. And I just wanted to say thank you all for  
15 taking the time to hear this petition and speak with  
16 me today.

17 **MR. CHIPCHASE:** And Mr. Eggen, what kind  
18 of work do you do?

19 **MR. EGGEN:** I'm a software developer and  
20 then I also am a part owner of a small business here  
21 on the Big Island that we make cabinets and millwork  
22 and that sort of thing.

23 **MR. CHIPCHASE:** And are you a member of  
24 the petitioner?

25 **MR. EGGEN:** Yes. I'm a member of the LLC



1 that owns the property.

2 **MR. CHIPCHASE:** Are there other  
3 members?

4 **MR. EGGEN:** Yes. So my wife is another  
5 member and then some of our other family also are  
6 members.

7 **MR. CHIPCHASE:** And why is your  
8 ownership structured as an LLC?

9 **MR. EGGEN:** So it makes basically shared  
10 ownership easier as well as inheritance. You know,  
11 some of them are older. They're going to be doing,  
12 you know, doing estate planning, passing it on to  
13 their children. So it's kind of a family event.

14 **MR. CHIPCHASE:** And as we've discussed  
15 today, the property that we've looked at is in both  
16 the agriculture and the conservation districts. Do  
17 you know what the county zoning for the property is?

18 **MR. EGGEN:** It's A20 zoning.

19 **MR. CHIPCHASE:** And the current boundary  
20 interpretation puts the conservation district line  
21 mauka of your home in an area that I know you use  
22 for some agriculture. Could you describe for us the  
23 impact that that designation has and why you're  
24 asking the commission to interpret the boundary as  
25 running along the Coast Guard road?

1           **MR. EGGEN:** Sure. Yeah, so, you know,  
2 right now the current boundary interpretation, it  
3 has the conservation line kind of up the hill from  
4 our backyard. And, you know, as I've kind of lived  
5 and learned more about all the rules and regulations  
6 for conservation zoned property, having, you know,  
7 the part of the property I actually live in, my yard  
8 and my house incorrectly in the conservation zone  
9 has created a lot of problems and just extra work  
10 and processes. You know, it makes it hard to do  
11 things as simply as landscaping or planting trees.  
12 You know, installing an irrigation system, trying to  
13 get solar panels, you know, to reduce my energy  
14 costs. Things like repaving my driveway. All those  
15 things, you know, they can be done in conservation  
16 but they take, you know, a significant amount of  
17 extra procedure. Some of them take years to go  
18 through the process. Require, you know, lots of  
19 permits and approvals. And that's in addition to  
20 just normal things that we all do with our county  
21 government, getting building permits and that sort  
22 of thing. So, you know, the way that it's regulated  
23 right now, my wife and I, we're not supposed to dig  
24 a hole with a shove, disturb the soil, cut a branch  
25 over one inch in diameter without sending a letter

1 to the OCCL in the mail and then waiting for, you  
2 know, up to 30 business days for them to send us a  
3 letter back approving our action. And they're all  
4 really nice people. You know, I know the OCCL  
5 people. I've worked with them. It's not about that  
6 being, you know, good or bad but it's just a very  
7 burdensome process for just living and using my  
8 home. And I think that correcting this issue would  
9 really simplify our lives.

10 **MR. CHIPCHASE:** Would you describe for us  
11 just briefly just some of the ag uses that you  
12 currently engage in on the property?

13 **MR. EGGEN:** Yeah, we have a few things.  
14 So, you know, our immediate yard area is planted  
15 with trees and fruits that have been -- they were  
16 all kind of put in when the Coast Guard was here for  
17 the people that lived there. So we've got things  
18 like avocados, bananas, coconuts, mangos. And then  
19 in the upper portion of the property that's more  
20 exposed and not as protected from the wind, the  
21 lower area with the trees is more like kind of a  
22 goalie. The upper area is more like a pasture and  
23 that area we have cows in for part of the year for  
24 fire control, you know, and just managing that  
25 pastureland a bit better than letting it go wild.

1           **MR. CHIPCHASE:** And with respect to the  
2 produce that you grow, do you sell any of that  
3 commercially currently?

4           **MR. EGGEN:** No. You know, right now  
5 because all of our produce is grown in conservation  
6 zone land, we're not allowed to sell that product.  
7 I mean, you can't have any commercial activity  
8 originating from conservation zoned -- the subzone  
9 that we're in prohibits that without -- I could go  
10 and get a permit I think, maybe, to do it but again,  
11 that's a board level permit. It takes a year and  
12 several public hearings just to be able to sell an  
13 avocado. So it's a bit burdensome.

14           **MR. CHIPCHASE:** And if that land were in  
15 agriculture, what would be your intent with respect  
16 to your growing operations?

17           **MR. EGGEN:** Yeah, there's a lot more land  
18 available in that area. You know, 1.8 acres of sort  
19 of prime land that's protected and hopefully would  
20 be irrigated. We can grow a lot more trees. My  
21 wife and I, you know, we both come from agricultural  
22 backgrounds. Our parents all grew up on farms,  
23 ranching, and we both moved to, you know, a rural  
24 place with land to grow because that's one of our  
25 main reasons to be here. So, you know, we'd like to

1 plant more trees. There's a wonderful farmer's  
2 market up in our town, Hawi, and we'd like to be  
3 able to sell our produce there and really share that  
4 with the community.

5 **MR. CHIPCHASE:** And if the boundary line  
6 were corrected as we've proposed, do you have any  
7 plans to develop the property?

8 **MR. EGGEN:** That's a good question. I  
9 don't. So, I mean, the property is already  
10 developed. The property was developed in 1961. The  
11 house I live in is from 1961. Nothing about the  
12 property has changed. And I think it's really  
13 important, you know, I've learned a lot about all  
14 these rules and going through this process that, you  
15 know, with the shoreline portion, the makai portion  
16 of the property remaining in conservation, there's  
17 no potential land use action that could be done by  
18 me or anyone ever that wouldn't go through the most  
19 rigorous form of regulation from the State of  
20 Hawaii; right? You can't subdivide it. Can't build  
21 anything. You can't get a permit to do anything  
22 because of that conservation presence.

23 And I think the other piece is, and this  
24 was asked by one of the commissioners, I believe  
25 Commissioner Chang, the entire property, you know,

1 shoreline to top of it is in the special management  
2 area and is already regulated through the special  
3 management area permitting process.

4 **MR. CHIPCHASE:** Nathan, for the portion of  
5 the property that you've described as being better  
6 for growing produce and other forms of agriculture,  
7 do you have an understanding of how that property,  
8 that area was used when the Coast Guard owned it and  
9 had its station there?

10 **MR. EGGEN:** Yeah. I had an opportunity to  
11 speak with the former facility manager for the Coast  
12 Guard who operated the property before it was shut  
13 down. His name was Arthur Greiner. He,  
14 unfortunately, has passed away during this COVID  
15 pandemic but, you know, he shared with me how they  
16 had planted the entire property with fruit for each  
17 of the homes and the people that lived there to give  
18 them, you know, extra, basically sources of food  
19 because especially back in 1960, this was extremely  
20 remote. There was very little choice for like fresh  
21 goods and produce. And so they did a lot to make it  
22 really hospitable for them. And that area that they  
23 chose to situate homes is, you know, as I said, it's  
24 like sunken down and protected because if any of you  
25 have ever been to Kohala or if you, you know, look

1 around the area, there's a gigantic windfarm. It's  
2 a very windy place and so it's quite hard to grow in  
3 the majority of this area, you know, unless you have  
4 some sort of natural benefit.

5 **COMMISSIONER SCHEUER:** Mr. Chipchase, you  
6 said brief. How much longer do you have? We're  
7 ready for a break.

8 **MR. CHIPCHASE:** I just have two more  
9 questions, Chair.

10 **COMMISSIONER SCHEUER:** Proceed.

11 **MR. CHIPCHASE:** Thank you.

12 The first was just in response to a  
13 question that Commissioner Chang had asked and I  
14 thought better to hear from the applicant.

15 Mr. Eggen, do you intend to operate an  
16 STDR on your property?

17 **MR. EGGEN:** No, we don't. You know, the  
18 property is the place that we live and it's our  
19 normal life here. And then, you know, the other  
20 thing is that the special management area permits  
21 specifically for our property. Prevents any STDR  
22 operations as a condition of it. And those permits  
23 are revocable if anyone was to ever violate that  
24 precedent.

25 **MR. CHIPCHASE:** My last question, Nathan.

1 Did you have an opportunity to talk to your  
2 neighbors about your petition and the request to  
3 correct the boundary line?

4 **MR. EGGEN:** Yeah. You know, it's not a  
5 requirement of this process but I wanted to tell all  
6 of them what's going on. So I spoke to each of my  
7 adjacent landowners. You know, all of them support  
8 the petition. Several of them sent in supportive  
9 comments as public testimony. Took the effort to do  
10 that. And then I also spoke to DHHL who is my  
11 adjacent neighbor. You know, they're obviously  
12 impacted by this same error. They and I have a  
13 really good working relationship. We support each  
14 other in all sorts of ways on an ongoing basis and  
15 have for years. And so, you know, I think across  
16 the board there's strong support and no negative  
17 feedback from any of them.

18 **MR. CHIPCHASE:** Thank you, Nathan.  
19 Chair, I have no further questions. I  
20 appreciate the opportunity.

21 **COMMISSIONER SCHEUER:** Okay. It is 11:41.  
22 We're going to take a 10-minute break. Reconvene at  
23 11:51 for questions of this witness and then we'll  
24 assess our proceedings.

25 Ten-minute break.



1 (Recess taken from 11:41 a.m. - 11:51

2 a.m.)

3 COMMISSIONER SCHEUER: Okay. It's 11:51.

4 Let's go back on the record.

5 I'm going to recognize Commissioner Chang  
6 followed by Commissioner Giovanni.

7 MR. ORODENKER: Giovanni doesn't have his  
8 hand up.

9 COMMISSIONER SCHEUER: Excuse me.  
10 Ohigashi.

11 Commissioner Chang?

12 COMMISSIONER CHANG: Thank you, Mr. Chair.

13 Oh, good morning, Mr. Eggen. Thank you  
14 for being here this morning with us. I have several  
15 questions I'd like to ask you.

16 The first one is, what does -- how do you  
17 pronounce the name of your LLC?

18 MR. EGGEN: It's Honoipu Hideaway.

19 COMMISSIONER CHANG: Can you tell me what  
20 does that mean?

21 MR. EGGEN: Sure. Yeah. So it's a name  
22 that we came up with as a family and, you know, we  
23 wanted something historical. This is a really  
24 important area and an important piece of land.

25 Honoipu is the name of the Ahupua'a that our

1 property is located on. And so we like that. You  
2 know, it's also, the ipu is the gourd, right, and it  
3 would be like something you would bring to like a  
4 family gathering with food in it, so it's like a  
5 place that we all gather together. So we kind of  
6 thought that was a good tie in. And then hideaway,  
7 you know, if you look at the map of this, it's  
8 basically at the end of the island. You know,  
9 there's thousands of acres of land around it. You  
10 really feel like you go down this long road and  
11 you're all by yourself. So it feels like you're  
12 hidden away from, you know, the end of the earth.  
13 So we thought it was fitting.

14 **COMMISSIONER CHANG:** Okay. And I'm sure  
15 you met Ahupua'a.

16 **MR. EGGEN:** I'm sorry, yes.

17 **COMMISSIONER CHANG:** No, that's okay.  
18 That's -- we all have a hard time with that word as  
19 well.

20 **MR. EGGEN:** It's a hard one. Yeah.

21 **COMMISSIONER CHANG:** I appreciate the  
22 explanation for the name.

23 In Hawaiian, you're right. Hawaiians give  
24 names and it's a very important -- it's very  
25 important because a name becomes a place. So I

1 appreciate you explaining to me your intention.

2           Could you tell me, when did you buy the  
3 property?

4           **MR. EGGEN:** Sure. I bought it in March of  
5 2018.

6           **COMMISSIONER CHANG:** 2018. And when you  
7 bought the property, did you know that a portion of  
8 it was in conservation land?

9           **MR. EGGEN:** Yes.

10           **COMMISSIONER CHANG:** Okay. Let me just --  
11 your counsel has described the intention of the LUC  
12 Commission when they drew the boundary line and  
13 essentially he indicated that it was the intent of  
14 the commission to follow the roadway. Let me ask  
15 you this. Do you think another plausible  
16 explanation could be that because the Coast Guard  
17 had changed the location of the roadway, the  
18 uncertainty the placement of the roadway, that the  
19 roadway was no longer a monument that should be  
20 followed because who knows, the Coast Guard could  
21 change it again. And that based upon the intention  
22 of conservation district lands, 205-2(e), to  
23 preserve scenic and historic areas, preserve water  
24 resources, but do you think another plausible  
25 interpretation of the commission's intent when they

1 drew that line, that it wasn't a mistake, it was  
2 intentional to draw the line where it did?

3 **MR. EGGEN:** That's a good question. I've  
4 considered that myself. You know. I try to be  
5 objective about it. I think that, you know, it  
6 looks pretty clear to me that somebody that's in the  
7 business of mapping and providing accurate records  
8 wouldn't certify a map that had an obvious like  
9 missing or mistake on it. You know, the base that's  
10 depicted truly did not exist in any way. In fact,  
11 in 1959, they demolished the entire base that's  
12 depicted on the Land Use Commission map. It was  
13 actually graded and taken down to the ground. And  
14 the base was enlarged from 20 acres, the size that  
15 you see on the Land Use Commission map, to 100  
16 acres. So it was made five times larger at that  
17 time. And so I think that although they may have  
18 wanted to do or specify one intention or another,  
19 again, maybe it's not my place to say what their  
20 intention was but I don't think someone who is a  
21 surveyor or a mapper would purposefully record an  
22 incorrect map that doesn't reflect the actual like  
23 structures, roads, and land.

24 **COMMISSIONER CHANG:** You are assuming that  
25 it's intentional incorrect. And I understand the

1 argument. But I'll just propose an alternative  
2 interpretation that given that the roadway had been  
3 changed recently, that the Land Use Commission,  
4 rather than using that as a monument because it was  
5 not necessarily a fixed roadway anymore -- it had  
6 been newly put in -- that the line that they drew  
7 for the conservation land in particular on the  
8 property that you currently own was intentionally  
9 drawn at that location. Wouldn't you agree that  
10 that's a possible interpretation of the LUC's  
11 intention?

12 **MR. EGGEN:** I don't see any other evidence  
13 where they've done similar things. I looked at the  
14 conservation boundaries for the entire state of  
15 Hawaii in my own research and I can't find any  
16 evidence where similar types of mapping issues have  
17 been resolved in the way that you're describing  
18 them. But I mean, ultimately I think that's part of  
19 what you as commissioners are here to decide. So I  
20 really feel like my opinion is minor in the grand  
21 scheme of it.

22 **COMMISSIONER CHANG:** I'm very impressed  
23 that you've looked at all of the conservation  
24 district. I was a former deputy attorney general  
25 with DNLR advising conservation, advising OCCL.

1           **MR. EGGEN:** Okay.

2           **COMMISSIONER CHANG:** I don't even know if  
3 I looked at all of the conservation map. So I  
4 applaud you. But nonetheless, I think my point is  
5 that I think that we are all surmising what's the  
6 intention of the Land Use Commission and I think it  
7 is fair to conclude that there might have been other  
8 intentions other than to say that the line was drawn  
9 intentionally along the roadway. And I guess that's  
10 my only point.

11           Let me move on from that. My other  
12 question is, you said you went and talked to --  
13 well, let me ask you, did you talk to OCCL regarding  
14 the regulations that were applicable to conservation  
15 lands?

16           **MR. EGGEN:** Yes. They visited the  
17 property with me and then we've also talked on a  
18 number of occasions.

19           **COMMISSIONER CHANG:** So when you knew you  
20 bought conservation land, you spoke to OCCL  
21 regarding the regulations. At what point in time  
22 did you decide to pursue this boundary  
23 interpretation? Because you bought the land in  
24 2018. When did you talk to OCCL?

25           **MR. EGGEN:** Also in 2018. They were the

1 organization that told me that they didn't -- they  
2 weren't in the boundary business and directed me to  
3 the Land Use Commission to seek a boundary  
4 interpretation, so.

5 **COMMISSIONER CHANG:** Did they ask you to  
6 see a boundary interpretation or a boundary  
7 amendment?

8 **MR. EGGEN:** A boundary interpretation.

9 **COMMISSIONER CHANG:** Okay. And you've  
10 chosen to do a boundary interpretation versus a  
11 boundary amendment; is that correct?

12 **MR. EGGEN:** That's right. That's correct.

13 **COMMISSIONER CHANG:** And can I ask you  
14 why? Why did you choose a boundary interpretation  
15 rather than the amendment?

16 **MR. EGGEN:** Yeah, that's a good question.  
17 So there's a couple of reasons for it. When I  
18 initially started this process I was working on my  
19 own, working with the Land Use Commission staff,  
20 kind of learning how all this pretty complicated  
21 process works to be completely honest. At that  
22 time, a staff planner told me that based on the  
23 information that I had shared with them that I  
24 should pursue a boundary interpretation and if there  
25 was a problem with it to seek a declaratory order.

1 You know, the problem with the amendment is that  
2 it's, like I'm a normal person and an amendment  
3 takes -- it looks like several years at best to be  
4 carried out. You have to do an environmental impact  
5 statement that costs \$100,000. Like, this has  
6 already been really expensive and time consuming and  
7 I just -- I think that it would be burdensome.

8 **COMMISSIONER CHANG:** I appreciate that. I  
9 mean, you do have -- your counsel has been before us  
10 many times. He's extremely competent. You do  
11 appear to have the resources. But I do also, you  
12 know, I appreciate that you also spoke to the  
13 adjoining landowners but if there may be other -- an  
14 interpretation based upon what you're arguing or  
15 your purporting may have broad implications just  
16 beyond your adjoining landowners. There may be  
17 other properties all along both the State of Hawaii,  
18 as well as the island of Hawaii where people may  
19 come in with similar arguments that the line is not  
20 -- that there's a mistake. Have you spoken to  
21 anybody else besides just your adjoining landowners?

22 **MR. EGGEN:** I have not talked to anybody  
23 else. I did, you know, just try to see if I could  
24 find other evidence of that, and at least in my  
25 review I didn't. I mean, I think one aspect of this



1 is that the military base when it was originally  
2 constructed was top secret and so there was very  
3 little like public communication of what was  
4 happening about it until 1961 when it was like  
5 opened up and put in the newspaper and whatnot. But  
6 I don't think that, you know, people necessarily  
7 would have the same situation where a federal agency  
8 built the roads of their own accord; right? Like,  
9 usually any other action would have permits and  
10 records and activities that would have been  
11 regulated by the state and county in which they  
12 occurred. This one was basically a unilateral  
13 federal action that kind of like went outside the  
14 bounds of the normal state processes.

15 **COMMISSIONER CHANG:** That's an excellent  
16 point and that may have been a consideration by the  
17 Land Use Commission knowing that it had previously  
18 been used by the military and so things could have  
19 changed. But, you know, I've appreciated your  
20 responses and Mr. Chair, I think at this point in  
21 time I don't have any other questions, further  
22 questions.

23 **COMMISSIONER SCHEUER:** Thank you,  
24 Commissioner Chang.

25 **COMMISSIONER CHANG:** Thank you.

1                   **COMMISSIONER SCHEUER:** Commissioner

2 Ohigashi?

3                   **COMMISSIONER OHIGASHI:** Mr. Eggen, is that  
4 how you pronounce it?

5                   **MR. EGGEN:** It's Eggen but that's fine.  
6 No problem.

7                   **COMMISSIONER OHIGASHI:** Eggen. Mr. Eggen.  
8 I'm sorry.

9                   I was looking at your Exhibit 19. I'm not  
10 sure if you have it in front of you or if you know  
11 about it.

12                   **MR. EGGEN:** I can grab it while we're  
13 speaking definitely.

14                   **COMMISSIONER OHIGASHI:** I was looking that  
15 your proposal appears to place the new boundary that  
16 you're requesting or the corrected boundary on the  
17 road fronting two structures on the property. And  
18 there are two structures on the property. Are those  
19 residences on the property?

20                   **MR. EGGEN:** They are. Yep.

21                   **COMMISSIONER OHIGASHI:** One is outside the  
22 property boundary line according to Exhibit 19. Is  
23 that a residence or are people living there?

24                   **MR. EGGEN:** Yeah, it's a residence. And  
25 the boundary issue is something that was created

1 when the federal government owned both parcels and  
2 they basically developed it as one large facility.  
3 And they didn't really pay very close attention to  
4 the locations of lot lines. So DHHL and myself have  
5 basically a boundary agreement about the issue, like  
6 an easement to address it.

7 **COMMISSIONER OHIGASHI:** So DHHL has -- you  
8 have an easement from DHHL to occupy that structure?

9 **MR. EGGEN:** Yeah. It has a different  
10 name. I'm trying to think of the exact legal  
11 document but that's an example of like, you know,  
12 like we provide them an access easement to their  
13 property which is landlocked and they address this  
14 lot line issue which is, again, kind of like this  
15 problem. It's nobody living's fault. It happened  
16 60 years ago but it's an issue, nonetheless.

17 **COMMISSIONER OHIGASHI:** Can you tell me  
18 who's living in the two residences?

19 **MR. EGGEN:** My wife and I live in one and  
20 the other one is used by our family when they visit.  
21 Some of them come for the winter. If it isn't  
22 COVID, it's a bit more often.

23 **COMMISSIONER OHIGASHI:** Is the one outside  
24 the boundary line your residence or is that the one  
25 that is being used by your family?

1           **MR. EGGEN:** The one that is outside the  
2 boundary line is used by the rest of my family. We  
3 live closest to the road to kind of keep an eye on  
4 things.

5           **COMMISSIONER OHIGASHI:** I'm not familiar  
6 with an LLC but is that -- is that -- are you the  
7 managing member or are you -- is that your title?

8           **MR. EGGEN:** I mean, we all technically are  
9 owner managers so there's no subsidiary level of  
10 members.

11           **COMMISSIONER OHIGASHI:** Your proposal  
12 would place you, these two structures outside of the  
13 conservation zone; is that right?

14           **MR. EGGEN:** That is correct.

15           **COMMISSIONER OHIGASHI:** However, the  
16 portion that exists outside of your property line  
17 would be subject to conservation district  
18 requirements; is that right?

19           **MR. EGGEN:** I don't know the technical  
20 answer to that. I mean, I'm not sure if you were to  
21 make this correction, if you would or would not also  
22 correct the basically related issue on the DHHL  
23 parcel. It's not part of this request.

24           **COMMISSIONER OHIGASHI:** No, no. Your  
25 declaratory ruling -- your declaratory request is

1 only for your parcel.

2 **MR. EGGEN:** That's my assumption. Yeah.

3 **COMMISSIONER OHIGASHI:** So it does not  
4 address that problem; is that right?

5 **MR. EGGEN:** Yeah. It's a complicated  
6 property.

7 **COMMISSIONER OHIGASHI:** When I started --  
8 when the Office of Planning gave their opening -- or  
9 their statement, I asked them about their Exhibit 4.  
10 And according to their Exhibit 4, they placed a 1982  
11 paved road based on, I guess, their GIS survey above  
12 the existing residences.

13 And if we were to follow the Office of  
14 Planning, which is the state arm of planning and  
15 their GIS, then we could relatively assume that the  
16 residences would remain within the conservation  
17 district; is that right?

18 **MR. EGGEN:** I disagree on that one. I  
19 think if you look at that document you'll see that  
20 it says it's not to be used for boundary  
21 interpretations down in the corner of it because the  
22 GIS data isn't accurate. And it's actually when you  
23 --

24 Go ahead.

25 **COMMISSIONER OHIGASHI:** I see something

1 signed by the executive officer on 10-26-2020 of the  
2 Land Use Commission, that the boundary --

3 **MR. EGGEN:** That's not on mine.

4 **COMMISSIONER OHIGASHI:** -- and been  
5 delineated is  
6 hereby certified as the actual land use district  
7 boundary.

8 So what my question is, is that given the  
9 two different maps, we seem to have a fuzzy type of  
10 figuring out where exactly the boundary line is that  
11 you are requesting to be moved. Are you -- is there  
12 any historical record of the 1982 paved road being  
13 above your home?

14 **MR. EGGEN:** There's not. There's an  
15 aerial photograph that we've shared with you from  
16 1965 produced by the U.S. Department of Agriculture  
17 that shows the road in its current location in front  
18 of my home. It's always been --

19 **COMMISSIONER OHIGASHI:** Was a survey of  
20 the 1982 paved road done? Or the 1982 -- I'm trying  
21 to be correct.

22 **COMMISSIONER SCHEUER:** Sorry. I just need  
23 to instruct the witness to not interrupt because it  
24 makes the transcription from this recording nearly  
25 impossible.

1           **COMMISSIONER OHIGASHI:** I'm sorry; maybe  
2 I'm proceeding questions too quickly, too. I'm  
3 going to try -- I'm just trying to -- it's the 1982  
4 topographical map that they used this line to say  
5 the 1982 paved road. Are you aware as an owner and  
6 person that has done research on it and I guess as  
7 an architect, are you aware of any surveys done of  
8 that particular road?

9           **MR. EGGEN:** That's a good question. So  
10 the road is not from 1982. That map --

11           **COMMISSIONER OHIGASHI:** No, I'm referring  
12 to the map.

13           **MR. EGGEN:** Okay.

14           **COMMISSIONER OHIGASHI:** I think we would  
15 agree that the road was created before 1961.

16           **MR. EGGEN:** Right. I agree. So, the  
17 Office of Planning's exhibit is a base map that my  
18 surveyors created and was certified by the boundary  
19 interpretation process that the Land Use Commission  
20 uses. And then the Office of Planning used GIS data  
21 and overlaid that on top of our map. The GIS data  
22 is not used by the Land Use Commission for its own  
23 boundary interpretations for my understanding and  
24 it's not accurate within a reasonable like for the  
25 scale that we're looking at, it's not an accurate

1 representation of location. The road itself is very  
2 clearly in the aerial photographs that predate that  
3 map in the same location that it's in in current  
4 aerial photographs, so I do not believe and none of  
5 the surveys that we have or aerial evidence show  
6 that it was ever behind the homes. The homes  
7 obviously have not moved.

8 **COMMISSIONER OHIGASHI:** When were the  
9 homes built?

10 **MR. EGGEN:** 1961.

11 **COMMISSIONER OHIGASHI:** So there could  
12 have been a road prior to 1961 that was modified in  
13 1961 after -- to be moved further down for the -- by  
14 the Navy; is that right? I mean, for all we know  
15 the paved road in this map was moved lower prior to  
16 1961 because they wanted to develop those two  
17 particular properties?

18 **MR. EGGEN:** I think the evidence that  
19 we've provided shows that they expanded the base and  
20 put the road from going around the base through the  
21 middle of the base. In 1960 and '61, they completed  
22 construction on June 2nd, and the road as it's  
23 depicted in the aerial photographs from 1965 is an  
24 accurate representation of that. And those same  
25 aerial photos from current present day match the



1 1965 aerial photos. So I think the location of the  
2 road as certified in the shoreline survey, the  
3 boundary interpretations is very accurate. And that  
4 is equivalent or is the road depicted as the 1982  
5 USGS road as shown on that map. Unfortunately, the  
6 OP map is basically inaccurate and wasn't done by a  
7 surveyor using data that has a margin of error or  
8 specificity that's much too inaccurate to be like  
9 used for this type of determination.

10 **COMMISSIONER OHIGASHI:** And I presume that  
11 that is your argument and not your testimony?  
12 Because are you a surveyor?

13 **MR. EGGEN:** I'm not a surveyor but the  
14 maps that we have provided --

15 **COMMISSIONER OHIGASHI:** Do you have  
16 expertise -- do you have expertise in determining  
17 whether or not the GIS map is accurate or not?

18 **MR. EGGEN:** I am not a surveyor and I do  
19 not have expertise in determining if their map is  
20 accurate.

21 **COMMISSIONER OHIGASHI:** Okay. So that's  
22 all the questions I have.

23 **COMMISSIONER SCHEUER:** Commissioners,  
24 further questions for Mr. Eggen?

25 Commissioner Giovanni followed by

1 Commissioner Cabral.

2 **COMMISSIONER GIOVANNI:** Thank you, Chair.

3 Thank you, Mr. Eggen.

4 I'd like to go back and follow on to some  
5 of Commissioner Chang's questions and answers that  
6 you provided.

7 So when you purchased the land in -- the  
8 property in 2018, you had a -- you acknowledge that  
9 you understood that part of that land was zoned in  
10 conservation; correct?

11 **MR. EGGEN:** That's correct.

12 **COMMISSIONER GIOVANNI:** What did that mean  
13 to you at the time?

14 **MR. EGGEN:** Well, at the initial time I  
15 didn't have a full understanding of what all those  
16 rules and regulations were. And I tried to work,  
17 you know, collaboratively and carefully with both  
18 OCCL as well as Hawaii County and all sorts of other  
19 agencies to make sure that I did understand them and  
20 followed those rules and regulations.

21 **COMMISSIONER GIOVANNI:** So when you -- was  
22 that before or after you purchased the land?

23 **MR. EGGEN:** Well, it actually started  
24 before the transaction closed so that I, you know,  
25 part of it I realized I would need to do special

1 management area permitting and potentially the  
2 conservation district use, CUDL permits. So I  
3 started learning about both of those processes  
4 before the purchase closed and after the purchased  
5 closed continued.

6 **COMMISSIONER GIOVANNI:** So it would have  
7 been possible for you to not close on the property  
8 based on the learnings that you developed in the  
9 process at that time; is that correct?

10 **MR. EGGEN:** I think that's true but I  
11 liked the property.

12 **COMMISSIONER GIOVANNI:** So strategically,  
13 you strike me as a person with both tactical and  
14 strategic thinking and critical thinking. Was it  
15 your intention -- your intention at the time to  
16 pursue changes to the -- either through a district  
17 boundary amendment or some other process now, this  
18 interpretation process, to rectify this for some  
19 reason? Did you see it as a problem you had to get  
20 corrected? I mean, what motivated you at the time,  
21 at that point in time and what's your motivation  
22 today?

23 **MR. EGGEN:** That's a good question,  
24 commissioner.

25 So, I didn't know that there was a mapping

1 error when I bought it. It wasn't apparent to me.  
2 I mean, to be quite frank, it takes a lot of staring  
3 at these maps. I mean, I live here and I had to  
4 stare at it for a long time to even like get an  
5 inkling that there was something wrong. It's not  
6 blindingly apparent unless you're a surveyor. So at  
7 first I didn't realize that there was an issue. I  
8 think what has really driven us to try to correct  
9 this error is that it feels -- I mean, I don't know  
10 if any of you live in conservation zoned property  
11 but if you are trying to be a good person and follow  
12 the rules they are quite burdensome. And the more  
13 duration that we've experienced that, the more I  
14 think that it's just become clear that we'd like to  
15 have a simplified life. I mean, for us, you know,  
16 and someday for the people in our family that  
17 inherit it from us and live here, too, we just don't  
18 want them to be having to kind of have -- it's  
19 almost like having two masters. You know, there's  
20 always this sort of convoluted process of who has  
21 jurisdiction. Who's going to approve your request  
22 shuffling paperwork back and forth. It's a little  
23 bit complicated.

24 **COMMISSIONER GIOVANNI:** All of that is  
25 necessitated because of your intention to make

1 changes. Is that not correct? And you're trying to  
2 make changes on conservation land. And the purpose  
3 of conservation land is to not -- is to conserve it,  
4 not make change. So it goes with the -- it kind of  
5 goes with the bargain, if you will. You buy  
6 conservation land. You have to deal with the  
7 bureaucracy, and I'll put a word in from my point of  
8 view, it might be viewed by some landowners as even  
9 a hardship to try to exist on conservation land.  
10 Isn't that something that you realized at the time  
11 that you purchased it or realized it at a point in  
12 time where you were learning about it and still  
13 could extract yourself from the transaction?

14 **MR. EGGEN:** I don't think that I really  
15 realized the full implications until after we closed  
16 on the property because we weren't able to really  
17 proceed very far with the process until we actually  
18 had ownership of the property. Like, they wouldn't  
19 really engage with us or allow us to submit any kind  
20 of requests or permits until we owned or had title  
21 to it. Right? So the most I could do was basically  
22 read and learn but not really engage in a  
23 significant way to find out what the limitations  
24 were going to be specifically for this property.  
25 But I hear where you're coming from and I think

1 that, you know, it's definitely something that's  
2 easier to see in hindsight than in the moment.

3 **COMMISSIONER GIOVANNI:** Fair enough.

4 So in the three years that you've owned  
5 the property and have had to deal with the  
6 regulations involving the conservation land and  
7 submitting requests and inquiries about it, have you  
8 ever gotten a refusal or turned down on any request?

9 **MR. EGGEN:** Well, I would say that  
10 generally when faced with the process that we would  
11 have to do we haven't proceeded with any of the more  
12 complicated things that I'd like to do. For  
13 example, getting solar panels requires a department  
14 level permit, a D-level permit with a public hearing  
15 and a 12-month lead time. And I can't find a solar  
16 installer who will even start the process of doing  
17 it on my behalf. Right? So I'm basically blocked  
18 from -- I can't install a solar system. I need  
19 someone to do it for me and no one will deal with  
20 the state to carry out that process. So those are  
21 the kinds of things that are --

22 **COMMISSIONER GIOVANNI:** Have you  
23 considered installing a ground mounted solar system  
24 on the agricultural land instead of putting it on  
25 the conservation land that you own?

1           **MR. EGGEN:** I have considered that. The  
2 problem for that for me is that I don't particularly  
3 want to look at a ground mount solar system as my  
4 view and I have a big roof with nothing on it. It  
5 seems like the logical place to put a solar system.  
6 But it's a point. You know, there's always lots of  
7 ways to solve a problem.

8           **COMMISSIONER GIOVANNI:** Thank you. I  
9 don't have any further questions.

10           Thank you, Chair.

11           **COMMISSIONER SCHEUER:** Thank you,  
12 Commissioner Giovanni.

13           Commissioner Cabral? Commissioner Cabral,  
14 if you're trying to talk, you're muted.

15           Commissioner Cabral? No?

16           Commissioner Wong, you're winding a flag?

17           **COMMISSIONER WONG:** Yeah. I got it from  
18 staff so you could see me, Chair. Thank you, Chair.

19           I have several questions regarding your  
20 property, sir.

21           **MR. EGGEN:** Okay.

22           **COMMISSIONER WONG:** So I'm going back to,  
23 again, you know your property before 2018, was it  
24 owned by only one person or prior to that someone  
25 else bought it or do you know the history of the

1 property?

2 **MR. EGGEN:** Yes, I do, commissioner. I  
3 bought the property from the Parker Ranch Land  
4 Trust. They were the original owners of the  
5 property before the federal government owned it.  
6 They had a reversal clause in the deed, and so when  
7 the federal government stopped using the property it  
8 was returned to them in the year 2000. They held it  
9 from the year 2000 until we purchased it in 2018.

10 **COMMISSIONER WONG:** So, and before that,  
11 as you said, before Parker Ranch, the federal  
12 government owned it a little while. That's correct?  
13 I just want to make sure I'm following the --

14 **MR. EGGEN:** Sorry. My headset is just  
15 running out of batteries. One moment.

16 **COMMISSIONER WONG:** Okay.

17 **MR. EGGEN:** Well, I think you can still  
18 hear me; is that correct?

19 **COMMISSIONER SCHEUER:** Yes.

20 **MR. EGGEN:** Okay. So the federal  
21 government owned it from 1959 until the year 2000,  
22 roughly.

23 **COMMISSIONER WONG:** Okay. So I guess I've  
24 got to go to Parker Ranch then. So, do you have any  
25 evidence on the record that the owner, which is



1 Parker Ranch, objected to the LUC's boundary? You  
2 know, the boundary map about the conservation  
3 boundary?

4 In their ownership until 1959 or their  
5 ownership from the year 2000 and later?

6 **COMMISSIONER WONG:** Yeah. Well, so the  
7 assumption is they owned it, you know, they owned  
8 the property before the federal government. I'm  
9 assuming that's the case; right?

10 **MR. EGGEN:** They did.

11 **COMMISSIONER WONG:** So, you know, when the  
12 LUC or the state made this conservation boundary map  
13 which we're talking about right now, do you know if  
14 they had any problems? Was there anything on their  
15 record that you know of that said, hey, you know  
16 what? I don't like where you're putting the line.  
17 So change it.

18 **MR. EGGEN:** Well, when the conservation  
19 line was created, the federal government owned the  
20 property, so I don't think Parker Ranch would have  
21 been aware of it. But I don't know beyond that.

22 **COMMISSIONER WONG:** Okay. So I just want  
23 to make sure I understand because, you know, Parker  
24 Ranch is a big landowner and I would assume that  
25 when you bought the property from Parker Ranch you

1 kind of understood, you know, the escrow or whoever  
2 did the background checks that, hey, there is a  
3 conservation land. There were issues on this but I  
4 guess didn't say anything about that issue; right?

5 **MR. EGGEN:** They disclosed that it was  
6 partially in conservation and they disclosed that  
7 they discovered the lot line issue that we discussed  
8 earlier with one of the other commissioners when  
9 they had a survey of the property done. They didn't  
10 resolve the issue with DHHL. They didn't ever seek  
11 to do so and so it wasn't until we purchased it that  
12 that issue was resolved.

13 **COMMISSIONER WONG:** In 2018,  
14 approximately?

15 **MR. EGGEN:** Yes.

16 **COMMISSIONER WONG:** So the other questions  
17 I have is we're going through a statutory ruling. I  
18 understand that we're dealing with the land, the  
19 property, the changes of whatever we want to do on  
20 it. So how come you didn't come and do a DBA  
21 instead?

22 **MR. EGGEN:** Is that the district boundary  
23 amendment, commissioner?

24 **COMMISSIONER WONG:** I (indiscernible).

25 **MR. EGGEN:** So the reason that I didn't do

1 a DBA is that when I spoke to the Land Use  
2 Commission staff initially in this process and we  
3 determined that there was this sort of inconsistency  
4 in question, one of the staff planners told me that  
5 this was the process that I should follow. And I  
6 started down that process on my own and felt like it  
7 was pretty difficult and confusing to do a  
8 declaratory order. And at that point I retained my  
9 counsel from Cal and team to help with that process  
10 because I didn't know if I would be able to complete  
11 it on my own.

12 **COMMISSIONER WONG:** Can has been in front  
13 of us a lot of times so he knows our process.

14 So not taking any position at this point  
15 because I want to hear everything, let's say we deny  
16 this. Would you come back for a DBA?

17 **MR. EGGEN:** I don't know definitively what  
18 I would do yet. I mean, it would a significant  
19 burden on me to do an environmental impact  
20 statement. I mean, I honestly, I think I mentioned,  
21 I mean I've spent exponentially more money on this  
22 than I ever dreamed that I would have to and, I  
23 mean, that's like the price of a college education  
24 to do a district boundary amendment for a child so I  
25 would have to evaluate it. I don't know.

1           **COMMISSIONER WONG:** Okay. Thank you.

2 Thank you, sir.

3           Chair, I reserve the right to talk to  
4 counsel after this after he finishes his  
5 presentation.

6           **COMMISSIONER SCHEUER:** Thank you,  
7 Commissioner Wong.

8           Commissioner Cabral?

9           **COMMISSIONER CABRAL:** My apologies. I  
10 think the battery in my mouse died that little bit  
11 ago. It's the weather over here.

12           Okay. Yes, thank you very much for  
13 meeting with us, and I can only imagine how  
14 expensive this whole process is and how irritating  
15 and cumbersome it is. And we understand  
16 conservation districts are very protective, which of  
17 course is their intent.

18           My questions are I think a practical  
19 matter. Okay. So your house, because it's in this  
20 low-lying area where it's best protected from the  
21 winds, and I am on the Big Island so I've been in  
22 that area at least if not on that roadway in the  
23 past and used to fish a lot up there. You're in  
24 conservation. How many -- approximately how many  
25 feet away is it that your agriculture land is going

1 to be?

2 **MR. EGGEN:** Do you mean if it were to be  
3 changed or --

4 **COMMISSIONER CABRAL:** No, no. Right now.  
5 Right now. If you wanted to walk over to your  
6 agricultural land, about how far from your house is  
7 that?

8 **MR. EGGEN:** It's about maybe 350 feet. I  
9 mean, it kind of slopes along the curve of the  
10 property but it's above the depression area an  
11 additional probably 150 feet beyond that. So like,  
12 my house, my backyard, there's like a land berm and  
13 then you continue walking up the hill and there's a  
14 stake from the surveyors for where the conservation  
15 location is currently located.

16 **COMMISSIONER CABRAL:** Okay. And then on  
17 your -- I know that it's very windy so, of course, a  
18 lot of things are hard to grow in that. But also,  
19 have you looked into, I mean, on that agricultural  
20 land then, you would be allowed on that land to have  
21 like a vacation rental or additional properties,  
22 develop additional houses that could be used either  
23 as -- you could live in them. You could have them  
24 as long-term residentials or you could petition to  
25 have them as vacation rentals; is that correct?

1           **MR. EGGEN:** I don't think that's correct  
2 from my understanding of the rules. I mean, I don't  
3 think I can actually build any other structures with  
4 the amount of -- so I'm in the special management  
5 area and there's a square footage limit for  
6 structures. And while I'm in conservation there's  
7 an even more restrictive square footage limit. So I  
8 don't believe I could build any other structures and  
9 I don't have any intention of doing that. I don't  
10 want to do that.

11           **COMMISSIONER CABRAL:** Okay. Okay. And I  
12 also -- I understand up in that area there's a lot  
13 of people and historically a lot of windbreaks were  
14 planted with large trees that could create  
15 windbreaks for protection for plantings and for  
16 housing and everything else. Do you have any  
17 windbreaks along your property that could help  
18 protect your land?

19           **MR. EGGEN:** We don't right now. I mean,  
20 the tower, right, it was basically like they kept  
21 the land grazed down really short around the tower  
22 so that they could serve all of the outriggers that  
23 basically supported it. So the outriggers are like  
24 in all the backyards as well as around the whole  
25 circle of that tower that you see in the aerial

1 photo. They didn't really have a lot of trees for  
2 interference with those support structures.

3 **COMMISSIONER CABRAL:** Okay. All right.

4 Thank you very much.

5 **MR. EGGEN:** Yep.

6 **COMMISSIONER SCHEUER:** Okay, Commissioner  
7 Cabral.

8 Commissioner Chang?

9 **COMMISSIONER CHANG:** Thank you, Mr. Chair.  
10 I just have two final questions.

11 Mr. Eggen, again, thank you.

12 This is based upon your responses. And  
13 you considered that the conservation regulations to  
14 be quite burdensome.

15 Was your price when you purchased the  
16 property commensurate with conservation lands?

17 **MR. EGGEN:** I mean, I think that we paid,  
18 at least for me, a lot of money for the property. I  
19 mean, it wasn't a cheap purchase or something like  
20 that. We didn't, I don't think, got a discount  
21 because it was partially in conservation.

22 **COMMISSIONER CHANG:** How do you know that?  
23 How do you know that it wasn't discounted because it  
24 was conservation?

25 **MR. EGGEN:** I looked at many other

1 shoreline properties for sale. I considered  
2 purchasing several of them, so.

3 **COMMISSIONER CHANG:** Okay. Would you --  
4 and again you do appear to be a very savvy  
5 businessperson. But would you agree that normally,  
6 a sales price will be different based upon its  
7 zoning, that you might pay more for agricultural  
8 land where you have greater, you have less  
9 restrictions than for conservation lands?

10 **MR. EGGEN:** I think that's fair. Yeah.

11 **COMMISSIONER CHANG:** And it does appear  
12 that you've read the regulations. But what is your  
13 understanding on the purpose of conservation lands?

14 **MR. EGGEN:** That's a great question,  
15 commissioner.

16 So, you know, I fully support the goals  
17 and initiatives of the conservation zone. They're  
18 there to protect and provide, you know, protection  
19 in perpetuity for important lands. The front  
20 shoreline portion of our parcel is in conservation.  
21 It, you know, has been improved. We worked with  
22 Hawaii County in the State of Hawaii, the National  
23 Park Service to align the Ala Kahakai, as well as an  
24 Aha Ula trail system, create a 10-foot wide  
25 pedestrian easement beyond the actual shoreline area



1 so that it's easier and safer for everyone to walk  
2 on like nice, you know, grass instead of lava rocks  
3 and things like that. So I'm a big fan. My wife is  
4 a big fan of public access of Hawaii's public  
5 shorelines and beaches and strongly support those  
6 things. You know, and with what we're talking  
7 about, none of that would change. It's really just  
8 about making the part of our property that we live  
9 in and use just a clear, like simple process to live  
10 in and to use our property.

11 **COMMISSIONER CHANG:** No, I understand and  
12 appreciate it. But it would change. You would be -  
13 - by changing it to agriculture, you would not have  
14 the protections of conservation, or the public would  
15 not have the protections of a conservation zone  
16 land. Isn't that correct?

17 **MR. EGGEN:** Well, the makai portion from  
18 the road would still be in conservation, so I think  
19 the public shoreline access, the things that  
20 conservation is there for, would remain the same.

21 **COMMISSIONER CHANG:** And using that same  
22 argument, if the Land Use Commission when it made  
23 its designation looked at this property or looked at  
24 the swath of land around you and determined that  
25 they wanted a greater area to be protected,

1 shouldn't we also honor and respect that  
2 designation?

3 **MR. EGGEN:** I think that's a good  
4 question. I can only say what evidence I see of how  
5 they put the boundary around where my parcel is  
6 located to infer that kind of question.

7 **COMMISSIONER CHANG:** Okay. No, and I  
8 appreciate that candor.

9 You raised something that I was not aware  
10 of. Is there a Na Ala Hele trail on the makai side  
11 of the property?

12 **MR. EGGEN:** There is a -- it's kind of a  
13 combined trail. So it's the Na Ala Hele, not like  
14 Kings Trail. The Na Ala Hele trail system has a  
15 different name which is escaping me but they  
16 basically run on the same pathway through this area.  
17 And it's both north and south. You know, DHHL  
18 doesn't like actively address those kinds of things  
19 so I don't know if they've gone through the process  
20 to basically record it or certify it for their part  
21 of the parcel but it is practically used in that way  
22 as well. And then to the south there's different,  
23 Na Ala Hele name as well as an Ala Kahakai  
24 alignment.

25 **COMMISSIONER CHANG:** Is it called Ala Loa,

1 the Ala Loa Trail?

2 **MR. EGGEN:** I believe the Ala Loa is  
3 actually above my property. It follows an old  
4 railway alignment that is actually the access road  
5 to the Mo'okini Heiau and other sites.

6 **COMMISSIONER CHANG:** Because it would make  
7 sense that there would be a makai trail that ran  
8 along the perimeter following the Ala Loa and the Na  
9 Ala Haki. So is that trail that's in front of your  
10 property, is that a public, is that owned by the --  
11 is that owned by the state?

12 **MR. EGGEN:** It's not owned by the state.  
13 There's an easement with Hawaii County for a 10-foot  
14 wide pedestrian access trail. It's kind of their  
15 standard way that they -- anytime that you request,  
16 like when I requested my SMA permit, that was one of  
17 the conditions is that we did that which we greatly  
18 support and, you know, we maintain it, mow it, make  
19 it really nice so that people can walk their dogs  
20 and go fishing. But it's not owned by them  
21 officially.

22 **COMMISSIONER CHANG:** I'm wondering why it  
23 isn't owned by the state. If it's a public trail  
24 that pre-existed, was pursuant to the Highways Act  
25 of 1892, it would be a public trail like the other

1 Ala Loa and Ala Kahakai Trail that goes around  
2 Hawaii island. It is owned by the state of Hawaii  
3 as a public trail. So I am wondering why this in  
4 front of your particular property it is not a  
5 publicly owned trail and if indeed there was a  
6 public trade there, that may have also been the  
7 basis upon which the Land Use Commission wanted a  
8 particular boundary, a buffer to protect that. I  
9 mean, we are only surmising what the LUC had  
10 intended. But that Ala Kaha Kai, or if it's an Ala  
11 Loa or Ala Kaha Kai, all of the other properties  
12 along the Kona Coast, that trail is owned by the  
13 state of Hawaii. So I am -- I do find it somewhat  
14 curious why this isn't. And that's not the issue  
15 before us today but there is sufficient case law.  
16 There's sufficient positions taken by the state of  
17 Hawaii, specifically DNLR. If there is a public  
18 trail in front of their property, especially one  
19 that is being used. It is owned in fee simple by  
20 the state of Hawaii. So again, that's not currently  
21 before us but I think that that is a -- that's an  
22 important issue in my mind when the Land Use  
23 Commission might have designated this. And it might  
24 be an issue in the future because the state has, you  
25 know, they have somewhat aggressively gone out and

1 claimed property where the trails existed.

2 So with that being said, I have no further  
3 questions. But thank you very much.

4 **MR. EGGEN:** Thank you, commissioner.

5 **COMMISSIONER SCHEUER:** Commissioners?

6 Okay. I have some questions for the  
7 witness. I'll just remind you, you did take an  
8 oath; yeah.

9 **MR. EGGEN:** Yes.

10 **COMMISSIONER SCHEUER:** Sorry. To start  
11 from one of the most recent things you said, you  
12 obtained a special management area permit from the  
13 county?

14 **MR. EGGEN:** That's correct.

15 **COMMISSIONER SCHEUER:** Can you explain to  
16 me and the rest of the commissioners what that  
17 permit was for?

18 **MR. EGGEN:** Sure. The special management  
19 area permit was to be able to basically take the  
20 homes and repair them so that I could live here.

21 **COMMISSIONER SCHEUER:** And when did you  
22 obtain that permit?

23 **MR. EGGEN:** We started the process in 2018  
24 and I believe it was like June of 2018 that it was  
25 granted.

1           **COMMISSIONER SCHEUER:** And did you  
2 represent in the SMA permit at that time that you  
3 were going to be seeking a boundary re-  
4 interpretation?

5           **MR. EGGEN:** I wasn't aware of the issue at  
6 that time.

7           **COMMISSIONER SCHEUER:** So the answer is  
8 no?

9           **MR. EGGEN:** That's correct.

10          **COMMISSIONER SCHEUER:** Okay. Did I  
11 understand the representations, and I'm not sure if  
12 it was you or your counsel earlier, that one of your  
13 wishes is to move this line into the agricultural  
14 district so that you can sell some of the produce  
15 from your property as is required for residents in  
16 the agricultural district.

17          **MR. EGGEN:** Yes, that's true.

18          **COMMISSIONER SCHEUER:** Okay. What kind of  
19 water service do you have to your property?

20          **MR. EGGEN:** I have an agricultural meter,  
21 a County of Hawaii water meter.

22          **COMMISSIONER SCHEUER:** You have an ag  
23 meter on your property?

24          **MR. EGGEN:** Yeah, it's very expensive.  
25 The size -- it's an inch and a half instead of the

1 normal like city-size meter so it's very expensive  
2 month to month.

3 **COMMISSIONER SCHEUER:** How many avocados  
4 would you have to sell for instance to cover one of  
5 Cal Chipchase's hours?

6 **MR. EGGEN:** I mean, it would take quite a  
7 few avocados to pay for that type of fee.

8 **COMMISSIONER SCHEUER:** So may I surmise  
9 that you would pursue the agriculture not primarily  
10 for its financial returns but rather because of the  
11 legal requirements involved as well as any other  
12 sort of values that you might get from growing  
13 produce?

14 **MR. EGGEN:** Well, I mean, we do have like  
15 that history. It's really what my life loves to do.  
16 If you saw our lanai right now, I mean, she's got  
17 the entire thing covered in potted pots that she  
18 would love to put in the ground.

19 **COMMISSIONER SCHEUER:** If I may. If I  
20 may. So, yes. You like to farm. I get that.

21 **MR. EGGEN:** Yeah.

22 **COMMISSIONER SCHEUER:** Yeah. But the  
23 motivation is not necessarily solely that you like  
24 to farm. It's that you would be required to farm to  
25 validly have a house in the agricultural district;

1 is that correct?

2 **MR. EGGEN:** I feel like you are maybe  
3 testifying for me but --

4 **COMMISSIONER SCHEUER:** Excuse me?

5 **MR. EGGEN:** It feels like you're --

6 **COMMISSIONER SCHEUER:** I'm asking you a  
7 question. You may feel free to answer or not answer  
8 it. Or your counsel can step in if he thinks it's  
9 inappropriate.

10 **MR. EGGEN:** Okay. Well, I recognize that  
11 I can't sell my produce right now because of how the  
12 area in which hit's grown is zoned. And so I  
13 wouldn't be able to pursue earning money that way  
14 that it stands.

15 **COMMISSIONER SCHEUER:** That is not my  
16 question. My question is, if we move -- if we  
17 granted this and you were now in the agricultural  
18 district and therefore required to produce, you're  
19 not going to be able to realize enough money from  
20 your agricultural pursuits to make it worthwhile in  
21 and of itself; is that correct?

22 **MR. EGGEN:** That's probably true. Like  
23 most parcels of land in the state of Hawaii that are  
24 ag zoned, they all suffer from very similar issues.

25 **COMMISSIONER SCHEUER:** So you haven't



1 done, for instance, a business plan for producing  
2 agricultural income from this property?

3 **MR. EGGEN:** I actually have looked at it,  
4 including use of the pasture area for different  
5 types of crops. I mean, we looked at pineapples.  
6 We thought about doing olives. We've looked at mac  
7 nuts but the wind is too high and they're very  
8 shallow rooted. I mean, I've really looked at all  
9 sorts of different ways to generate a reasonable  
10 income from the land. It bothers me to have 17  
11 acres and not be able to do all that much with it.  
12 So this is one that we feel like is practical and  
13 satisfying for what we want to kind of produce.

14 **COMMISSIONER SCHEUER:** So what is the  
15 agricultural use to which you would put the land?

16 **MR. EGGEN:** We want to plant the current  
17 area that grows fruit with new trees. A lot of them  
18 are very old and like, you know, they produce but  
19 they aren't producing enough to really be lush. And  
20 so we want to have a lot more varieties of citrus,  
21 mangos, and avocados so we can sell those. Those  
22 are the popular things at our farmer's market. I'm  
23 not sure about elsewhere but those are the main  
24 things that people buy here.

25 **COMMISSIONER SCHEUER:** Okay. When you

1 testify on things as being your intention, you are  
2 one member and not even the managing member of the  
3 LLC; is that correct?

4 **MR. EGGEN:** I am a managing member of the  
5 LLC.

6 **COMMISSIONER SCHEUER:** Okay. So is your  
7 intention identical to the LLC's intention?

8 **MR. EGGEN:** Yes. My wife is the other  
9 managing member who I'm describing in my  
10 conversations about what we want to do.

11 **COMMISSIONER SCHEUER:** But as an LLC, the  
12 LLC could be owned by somebody else with the asset  
13 and its intention could change?

14 **MR. EGGEN:** I own the LLC with my wife and  
15 the rest of my family.

16 **COMMISSIONER SCHEUER:** But if the LLC were  
17 sold, the LLC's intention would change; is that  
18 correct?

19 **MR. EGGEN:** Yes. If the property was  
20 transferred to someone else it could change. I  
21 think the good news is that the presence of  
22 conservation land on the shoreline means that any  
23 kind of meaningful actual attempt at anything would  
24 be super regulated.

25 **COMMISSIONER SCHEUER:** So I want to go

1 back to one other thing that came out during  
2 Commissioner Chang's question of you. She asked  
3 you, and I'm paraphrasing, whether or not there was  
4 any discount on the property because it was in a  
5 conservation district and you said you did not  
6 believe so.

7 **MR. EGGEN:** That's correct.

8 **COMMISSIONER SCHEUER:** So there was  
9 nothing in any of the marketing of the property that  
10 suggested that this property was being sold at a  
11 discount because of its condition?

12 **MR. EGGEN:** It was marketed as a property  
13 to redevelop into a luxury family compound. That's  
14 how it was presented. There are other properties  
15 that were basically at the same price for about the  
16 same acreage within three miles of this property at  
17 the time I purchased it.

18 **COMMISSIONER SCHEUER:** What was that  
19 acquisition price?

20 **MR. EGGEN:** It's public record. It was  
21 \$905,000.

22 **COMMISSIONER SCHEUER:** For 17 acres of  
23 coastal land?

24 **MR. EGGEN:** Yes.

25 **COMMISSIONER SCHEUER:** With housing?

1           **MR. EGGEN:** Mm-hmm. There was another one  
2 for sale for \$1 million with more acreage as well as  
3 structures on it so, I mean, it's not, like, I  
4 negotiated the price of \$905,000. It was listed for  
5 \$1 million, so.

6           **COMMISSIONER SCHEUER:** And last question  
7 from me, at least for now.

8           **MR. EGGEN:** Sure.

9           **COMMISSIONER SCHEUER:** Have you estimated  
10 what the new value of this property would be should  
11 you be successful in convincing the Land Use  
12 Commission to take your position on the boundary  
13 reinterpretation?

14           **MR. EGGEN:** I have not.

15           **COMMISSIONER SCHEUER:** Not even back of  
16 the envelope daydreaming on your front porch  
17 estimate?

18           **MR. EGGEN:** I don't really think that, I  
19 mean, the property is more valuable since I improved  
20 it.

21           **COMMISSIONER SCHEUER:** It's a yes or no  
22 question.

23           **MR. EGGEN:** Well, okay. I would say no,  
24 not specifically from this action but definitely  
25 because I have fixed it up.

1           **COMMISSIONER SCHEUER:** Okay. Thank you  
2 very much.

3           **MR. EGGEN:** Sure.

4           **COMMISSIONER SCHEUER:** Mr. Chipchase, do  
5 you have any redirect?

6           **MR. CHIPCHASE:** I do not, Chair.

7           **COMMISSIONER SCHEUER:** Okay. Would you  
8 walk us through how you wanted to spend the  
9 remainder of your time?

10          **MR. CHIPCHASE:** Yes, Chair.

11                 With the conclusion of Mr. Eggen's  
12 testimony, the only other evidence to review is the  
13 testimony that was submitted in support of the  
14 petition. From there I will discuss the standards  
15 that the commission applies, look at OPSD's Exhibit  
16 4 that had come up early in the discussion that  
17 Commissioner Ohigashi had mentioned, and make my  
18 closing arguments. And I think all of that is  
19 probably 20 minutes or so of time.

20          **COMMISSIONER SCHEUER:** We've obviously run  
21 through lunch hour. I don't think anybody on the  
22 commission anticipated the length of your  
23 presentation today. Let me assess with my fellow  
24 commissioners how you wish to proceed. Do you want  
25 to take a lunch break or do you want to just try and

1 plow on through?

2 **COMMISSIONER WONG:** I need a break --

3 **COMMISSIONER SCHEUER:** Commissioner Wong,  
4 we can either take a 10-minute break or like a 30-  
5 minute break. I know where your stomach votes,  
6 Commissioner Wong.

7 **COMMISSIONER WONG:** Okay, thank you.

8 **COMMISSIONER CHANG:** Mr. Chair, I'm good  
9 with a 10 minute but if we take no more than a 30  
10 that's fine, too.

11 **COMMISSIONER SCHEUER:** Okay.

12 **COMMISSIONER CABRAL:** Yeah. I thought the  
13 last one was our lunch break so I ate while you were  
14 talking. Thank you.

15 **COMMISSIONER SCHEUER:** Commissioner  
16 Giovanni?

17 **COMMISSIONER GIOVANNI:** No more than 30.  
18 Thank you.

19 **COMMISSIONER SCHEUER:** Okay. Let's  
20 reconvene at 1:20 exactly.

21 **(Recess taken from 12:51 p.m. - 1:21 p.m.)**

22 **COMMISSIONER SCHEUER:** It is 1:21. We are  
23 back on the record.

24 I recognize Commissioner Ohigashi.

25 **COMMISSIONER OHIGASHI:** Yeah, I just

1 wanted to apologize to Mr. Eggen. I didn't mean to  
2 get so testy about it. It's just I have some other  
3 issues going on right now but, and I want to express  
4 my concern about the exhibit, the Exhibit 4. I did  
5 it wrongly to Mr. Eggen rather than to the  
6 Department of Planning, Office of Planning. I  
7 apologize. That is for you, Mr. Chipchase.

8 **MR. EGGEN:** I appreciate that,  
9 Commissioner.

10 **COMMISSIONER SCHEUER:** Thank you,  
11 Commissioner Ohigashi.

12 Anything further, commissioners? If not,  
13 Mr. Chipchase can continue.

14 **MR. CHIPCHASE:** Very good, Chair.

15 Commissioners, as Mr. Eggen mentioned, he  
16 did have an opportunity to talk to his neighbors and  
17 uniformly they supported the petition and the  
18 correction. Some went so far as to submit public  
19 testimony in support and it's part of the record.  
20 And we put some of that up on the screen. I won't  
21 read them or go through them but I think it is  
22 important to note that to the folks most directly  
23 affected by this, they support the petition and  
24 support the correction.

25 In terms of why we're here, coming back to

1 what makes this the procedure that we follow, we  
2 went through -- Mr. Eggen, as he testified, first on  
3 his own and then with counsel, through all of the  
4 steps that the rules direct one should take before  
5 coming to the Land Use Commission on a petition for  
6 declaratory ruling to correct an issue with a  
7 boundary interpretation. Those rules are set out  
8 principally in section 22.

9 If you go down, Chris. No, next slide.

10 But they don't start there. They don't  
11 start with subsection F which is the end of our  
12 journey when we come to the commission. They start  
13 with the other subsections. And these are the steps  
14 that he went through, both on his own and then with  
15 counsel before we presented to you on this  
16 declaratory ruling. And if you recall --

17 Keep going, Chris.

18 We, when we finally got through all of  
19 these steps, through all of these subsections, we  
20 presented a petition that was based on staff's  
21 interpretation that the Land Use Commission had  
22 followed the old road. That that was the Land Use  
23 Commission's intention in 1969. And so we prepared  
24 a petition explaining that we agree with that  
25 intention. That it's correct. It's supported by



1 the record. But they simply relied on the wrong  
2 road. They just had an old map.

3 Keep going, Chris.

4 When staff's interpretation changed and  
5 they said, well, now we think the commission meant  
6 to align the 300 foot, we reworked all of the  
7 papers. We came back to reviewing historical  
8 evidence to say is there anything that we can find  
9 in the maps, in the 1969 review, in any other public  
10 record, and we made public records requests that  
11 could support an interpretation along the 300-foot  
12 line and we found nothing. We reworked our papers  
13 to address that issue. Reworked our mapping. Had  
14 new surveys done, new overlays prepared. And it's  
15 as a result of all the effort that Mr. Eggen put  
16 into those steps, to the steps that we just breezed  
17 through on the screen and in response to a changing  
18 basis that was expressed by staff, and nobody's  
19 fault; right? People's rationale may change. I  
20 don't blame anyone for that. But it's as a result  
21 of that long process that we come, or after that  
22 long process that we finally come before you and  
23 present everything that we've learned. And that's  
24 why our petition -- our presentation has run the  
25 length that it's run, so we can walk you through all

1 of this to show you that we have done our homework.  
2 That we've reviewed all of the maps, historical  
3 evidence. That we've had surveyors survey the  
4 property, prepare overlays not only of the property  
5 but of the broader area. And based on all of that  
6 we can see no evidence that the commission intended  
7 to do anything other than follow a road. Or did  
8 anything other than simply put the road in the wrong  
9 location because it didn't have an updated map.

10           And that really brings us back to this  
11 process. And I understand that it's not a favored  
12 process. I understand that. And I think you guys  
13 know me well enough that I take cases that I find  
14 interesting and I think that my outcome is right and  
15 I'm arguing for the correct result. That's how I  
16 feel about this case. And when I look at the  
17 precedent that supports using this process in a case  
18 like this, I come to that same conclusion. And you  
19 guys do have precedent. And the Hawaii Supreme  
20 Court as we put up on the screen recognizes that  
21 even agencies in adjudicatory proceedings like this  
22 one have precedent and that that precedent should  
23 guide them in future cases.

24           The precedent you have is only just north  
25 of 20 years old. It's the Robert E. and Christine

1 M. Stengel case. And we presented a copy of the  
2 entire decision as Exhibit 22. And in that case,  
3 the commission amended the conservation district  
4 boundary line on the 1974 LUC map for the H59  
5 quadrant to reflect what it determined in that  
6 proceeding was the actual intent of the commission  
7 in its 1969 review. In that case, the official LUC  
8 map showed the conservation district line as  
9 following a 200-foot contour line noted as the top  
10 of the pali. Petitioner, after going through the  
11 steps that Mr. Eggen has gone through, came before  
12 the commission and pointed out to the commission  
13 that the conservation district boundary line as  
14 represented in the official map was incorrect  
15 because the 200-foot contour line on the map did not  
16 reflect the actual location of the pali. The  
17 commission noted that the petitioners had purchased  
18 the property with the intent of building a home on  
19 it.

20 But this fact did not prevent the  
21 commission from correcting the mapping error. The  
22 fact that they bought the property with knowledge of  
23 the error did not prevent the commission from  
24 correcting the error. The fact that it might make  
25 the property more valuable to move the line because

1 then less land is in conservation did not prevent  
2 the commission from correcting the error. The  
3 commission corrected the error because the error  
4 existed. And that's really as we looked at the very  
5 beginning of our presentation today, that's really  
6 what the 1969 commission intended. These aren't  
7 going to be perfect, that there will be mistakes,  
8 but there needs to be a process for fixing them.  
9 That's the process in Stengel. That's the process  
10 today.

11           So in Stengel, after submitting two  
12 boundary requests and the topographical survey  
13 depicting the accurate location of the pali, the  
14 petitioners finally sought a declaratory order under  
15 section 22(F), the same section we're here today  
16 requesting that the commission correct the location  
17 of the boundary. And the commission granted the  
18 request in part. And in doing so, the commission  
19 relied on the intent and the action of the drafters  
20 of the 1965 review. And interpreted the  
21 conservation district boundary line as being along  
22 the actual location of the top of the pali, rather  
23 than along the 200-foot contour line as was drawn on  
24 the LUC map. It was a mistake and they corrected  
25 it.

1 In this case, all we ask is that the  
2 commission take similar action. As in Stengel, the  
3 conservation district boundary line does not follow  
4 the actual location of the physical boundary which  
5 is the only boundary of any evidence the commission  
6 intended to follow in 1969. It simply doesn't  
7 follow the road because they didn't know it was in  
8 that location. Instead, they started the  
9 conservation district boundary line through our  
10 property at exactly the point where they believed  
11 the old road existed.

12 It simply did not exist in that location  
13 at that time, and we know that they followed that  
14 road because to the north of the property they  
15 followed what they believed to be the road as it  
16 existed in that location at the time. It did not  
17 exist in that location, not only on our property but  
18 to the north. They still followed it. They simply  
19 got the physical boundary, that physical marker that  
20 they were looking for wrong. And having started  
21 from the wrong point, they simply continued the  
22 wrong line through our property. It's exactly like  
23 Stengel and we can see that on the overlay, the  
24 overlay with the 1982 USGS. We can see the points,  
25 the intersections, what they meant to do and where

1 they went wrong. We know that road existed. We  
2 know that it existed in its current location.

3 And go ahead, Chris.

4 We know that they followed roads. We know  
5 that the property was in agriculture. So all those  
6 data points that we have line up, property and  
7 agriculture, intended to follow roads, thought they  
8 were following the road. The road simply didn't  
9 exist where they thought it was.

10 And so we also know that the standards the  
11 commission set out for its review in 1969, accord  
12 with the standards for the agricultural district and  
13 the conservation district and that placing the line,  
14 the boundary line along an existing roadway was both  
15 their intent and consistent with what the  
16 conservation district and the agricultural district  
17 are supposed to do and are supposed to represent.

18 Go ahead, Chris.

19 We also know that that is consistent with  
20 the county zoning and the county's designation of  
21 the property.

22 And so then we come then to the last  
23 document we've discussed so far today, Exhibit 4  
24 that Commissioner Ohigashi had mentioned. When we  
25 look at this document, we can clearly see the

1 location of the road actually surveyed as Mr. Eggen  
2 explained. We know from the aerial photographs and  
3 the USGS maps that no road has ever existed in the  
4 location of what is marked as the 1982 paved road.  
5 Never has in the history of the property. Nothing  
6 has ever looked like that. That is simply a mistake  
7 because of the limitations of the GIS software that  
8 is meant to track the existing road as it is today.  
9 What we have that is reliable is actual survey maps  
10 of our property mapping that road, mapping the  
11 currently interpreted conservation district line,  
12 showing where 300 feet from the shoreline would be,  
13 demonstrating that 300 feet is no the metric that  
14 they used because it doesn't intersection in any  
15 material way with the existing line. So the actual  
16 evidence, the actual surveyed evidence we know where  
17 the road is. We know where it was. And we know  
18 where the line should be.

19 I talked a little bit about the process.  
20 And what we've done is what the commission  
21 contemplated in 1969. It's what the rules direct us  
22 to do. It's what your precedent directs us and  
23 directs you to do. And it's what staff advised Mr.  
24 Eggen to pursue. Those are the reasons that we're  
25 here. And that decision is based on your decision,

1 ultimately. It's based on evidence. The evidence  
2 is the information that we have presented to you  
3 over the course of this morning and now into this  
4 afternoon. That evidence shows only that the  
5 commission intended to follow a road and it just got  
6 the location of the road wrong. It shows that none  
7 of the other considerations that we've discussed --  
8 purchase prices when acquired, all those things --  
9 have ever been relevant to your decision. The one  
10 precedent that we have. None of them are reflected  
11 in the rules. None of those considerations are  
12 reflected in the 1969 review. It's simply a matter  
13 of correcting a mistake.

14           And I'll close with this and I appreciate  
15 your time greatly. That mistake is important. It  
16 may not seem like it should be. It may seem that  
17 there should be other reasons or other solutions. I  
18 don't know. But it's important to an individual.  
19 It's important to a family. And I think that that's  
20 why they've invested so much in this. And I think  
21 that getting it right is important, too.

22           Thank you very much.

23           **COMMISSIONER SCHEUER:** Thank you.

24           Commissioners, any further questions for  
25 Mr. Chipchase at this time? When we review our



1 procedures we're going to have some questions from  
2 him. I'll then allow you to ask any further  
3 questions if you want to of the county or OPSD.  
4 I'll give Mr. Chipchase a chance to rebut and then  
5 we'll move into deliberation.

6 **COMMISSIONER:** Very good.

7 **COMMISSIONER SCHEUER:** Commissioner  
8 Ohigashi?

9 **COMMISSIONER OHIGASHI:** Mr. Chipchase,  
10 when I read the Stengel decision it said something  
11 about -- it dealt with a situation where there was a  
12 clear delineation that it should be on the top of  
13 the pali. However, the topographical survey showed  
14 that the approximate boundary drawn was inconsistent  
15 with the top of the pali. In this case, we're  
16 dealing with an existing dirt road that was  
17 specifically identified on the map shown on  
18 everybody's map and utilized by the commission to  
19 draw that particular boundary. Is my interpretation  
20 wrong or can you expand on what you think where am I  
21 going wrong with that?

22 **MR. CHIPCHASE:** I'll do my best. I think  
23 you're not wrong on the Stengel decision. I think  
24 that your interpretation of the Stengel decision is  
25 the same as mine. Where I think we might differ is

1 really only as to the evidence here. The evidence  
2 shows I think as you correctly said that they  
3 intended to follow this road, this road depicted on  
4 the 1957 map. The difference is between you and I  
5 on that is that the road did not actually exist in  
6 these locations, not only on our property but north  
7 of it when it was mapped. So in that way it's  
8 exactly like the Stengel decision. We know in  
9 Stengel they intended to follow the top of the pali.  
10 They just drew the line in the wrong place. We know  
11 in our case they intended to follow an actual  
12 roadway. They just drew the roadway in the wrong  
13 place because they didn't have updated information.  
14 And so in the same way as in Stengel there was a  
15 mistake made. There was a mistake made here when  
16 they drew the line.

17 **MR. OHIGASHI:** Did the dirt way road exist  
18 in 1957?

19 **MR. CHIPCHASE:** It existed in 1957. It  
20 did not exist in 1964 in its current -- in the  
21 location that the LUC placed it.

22 **MR. OHIGASHI:** So the dirt road that was  
23 depicted on this particular map, even though it was  
24 wrong, wasn't there in 1964, it still existed in  
25 1957?

1           **MR. CHIPCHASE:** It did exist in 1957.

2           **MR. OHIGASHI:** So, assuming that they  
3 intended to follow that particular road that was  
4 listed in 1957, wouldn't it make sense that the line  
5 be drawn as it is now?

6           **MR. CHIPCHASE:** Actually not for two  
7 reasons, commissioner. One is that there's no  
8 indication in any record from 1969 or in any of the  
9 mapping that they intended to follow roads that had  
10 at one time existed and were no longer in place.  
11 The second is we have the opposite indication, that  
12 they intended to follow existing roads at the time  
13 they were mapping. And so there's no indication in  
14 any document or map or any other thing that this  
15 commission has done suggesting we know the road  
16 isn't there. We're going to follow it anyway. We  
17 have exactly the opposite indication.

18           **MR. OHIGASHI:** And is there an explanation  
19 that can be fashioned that because the military  
20 controlled that particular area that they  
21 intentionally drew the conservation district line  
22 above the military's particular facilities which  
23 included these particular developments and  
24 therefore, adhere to the 1957 line? So that when it  
25 returned under state control it would remain in the

1 conservation district?

2           **MR. CHIPCHASE:** No, commissioner. With  
3 respect, there's no indication that that is what  
4 they intended to do. And again, there is the  
5 opposite indication. We can look at that, or we can  
6 see that opposite indication in a couple of ways.  
7 The first is that when they deviated from the  
8 roadway, we can clearly see the deviation on the  
9 map, say for Kamehameha, the first birthplace.  
10 There's a clear deviation from where they perceived  
11 the roadway to be.

12           The second is historically we know that  
13 when they deviate from physical features, like  
14 roads, they have said so for an area and they don't  
15 say that here.

16           And the third reason that we know, and I  
17 think is the most critical to understand really, is  
18 that north of our property, so north of where we are  
19 today, the road had disappeared, had been changed.  
20 But they continued to follow that approximate  
21 location into our road. And then as you see where  
22 the road turned mauka in 1957, they drew a line that  
23 simply connected it to the next point that we see on  
24 the roadway. So there's nothing to suggest any  
25 other conclusion beyond that they were following

1 roadways and they just didn't know where the roadway  
2 was.

3 **COMMISSIONER OHIGASHI:** What effect -- I'm  
4 moving onto a different topic.

5 **MR. CHIPCHASE:** Sure.

6 **COMMISSIONER OHIGASHI:** What effect does  
7 the fact that this particular request would only  
8 apply to petitioner's property and not apply to that  
9 portion of the residence that is outside of this  
10 particular property?

11 **MR. CHIPCHASE:** It has no effect on the  
12 decision. As a practical matter that area would  
13 remain in conservation unless the landowner sought  
14 to change it. Now, it is DHHL, which is typically  
15 not bound by the conservation district line anyway,  
16 so I don't even think practically it necessary has  
17 an effect but it certainly doesn't have a legal  
18 effect on the decision today.

19 **COMMISSIONER OHIGASHI:** And I should have  
20 asked Mr. Eggen, but is there any agriculture going  
21 on on the other 14 somewhat, or the 12.28 acres I  
22 think or 14-point something acres that are in  
23 agricultural land right now?

24 **MR. CHIPCHASE:** What we presented and I  
25 think Mr. Eggen testified is that that property,

1 that area of the property is used for grazing.

2 **COMMISSIONER OHIGASHI:** And I'm not sure  
3 if he answered the question or anything like that,  
4 or if you can answer the question, you mentioned  
5 there were like 10 cows or something on there. Is  
6 that his cows?

7 **MR. CHIPCHASE:** I mentioned -- yes,  
8 commissioner. I'm sorry to speak over here. Yeah,  
9 I think that was me. And when I've spoken with Mr.  
10 Eggen I've asked him who owns the cows and he  
11 advised me that they are his cows. I'm sure he's  
12 still on and could answer that question if it's not  
13 clear.

14 **COMMISSIONER OHIGASHI:** No, I just was  
15 curious about that.

16 And besides, has there been any attempt to  
17 do additional farm on that particular area?

18 **MR. CHIPCHASE:** Yeah. Mr. Eggen did  
19 testify a little bit about that today. I believe in  
20 colloquy with the chair though I might be mistaken  
21 about the other kinds of ag that he has looked at  
22 for that mauka upslope portion of his property.

23 **COMMISSIONER OHIGASHI:** Why don't you  
24 refresh me? Why don't you tell me has there been  
25 any other ag done besides for that particular area?

1           **MR. CHIPCHASE:** Not done. And so if I  
2 said "done," then I made a mistake. I said looked  
3 at. He contemplated doing other ag. And as I  
4 recall one of them was macadamia nuts. Another one  
5 was olives. I think he looked at some other type of  
6 produce or growing operation up there and for one  
7 reason or another determined that it wasn't  
8 immediately feasible.

9           **COMMISSIONER OHIGASHI:** And so the only  
10 area feasible would be this 1.8 acres?

11           **MR. CHIPCHASE:** That is Mr. Eggen's  
12 testimony and that is my understanding is that this  
13 area of the property is uniquely protected from the  
14 wind in the area and so that it is better suited  
15 from growing fruits and vegetables than the other  
16 portions of the property. And that's consistent  
17 with the historical use of the property which  
18 historically, based on the records we've shown,  
19 wasn't grazing. And then when it was owned by the  
20 Coast Guard they grew fruits and vegetables in that  
21 same area that Mr. Eggen would like to use for a  
22 more commercial agricultural operation.

23           **COMMISSIONER OHIGASHI:** I don't have any  
24 more questions.

25           **MR. CHIPCHASE:** Thank you, commissioner.

1                   **COMMISSIONER SCHEUER:** Thank you,  
2 Commissioner Ohigashi.

3                   Commissioner Chang followed by Giovanni.

4                   **COMMISSIONER CHANG:** Thank you, Mr. Chair.

5                   Mr. Chipchase, you would agree that under  
6 15-15-22, it is within the sole discretion or  
7 authority that the interpretation of district  
8 boundaries is by the Land Use Commission?

9                   **MR. CHIPCHASE:** I would agree that the  
10 Land Use Commission is the ultimate interpreting  
11 authority. I would say that its interpretation is  
12 not really a matter of discretion but is based on  
13 the evidence presented to it.

14                   **COMMISSIONER CHANG:** But you would agree  
15 that weighing the evidence, determining its  
16 credibility, that's really within the authority of  
17 the commission?

18                   **MR. CHIPCHASE:** I'm not sure I would get  
19 that far, Commissioner Chang, on a declaratory  
20 petitioner, petition for declaratory ruling. The  
21 facts are undisputed because there is no opposing  
22 party so the facts that we've presented in the form  
23 of the testimony, the presentation, and the  
24 exhibits. And I haven't forgotten, chair, to move  
25 in my other exhibits -- I'm just waiting until we're



1 done with questioning -- is the evidence before you.  
2 And so those facts, for purposes of a declaratory  
3 ruling, are not in dispute.

4 **COMMISSIONER CHANG:** But you cannot, I  
5 mean, you wouldn't dispute the fact that OPSD has  
6 taken a different interpretation than the  
7 petitioner?

8 **MR. CHIPCHASE:** With respect to how I have  
9 understood OPSD's position is that they've simply  
10 concluded there wasn't sufficient evidence to show  
11 that a mistake was made. That's not in itself  
12 evidence. They're not a party to the proceeding.  
13 They've just offered their comment on the evidence  
14 that has been introduced. The map that they  
15 provided is Exhibit 4, which with respect I think  
16 we've demonstrated is not correct but because OP is  
17 not a party to the proceedings, that map itself is  
18 simply OP's commentary, not evidence before the  
19 commission.

20 **COMMISSIONER CHANG:** But you didn't object  
21 to Office of -- OPSD's, either their testimony or I  
22 don't know if we -- we may not have entered their  
23 exhibit. But you are -- you have not opposed the  
24 procedural instructions provided by the chair that  
25 OPSD, like the county, would have the opportunity to

1 present their own arguments; right?

2 **MR. CHIPCHASE:** Up to your last sentence I  
3 was completely with you. I didn't and I don't.  
4 They have absolutely the same right as the county to  
5 comment on the petition.

6 **COMMISSIONER CHANG:** Okay. Okay.

7 And it is -- so the kuleana (phonetic) --  
8 within the parameters of the commission to weigh all  
9 of those -- all of the evidence and the arguments by  
10 the various -- I know it's just the petitioner but  
11 so also take into consideration OPSD and the county.

12 **MR. CHIPCHASE:** Oh, I think you definitely  
13 consider OPSD and the county's comments. You don't  
14 consider them as evidence.

15 **COMMISSIONER CHANG:** Okay. Fair enough.

16 All right. Thank you so much. I don't  
17 have any other questions, Mr. Chair. Thank you.

18 **MR. CHIPCHASE:** Thank you.

19 **COMMISSIONER SCHEUER:** Thank you,  
20 Commissioner Chang.

21 Commissioner Giovanni?

22 **COMMISSIONER GIOVANNI:** Thank you, Chair.

23 I just have a couple of logical questions to clear  
24 up and maybe Mr. Chipchase can help me.

25 **MR. CHIPCHASE:** I'll try.

1           **COMMISSIONER GIOVANNI:** So what was the  
2 year that you suggested that the mistake was made by  
3 the commission?

4           **MR. CHIPCHASE:** 1969.

5           **COMMISSIONER GIOVANNI:** What year were the  
6 houses that the petitioner now occupies, when were  
7 they built?

8           **MR. CHIPCHASE:** 19691.

9           **COMMISSIONER GIOVANNI:** So when the  
10 commission made their mistake, they were aware that  
11 -- surely aware that the houses were there; is that  
12 correct?

13           **MR. CHIPCHASE:** It does not appear so. I  
14 have no basis to believe they were.

15           **COMMISSIONER GIOVANNI:** Say that again.

16           **MR. CHIPCHASE:** Well, I have no basis to  
17 believe that the commission was aware of the homes.  
18 It may have been. I'm not denying that that's  
19 possible. But as I look at the record in the 1969  
20 review and the map that they used as a base, there's  
21 no discussion of those homes and there's no  
22 indication on the map that they used that those  
23 homes existed even though they did.

24           **COMMISSIONER GIOVANNI:** Well, I'm not  
25 going to enter into the war of conjecture about what

1 their intent was or what they may or may not have  
2 known at the time. I'm going to try to rely on the  
3 evidence to make my decision, so thank you very  
4 much.

5 **MR. CHIPCHASE:** You're welcome.

6 **COMMISSIONER SCHEUER:** Thank you very  
7 much, Commissioner Giovanni.

8 Commissioners, anything further?

9 Mr. Chipchase?

10 **MR. CHIPCHASE:** I would be disappointed if  
11 you didn't have questions, Chair.

12 **COMMISSIONER SCHEUER:** You've had the  
13 opportunity to observe me in action for a few years  
14 now.

15 **MR. CHIPCHASE:** Indeed.

16 **COMMISSIONER SCHEUER:** You might guess one  
17 of the things that's disturbing me. I understand  
18 that a lot of this hinges on, you know, whether or  
19 not an error was committed. Bu the discussion is  
20 strangely absent from the actual practical  
21 implications of a ruling one way or another. I have  
22 not visited this property. I am unaware and the  
23 record is kind of silent as to whether there are --  
24 there is -- whether it is view plains or below  
25 ground resources or other way sin which the land

1 which is currently in the conservation district  
2 doesn't actually like meaningfully contain some  
3 values that we would want to protect in the  
4 conservation district and whether or not there would  
5 be harm that would occur to the state and to the  
6 public trust as a result of this interpretation,  
7 even if we took the position embracing your argument  
8 saying, yeah, you know, they've got it wrong but  
9 even if they got it wrong, it's possible that they  
10 should have done it differently to actually protect  
11 meaningful things.

12 Are you suggesting by narrowly focusing  
13 your argument merely on the way the maps were drawn  
14 that those considerations are completely outside of  
15 what we need to consider in our deliberations?

16 **MR. CHIPCHASE:** It's --

17 **COMMISSIONER SCHEUER:** If I haven't been -  
18 - if I haven't been clear, please ask for a  
19 clarification.

20 **MR. CHIPCHASE:** Oh, no, you're clear,  
21 Chair. And I understand where you're coming from as  
22 well. And if you'll indulge me in my answer I would  
23 say -- I partly would say that those are not  
24 considerations for the issue that is before you.  
25 They might be considerations -- indeed, they are

1 considerations on a district boundary amendment.  
2 But when we're looking at an existing line and  
3 simply determining whether that line was drawn in  
4 the wrong location and others were interpreting the  
5 line was meant to be drawn, those are not  
6 considerations that are reflected in the 1969  
7 review, in the rules, or your precedent. And so I  
8 would say that they are not a proper basis for an  
9 interpretive decision as opposed to a relocation of  
10 a boundary.

11 But as to your premise, chair, I would say  
12 with respect that there is evidence of the actual  
13 use of that property including its topography in the  
14 record. The actual use of the property we know is a  
15 roadway. We know that that roadway services not  
16 only our property but at least DHHLs property as  
17 well. We know that there are homes located on the  
18 property and we know that those homes have been  
19 there since 1969, before the conservation district  
20 was met. We know how the property mauka of used.  
21 It's cultivated for personal consumption and use.  
22 And we know the general topography of the property.  
23 That the area behind the homes, there is a dip in  
24 the land and that it slows up and then it's  
25 generally more exposed to the wind.

1 We also know that all the agencies had an  
2 opportunity to comment on this. That's attached to  
3 OPSD's submission. And with the exception of OPS,  
4 no agency took a position on the petition, including  
5 DLNR. And so we know from the evidence that is  
6 before, that there's no indication there are any  
7 resources in this 1.8 acres that included an  
8 improved road and two homes. There are no resources  
9 or other values that reflect what the conservation  
10 district is and is meant to prospect.

11 **COMMISSIONER SCHEUER:** Thank you for your  
12 response.

13 Commissioners, anything further?

14 If not, I want to make, as I indicated,  
15 commissioners, do you have any questions for the  
16 county first?

17 Seeing none, questions for OPSD?

18 Commissioner Ohigashi?

19 **COMMISSIONER OHIGASHI:** Yeah. I'm kind of  
20 disturbed about Exhibit -- your Exhibit 4. Could  
21 you explain what the purpose of Exhibit 4 was?

22 **MS. KATO:** The purpose of Exhibit 4 was to  
23 show the 1959 dirt road and the approximate location  
24 on the property.

25 **COMMISSIONER OHIGASHI:** 1959 or is it --

1           **MS. KATO:** The green line. That was the  
2 main purposes of Exhibit 4. And then other lines  
3 are just generally to show where those other things  
4 are in relation.

5           **COMMISSIONER OHIGASHI:** So the 1982 paved  
6 road is not located where it's located. Are you  
7 stipulating that it's In accordance with what the  
8 petitioner had done?

9           **MS. KATO:** This overlay was done just by a  
10 GIS on just under best efforts to make it match.  
11 But the purpose of it was to where the 1957 dirt  
12 road ran on the property. It was not to say that  
13 the paved road is not where the petitioner says it  
14 is.

15           **COMMISSIONER OHIGASHI:** So are you saying  
16 that the 1957 dirt road is accurately portrayed on  
17 your Exhibit 4?

18           **MS. KATO:** As far as I'm able to tell,  
19 yes. Again, this was prepared by GIS. I am not an  
20 expert on this but the purpose of this exhibit is to  
21 locate where approximately that road is because we  
22 weren't sure if it actually went through the  
23 property or if it just, as you can see, just goes  
24 through a corner of it. We are not suggesting that  
25 the paved road is in a different location. They



1 weren't show on the survey. That was not the point  
2 of this exhibit.

3 **COMMISSIONER OHIGASHI:** Is a blue line  
4 accurate?

5 **MS. KATO:** Yeah, it looks like it's  
6 exactly on the same line as the boundary  
7 interpretation and survey.

8 **COMMISSIONER OHIGASHI:** So what I meant to  
9 take away from this exhibit is the only line that  
10 appears to be inaccurate is a 1982 paved road line;  
11 is that right?

12 **MS. KATO:** I cannot say whether it's  
13 accurate or inaccurate. This is what we received  
14 from GIS. This was their best efforts to show us  
15 where things are located.

16 **COMMISSIONER OHIGASHI:** It seems like --

17 **MS. KATO:** These are the topographic maps.

18 **COMMISSIONER OHIGASHI:** Okay. It caused  
19 more confusion than anything.

20 **COMMISSIONER SCHEUER:** Mahalo,  
21 Commissioner Ohigashi.

22 Commissioner Chang?

23 **COMMISSIONER CHANG:** Thank you.

24 Ms. Kato, Mr. Chipchase just said that  
25 DLNR did not object but in looking at your exhibit,

1 Division of State Parks under which Na Ala Hele  
2 presides, I do not see them as being checked off.  
3 Do you know whether the division of state parks had  
4 any comments to this petition o this action.

5 **MS. KATO:** I am not aware of any  
6 additional comments, just that they did not -- the  
7 ones that are checked off had no comments at all.

8 **COMMISSIONER CHANG:** The petitioner did  
9 admit that there is -- well, there is a Na Ala Hele,  
10 there's a trail system that goes in effect.  
11 Wouldn't you agree that that is a cultural or a  
12 natural resource?

13 **MS. KATO:** I'm not familiar with this  
14 trail but it would have been something that would  
15 have been good to know. I don't know where this  
16 trail is located. I've not heard of it before. I  
17 think that is possibly another consideration as  
18 something that may have been another unusual  
19 explanation for the location of the boundary. As  
20 you mentioned, if there's a trail, maybe there was a  
21 butter. They could have considered that at the  
22 time. But, you know, there are multiple reasonable  
23 explanations other than a roadway. And I'm actually  
24 --

25 There is one point that I wanted to

1 mention. Mr. Chipchase stated that the first LUC  
2 boundary interpretation stated that the boundary was  
3 based on roadways but in the October 2020 letter I  
4 did not see anything that mentioned that it was  
5 based on roadways. So that's just something I  
6 wanted to know. I'm not sure where that is coming  
7 from. And OPS is not seeing any actual support for  
8 the assertion that the boundary was intended to  
9 follow the roadway.

10 Well, I just wanted your clarification  
11 that the Division of State Parks did not respond to  
12 your request.

13 **MS. KATO:** They did not.

14 **COMMISSIONER CHANG:** So we don't know  
15 their position. Okay.

16 **MS. KATO:** That's correct. They did not  
17 respond. And we did not know about this trail  
18 before the hearing.

19 **COMMISSIONER CHANG:** All right. Very  
20 good. Thank you so much. I have no other  
21 questions.

22 **COMMISSIONER SCHEUER:** Okay.

23 Commissioners, further questions for OPSD?

24 So if I may, Ms. Kato, if I -- and if I  
25 misheard you please correct me, but your last

1 statement was you have not heard any evidence that  
2 LUC's original placement of the boundary was based  
3 on the roadway so you're disputing what Mr.  
4 Chipchase has offered?

5 **MS. KATO:** That's correct. I mean, I  
6 don't know that there's any -- we have not seen any  
7 actual cert that the boundary was intended to follow  
8 a roadway other than look at this map. The roadway  
9 looks kind of in the same area as the boundary line  
10 in certain places. There is no roadway south of the  
11 property. So when you look at the property, there's  
12 no roadway south of the property and the old dirt  
13 road didn't even cut across through the property.

14 **COMMISSIONER SCHEUER:** What -- help me.  
15 What kind of evidence do you think the petitioner  
16 could have provided that you would have been like,  
17 ah, yeah, clearly?

18 **MS. KATO:** Well, for example, the Stengel  
19 case was mentioned, and the Stengel case, I think,  
20 had a specific note saying that it was meant to be  
21 atop of pali and it's just -- they misunderstood --

22 **COMMISSIONER SCHEUER:** Rather than the  
23 bond guidance in here there wasn't a specific  
24 mention.

25 **MS. KATO:** Yeah. And the bond guidance

1 didn't even state that it's supposed to be on the  
2 roadway. It just stated that that area was full of,  
3 you know, historic areas that should be preserved in  
4 the conservation area. Also, you know, he's also  
5 relying on the condition one of those four  
6 conditions that are listed in the report, the 1969  
7 report. And the 1969 report we understand was not  
8 actually adopted by the LUC. The map was the  
9 official adopted document, not the report. The  
10 report just provides a record of what happened and  
11 background information. And also, we don't think  
12 that it has been shown that condition one has been  
13 met. Because condition one, of course, is a road at  
14 the edge of agricultural use, meaning it separates  
15 agricultural use and nonagricultural use. There's  
16 just been kind of general maps showing the area in  
17 general was used for pasture, for grazing, but that  
18 paved road actually divided agricultural use and  
19 non-agricultural use.

20           And also, the constructed buildings were  
21 Coast Guard buildings. They were for crew housing  
22 for I think residential housing for married crew  
23 members. And those buildings existed in 1969 mauka  
24 of the road. So it kind of doesn't make sense to  
25 say that the Coast Guard buildings constituted

1 agricultural use.

2 **COMMISSIONER SCHEUER:** Thank you.

3 Anything further, commissioners? If not,  
4 I'll give Mr. Chipchase a final chance to say  
5 anything and any other questions.

6 Commissioner Cabral, is this for Mr.  
7 Chipchase or for OPSD?

8 **COMMISSIONER CABRAL:** No, actually, I'd  
9 like to go back to Ms. Campbell with Hawaii County.  
10 And am I understanding it that Hawaii County  
11 Planning Department corporation counsel is not  
12 taking any kind of position on this?

13 **MS. CAMPBELL:** That's correct.

14 **COMMISSIONER CABRAL:** You know, it's our  
15 island. It'd be nice to have input. So that's just  
16 my opinion. Thank you.

17 **MS. CAMPBELL:** Okay. If you want me to  
18 clarify a little bit, as the petitioner and Mr.  
19 Eggen have both stated, the entire zoning of the  
20 property is currently Ag 20. And so moving this  
21 line either further mauka or makai doesn't really  
22 change the Hawaii county zoning, and we do defer to  
23 the authority of the Land Use Commission to make  
24 state boundary changes. That's really the kuleana  
25 of the LUC, not of the county.

1           **COMMISSIONER CABRAL:** Okay. Well, I  
2 definitely appreciate the opinion, I mean, the  
3 information. Thank you.

4           **MS. CAMPBELL:** Thanks.

5           **COMMISSIONER SCHEUER:** It does make me  
6 want to ask Ms. Campbell, if the parcel is less than  
7 20 acres and if it's Ag 20 and there was not an  
8 existing house on it, say the entire thing was in  
9 the ag district and it was 17 acres in Ag 20 zoning,  
10 what would be the rights of the landowner to develop  
11 an agricultural-related unit?

12           **MS. CAMPBELL:** You know, I would have to  
13 look into that. I don't know off the top of my  
14 head. Obviously, it would be a nonconforming lot.  
15 I am unaware of how these lots were formed. It does  
16 not seem to be consistent with the use of the  
17 property. I think either Mr. Chipchase or Mr. Eggen  
18 noted that at some point in the past obviously the  
19 Coast Guard did not pay attention to their own lot  
20 lines when they were making use of the property and  
21 they dropped a home right across a lot line. So I  
22 don't know how these lots came into existence. This  
23 one clearly as 17 acres in an Ag 20 zoning is a  
24 nonconforming lot.

25           **COMMISSIONER SCHEUER:** Thank you, Ms.

1 Campbell.

2 Anything further then before we go to Mr.  
3 Chipchase?

4 And I can do this before or after, Mr.  
5 Chipchase, but I did recall a question I had for you  
6 that was a minor one.

7 **MR. CHIPCHASE:** Please go ahead, Chair.

8 **COMMISSIONER SCHEUER:** I need some  
9 clarification on. You know, you had the news  
10 article that talked about the open house for the  
11 rebuilt Coast Guard station and cookies and cake and  
12 ice cream was served afterwards. In that article,  
13 and I don't have your exhibit number in front of me,  
14 but it actually described that the new road was  
15 built from the Upolu airport to the property.  
16 That's to the north of the property. So I'm not  
17 understanding the argument that you're trying to  
18 make that somehow that would affect the road on the  
19 southern end of the Coast Guard property.

20 **MR. CHIPCHASE:** Yeah. It's actually a  
21 great question, Chair, because it's clear that I  
22 haven't been clear in what I've been trying to  
23 explain and that is that the new road extended  
24 beyond our property to the north. It went farther  
25 north than our property. And so yet we know that



1 the LUC in 1969 used the location of the old road,  
2 alignment of the old road north of our property when  
3 it mapped its boundary. And so we know that not  
4 only with respect to our property but with respect  
5 to the other properties in the area it intended to  
6 follow a road. It's just that the road was not in  
7 the same location either on our property or to the  
8 north.

9 As for the chair's question about the  
10 southern portion of our property, and I'll pull up  
11 an exhibit in a moment that I think illustrates this  
12 more clearly when we're done with the questions, but  
13 the road curves through the property as realigned  
14 and goes along the southern edge of it. So as  
15 realigned, it did go from that area up north all the  
16 way through the property before curving mauka.

17 **COMMISSIONER SCHEUER:** So I guess just  
18 Exhibit 14 states, "A new road leads to the station  
19 taking the place of the former drive by the Upolu  
20 Point Airport." So I just -- I don't understand how  
21 this exhibit makes your case because it's discussing  
22 a road from the north to your property, not through  
23 your property.

24 **MR. CHIPCHASE:** And we have other evidence  
25 in the record, Chair, that I didn't -- Exhibit 13?

1 Exhibit 13 Ms. Olds points out to me discusses the  
2 road through our property in 1969. Would that be  
3 right, Ms. Olds?

4 **MS. OLDS:** Yes.

5 **MR. CHIPCHASE:** Yes, in 1961. So it was  
6 all the same road realignment. And when it was  
7 realigned and these units were constructed as Mr.  
8 Eggen testified in 1961, the road ran in front of  
9 them, just makai, and then up the southern boundary.

10 **COMMISSIONER SCHEUER:** Mr. Eggen, you've  
11 been spared appearing in front of the LUC for all  
12 the previous portions of your life so this isn't  
13 just -- right now we're just working with your  
14 counsel, so.

15 Mr. Chipchase, why don't you continue?

16 **MR. CHIPCHASE:** Very good, Chair.

17 I think I'll start with a point that Ms.  
18 Kato made and that is the basis of the LUC's  
19 original -- the staff's original interpretation. I  
20 spoke with staff extensively about the basis for the  
21 interpretation and the actual location of the  
22 roadway and it was represented to me that it was  
23 based on the location of a roadway. And if you look  
24 at our first petition as I know Ms. Kato has and has  
25 possession of, it's entirely based on that

1 interpretation because that was the interpretation  
2 we were told served as the basis for the line that  
3 was drawn through our property. And if you look at  
4 the docketing history you can see that that petition  
5 was set for hearing some time ago but the hearing  
6 was continued because staff issued an errata  
7 changing the basis of its interpretation from a  
8 roadway to 300 feet, yet the line did not move. The  
9 only reason to issue the errata is because the basis  
10 for the interpretation changed. And I spoke with  
11 staff after that. I totally understand. People  
12 look at things differently. They come to different  
13 conclusions. We took it into account and refiled a  
14 supplemental petition to address that change. But  
15 absolutely, the initial basis was that it had been  
16 located all along a road. That's the only reason  
17 that an errata was later filed.

18           The next thing that I want to talk a  
19 little bit about is the Stengel case. And in doing  
20 so I'll have Chris put up one of the overlays. And  
21 this is -- Molly, what exhibit is this? She'll look  
22 it up real quick. There we go.

23           So this is Exhibit 20. No, she's  
24 correcting herself. This document is an overlay  
25 prepared by a surveyor. We're entirely confident in

1 the location of the lines to Commissioner Ohigashi's  
2 point. And as you can see, the district boundary  
3 that the commission drew to our property and north  
4 of it is entirely co-terminus with where they  
5 believed the road to be except when you get up to  
6 Kamehameha's first birthplace. It doesn't casually  
7 intersect. It doesn't maybe kind of closely align.  
8 It entirely aligns; right? This is Exhibit 8. And  
9 so just as in Stengel, we know directly from the map  
10 what the commission thought it was following in 1969  
11 -- a roadway. Because the line they drew is  
12 entirely co-terminus with the roadway, all the way  
13 into our property. And then once they get to our  
14 property they just generally continue that direction  
15 through the property and south. And if we looked at  
16 the map, and it's been earlier up on the screen, it  
17 connects with another roadway to the south. That is  
18 everything and more that Stengel had. And we know  
19 that when they drew this they just used the wrong  
20 map because we can see from the baseline, the 1982  
21 USGS, that's not where the roadway was for the bulk  
22 of that length. It had been realigned to the north  
23 into our property, through our property, before  
24 turning mauka. Exactly the same textural basis that  
25 Stengel had, a clear indication on the map of what

1 the commission was doing and intended to do and a  
2 clear indication that the road they thought they  
3 were following simply didn't exist in that location  
4 at that time.

5 As Ms. Kato mentioned, too -- you can take  
6 it down, Chris.

7 **COMMISSIONER OHIGASHI:** Excuse me, is that  
8 Exhibit 20?

9 **COMMISSIONER SCHEUER:** Exhibit 8,  
10 commissioner.

11 **COMMISSIONER OHIGASHI:** All right. I  
12 thought he said Exhibit 20, that's why.

13 **MR. CHIPCHASE:** I did. I was wrong.  
14 Molly fixed it. It's Exhibit 8.

15 The record, and if you will, the  
16 legislative history for lack of a better  
17 description, is not limited to the general  
18 statements of what the commission did in this  
19 district. Those absolutely indicate that the  
20 commission was following physical boundaries and not  
21 a mathematical computation from the coast. That is  
22 true. But they also had their expressed conditions  
23 which included that roadways were the most favored  
24 condition under the circumstances set out in the  
25 condition and there was a progression making 300

1 feet from the shoreline the least favored of those  
2 conditions.

3 In terms of the use of the property, we  
4 not only have the maps showing agricultural use,  
5 pasture use. We not only have those Coast Guard  
6 records that showed they were buying agricultural  
7 property. We not only have the commission's  
8 statement that the land was agriculture. We have  
9 the fact as Mr. Eggen testified, that the Coast  
10 Guard also used this area up to the mauka edge of  
11 the homes for agriculture. So it meets all of those  
12 conditions that the commission would have followed  
13 in condition one. Its primary motivating condition.

14 And you stack up all of that on one side  
15 of a ledger as evidence for what the commission  
16 intended to do and the mistake that was made. And  
17 on the other side of the ledger there's nothing but  
18 conjecture. Maybe they meant this. Maybe they  
19 meant that. But there's not a single document, not  
20 a single record, not a single map that supports any  
21 of that conjecture.

22 And so when faced with a record that  
23 clearly shows that a mistake was made, and it's not  
24 even clearly. It's just more likely than not if you  
25 were to apply any sort of standard to this. It's

1 just more likely than not a mistake was made. The  
2 only thing to do is to correct that mistake. And to  
3 Commissioner Ohigashi's point, we recognize it only  
4 corrects it for this area but we wanted to show you  
5 for this particular property. We wanted to show you  
6 the potential effect more broadly so that you  
7 understand this is not a significant matter. This  
8 is not something -- it's significant to Mr. Eggen  
9 and his family for sure but not significant in terms  
10 of the impact or potential impact to the balance of  
11 the conservation districts. You heard Mr. Eggen  
12 testify he's looked at all of the districts and  
13 hasn't seen an error like this before. And frankly,  
14 I haven't either.

15           And so based on the record that is before  
16 the commission, we respectfully submit that the  
17 right course, the best course is to follow the  
18 process that's been laid out, follow the precedent  
19 that you have, and correct this mistake.

20           Thank you very much for your time today.

21           **COMMISSIONER SCHEUER:** Anything final for  
22 Mr. Chipchase, commissioners? If not, we're going  
23 to move on to deliberation.

24           Okay. So I'll remind everyone who's  
25 listening that this is a hearing on a request for a

1 declaratory ruling. As such, the decision of the  
2 commission will be made on the written briefs on  
3 file posted to our website.

4 Hold on. You lied to me, Mr. Chipchase.  
5 You said you were going to actually ask for that  
6 exhibit to be admitted into the record prior to the  
7 end of our proceedings.

8 **MR. CHIPCHASE:** Chair, you and I are  
9 scarily on the same wavelength because it occurred  
10 to me at the moment it occurred to you. And that  
11 makes me really nervous. But I will pass on that  
12 and simply ask the commission to receive into  
13 evidence Exhibits 35 through 39, plus this  
14 PowerPoint presentation to be submitted following  
15 the proceeding as is my normal practice.

16 **COMMISSIONER SCHEUER:** There are no  
17 concerns at this point entering them in despite the  
18 sort of larger concerns the last minute entry of  
19 them but I think we've spent enough time on them to  
20 be familiar with them.

21 Anybody concerned?

22 Seeing none, I'm going to enter those into  
23 evidence. And so I will remind Mr. Chipchase that  
24 while great minds think alike, my father-in-law  
25 reminds me that also the not so great minds think



1 alike as well. (Laughter)

2 **MR. CHIPCHASE:** Noted.

3 **COMMISSIONER SCHEUER:** With that said, the  
4 decision of the commission will be made on the  
5 written briefs and filed and posted to our website.  
6 This is not an evidentiary hearing. Any oral  
7 presentation made today and any public testimony  
8 will be considered in our decision-making process  
9 according to the commission's administrative rule,  
10 section 15-15-100. Within 90 days after receipt of  
11 a petition for a declaratory order, the commission  
12 shall either deny the petition in writing stating  
13 the reasons for denial, issue a declaratory order,  
14 or set the matter for hearing as provided in section  
15 15-15-103 of the commission's rules.

16 In addition, section 15-15-102 provides  
17 that the commission for good cause may refuse to  
18 issue a declaratory order by giving specific  
19 reasons. The commission may so refuse where, (1)  
20 the question is speculative or purely hypothetical  
21 and does not involve existing facts or facts that  
22 can be expected to exist in the near future; (2) the  
23 petitioner's interest is not of the type that would  
24 give the petitioner standing to maintain an action  
25 if the petitioner were to seek judicial relief; (3)

1 the issuance of the declaratory order may affect the  
2 interest of the commission in a litigation that is  
3 pending or may reasonably be expected to arise; or  
4 (4) the matter is not within the jurisdiction of the  
5 commission.

6 So during our deliberations, I will not  
7 entertain any additional input from the parties or  
8 the public unless those individuals or entities are  
9 specifically requested to do so by the chair. If  
10 you are requested to do so by me, you will limit  
11 your answers solely to the questions asked.

12 Commissioners, let me confirm that each of  
13 you are prepared to deliberate on the subject docket  
14 having reviewed the record at hand.

15 After I call your name, please signify  
16 with either an aye or a nay that you are prepared to  
17 deliberate on this matter.

18 Commissioner Cabral?

19 Commissioner Cabral?

20 **COMMISSIONER CABRAL:** Hello? Yes, I'm  
21 sorry.

22 **COMMISSIONER SCHEUER:** No problem.

23 Are you prepared to deliberate on this  
24 matter?

25 **COMMISSIONER CABRAL:** Yes. Yes, I am. I

1 have a new hearing aid, too.

2 **COMMISSIONER SCHEUER:** Commissioner Chang?

3 **COMMISSIONER CHANG:** Yes. Aye.

4 **COMMISSIONER SCHEUER:** Commissioner

5 Giovanni?

6 **COMMISSIONER GIOVANNI:** Aye.

7 **COMMISSIONER SCHEUER:** Commissioner

8 Ohigashi?

9 **COMMISSIONER OHIGASHI:** Yes.

10 **COMMISSIONER SCHEUER:** Commissioner Wong?

11 **COMMISSIONER WONG:** Aye.

12 **COMMISSIONER SCHEUER:** The chair is also

13 prepared to deliberate on this matter.

14 Commissioners, what is your pleasure?

15 Commissioner Wong?

16 **COMMISSIONER WONG:** Yes, Chair. Thank

17 you.

18 I would like to make a motion to -- sorry,

19 I don't know how to say it properly as everyone

20 knows, to say no to the request to move the line,

21 you know, to change the lines. I'm sorry. You have

22 to say it more eloquently than me, Chair, but it's

23 like --

24 **COMMISSIONER SCHEUER:** A motion to deny

25 the petition.

1           **COMMISSIONER WONG:** Yeah, correct. Thank  
2 you, Chair.

3           **COMMISSIONER SCHEUER:** Would you -- if  
4 there's -- let's see if there's a second, and if  
5 there's a second I'll ask you to speak to your  
6 motion.

7           Is there a second?

8           Commissioner Chang? Sorry, I'm going to  
9 ask you to go orally on the record.

10          **COMMISSIONER CHANG:** Yes. I'm sorry. I  
11 second Commissioner Wong's motion that was  
12 eloquently stated by you.

13          **COMMISSIONER SCHEUER:** So I'm going to ask  
14 the movant and the seconder to speak to their  
15 reasons for making the motion.

16          **COMMISSIONER WONG:** Yeah, Chair. Thank  
17 you.

18           I heard all of the information from Mr.  
19 Chipchase and his client, plus hearing OP's  
20 statement and looking at all the records and  
21 exhibits and I feel that, you know, looking at all  
22 the exhibits and everyone's motions, I believe the  
23 statement that OP stated, which is very rare that,  
24 you know, that there was not enough evidence to me  
25 at this point in time to, you know, support Mr.

1 Chipchase's motion.

2 **COMMISSIONER SCHEUER:** Thank you,  
3 Commissioner Wong.

4 Commissioner Chang?

5 **COMMISSIONER CHANG:** Yes, thank you. I am  
6 going to support this motion for several reasons.  
7 One, I am concerned about we do have an existing --  
8 we have had a similar petition that came before us.  
9 It was the church declaratory request for  
10 declaratory interpretation of a district boundary  
11 amendment -- a boundary amendment. So I am  
12 concerned about: (1) we have an existing potential  
13 litigation; (2) notwithstanding the petitioner's  
14 argument that this really wouldn't affect anybody, I  
15 don't believe that's necessarily the case. We don't  
16 know whether Department of Hawaiian Homelands or any  
17 of the other adjoining landowners or other similarly  
18 situated properties may raise similar issues related  
19 to an interpretation of a previously determined  
20 boundary amendment.

21 And I disagree with the petitioner that a  
22 mistake has been made. I think the record speaks  
23 for itself. I think the map is -- I think the map  
24 that was file that has been in existence does -- is  
25 the guiding document. I also believe that the

1 petitioner bought the property knowing that it was  
2 conservation. And when it became a little more  
3 difficult, the regulations -- I don't know at what  
4 point in time he realized there was a mistake but  
5 apparently up until his meeting with OCCL he  
6 understood the property to be conservation.

7 So for all of these reasons and the  
8 testimony that's been provided, I believe that there  
9 has not been a mistake and I support the motion to  
10 deny the petition. Thank you.

11 **COMMISSIONER SCHEUER:** Thank you,  
12 Commissioner Chang.

13 Commissioners, we are in deliberation.  
14 There is a motion before us to deny the petition.

15 Commissioner Ohigashi?

16 **COMMISSIONER OHIGASHI:** I thought about  
17 this a lot. I kept looking at the exhibits and I  
18 was kind of concerned. But in the end when I took a  
19 look at Exhibit 8 as Mr. Chipchase showed, I looked  
20 at the fact that this road that went through the  
21 property, actually went through the property that  
22 they are claiming -- which appeared to be built by  
23 the United States Government, there was a divergence  
24 that occurred far from it. In other words, it  
25 seemed the old road became the new road but the old

1 road was followed. I don't think that I can -- I  
2 think it's reasonable to conclude that the  
3 commission at that time indicated that there was --  
4 that to use the old road as a standard in this case.  
5 And what appeared to me, that we have a case that is  
6 not like Stengel where there was a specific  
7 reference, a landmark, a landmark that could be --  
8 that was supported by leaps and bounds that could be  
9 surveyed, in this case, it seems to me that there  
10 was an intentional intent to follow the existing old  
11 road as it was listed. What supports this more than  
12 anything else was the fact that these structures  
13 were built in 1961 and would not be considered  
14 agricultural use under any definition. So I think  
15 that the commission -- I think it's reasonable to  
16 conclude that there was not a mistake made and that  
17 based upon the existing evidence, it appears that  
18 the old road was followed for a reason. Therefore,  
19 I cannot support granting a petition in this case.

20 **COMMISSIONER SCHEUER:** Thank you,  
21 Commissioner Ohigashi.

22 Commissioner Giovanni?

23 **COMMISSIONER GIOVANNI:** Thank you, Chair.

24 You know, for me, I have a very high bar  
25 when it comes to the LUC making a change of a

1 district boundary from conservation to agriculture  
2 or other. And I always look to a DBA as being the  
3 proper course of action. In this case, they're  
4 looking for a simple declaratory ruling that would  
5 remedy the situation from the perspective of the  
6 landowner. I get it. I understand it. It is a  
7 simpler course of action. But for me, the case  
8 would have to be overwhelmingly compelling because I  
9 have such a high bar when it comes to conservation  
10 land. I think that Mr. Chipchase put forth a  
11 reasonable explanation. I think that it would be  
12 possible to put forward contrary reasonable  
13 explanations and I think the OP has done that to  
14 some extent. I really believe that this matter  
15 would be -- if the landowner is so inclined to  
16 pursue it, would be better and more appropriately  
17 addressed by the LUC in a DBA. I know that's more  
18 complicated, more expensive, but that's the risk you  
19 take when you buy conservation land. I will be  
20 supporting the motion. Thank you.

21 **COMMISSIONER SCHEUER:** Thank you,  
22 Commissioner Giovanni.

23 Commissioner Cabral?

24 **COMMISSIONER CABRAL:** I am truly confused.  
25 I absolutely understand their desire, and they as



1 individuals, as the current homeowners, God bless  
2 all of their reasonings and their wants and their  
3 desires and their respect for what they're doing  
4 with the land. And I got it and it's wonderful.  
5 And that's what they're going to do. And I can  
6 appreciate that Mr. Chipchase has done this  
7 unbelievably good job of showing us so many roads  
8 and so many ways that a decision or mistake could  
9 have been made. He's got me confused. But on the  
10 other side, I'm really concerned that, you know,  
11 this was a long time ago that this designation was  
12 made and now somebody buys it and now we don't like  
13 the hassle that it is to be in conservation. We've  
14 had several of these come up to us, you know? And  
15 man, if every time somebody buys it in conservation  
16 and then they want to have us change it we're never  
17 going to have -- we'll be seven days a week doing  
18 these hearings. So I'm just concerned about it on  
19 both sides and I'm still a little conflicted. But  
20 at this time I'm probably going to support the  
21 motion. Okay, thank you.

22 **COMMISSIONER SCHEUER:** If I've learned one  
23 thing over the years it's the things you think are  
24 going to be simple are complicated and the things  
25 you think might be complicated, they're simpler.

1           You know, Mr. Chipchase has put on a very  
2 good description of things. And I don't doubt for  
3 one second his sincerity that he believes in his  
4 argument that an error was made. You know, I like  
5 the petitioner. I like their plans. I think that's  
6 not relevant at all to our deliberations at all. I  
7 don't think -- I instinctively believe that public  
8 trust considerations have to be incorporated into  
9 all of our deliberations but I'm not exactly sure  
10 here on this one how it is and so really, I put  
11 those aside and really do focus on the issues at  
12 hand. And the one part where I feel the  
13 petitioner's argument sort of fatally falls apart is  
14 that while indeed I'm sure in some historic period  
15 before the Coast Guard station was there some of  
16 these lands were used for grazing, at the time the  
17 petition or the boundary determination was made,  
18 it's undisputed from the record that there was  
19 housing in the area. And for the roadway to be used  
20 as the boundary line I think OPSD stated it  
21 correctly, that it was when that was a distinctive  
22 boundary between agricultural and nonagricultural  
23 uses. And so I don't think that you can sort of  
24 rely on that first guide in this case, even if some  
25 of the land around the houses by secondhand

1 testimony from the petitioner states, oh, yeah, we  
2 grew some stuff around there, that's not a high  
3 enough sort of evidentiary bar that this road as  
4 existed in 1961 was truly the line between ag and  
5 nonagricultural uses.

6 So I look at the ledger as beautifully  
7 described by commissioner -- not commissioner, by  
8 Mr. Chipchase, as slightly different. There is,  
9 indeed, some things on one side of the ledger  
10 indicating this might have been a mistake but  
11 there's also things that indicate it might not have  
12 been a mistake. So that said, it's not an easy one.

13 Anything further, commissioners?

14 If not, Mr. Orodenger, would you please  
15 poll the commission?

16 **MR. ORODENKER:** Mr. Chair, and if you'll  
17 indulge me a little bit, I want to clarify  
18 Commissioner Wong's motion. The motion is to deny  
19 the petition such that the LUC's original boundary  
20 determination is deemed correct. If there are any  
21 commissioners that have a problem with that, please  
22 let me know.

23 **COMMISSIONER SCHEUER:** Let me check.

24 **COMMISSIONER WONG:** No problem, Chair.

25 **COMMISSIONER SCHEUER:** Movant.

1            Second? Ms. Chang?

2            **COMMISSIONER CHANG:** No. I concur with  
3 the clarification.

4            **COMMISSIONER SCHEUER:** Okay. Anybody who  
5 spoke to the motion disagree with the clarification  
6 of the motion?

7            Please proceed, Mr. Orodenger.

8            **MR. ORODENKER:** Thank you, Mr. Chair.  
9 Commissioner Wong?

10           **COMMISSIONER WONG:** Aye.

11           **MR. ORODENKER:** Commissioner Chang?

12           **COMMISSIONER CHANG:** Aye.

13           **MR. ORODENKER:** Commissioner Giovanni?

14           **COMMISSIONER SCHEUER:** You're muted.

15           **COMMISSIONER ORODENKER:** My apologies.  
16 I vote aye.

17           **MR. ORODENKER:** Commissioner Ohigashi?

18           **COMMISSIONER OHIGASHI:** Aye.

19           **MR. ORODENKER:** Commissioner Cabral?

20           **COMMISSIONER CABRAL:** I'm agonizingly  
21 going to vote aye because I'd like to see this be a  
22 nice outcome for the petitioner and their desires  
23 but I think in principle I have to vote in favor of  
24 the motion. Thank you.

25           **MR. ORODENKER:** Chair Scheuer?

1           **COMMISSIONER SCHEUER:** Aye.

2           **MR. ORODENKER:** Thank you, Mr. Chair. The  
3 motion passes unanimously with six affirmatives.

4           **COMMISSIONER SCHEUER:** Well, there being -  
5 - well, thank you to the parties.

6           **MR. CHIPCHASE:** And if I may, Chair,  
7 commissioners, just real quick before you sign us  
8 off, I appreciate your time and attention today.  
9 Obviously, I'm disappointed in the outcome but I  
10 thank you all for your thought and the time that you  
11 spent with me. And I wish everyone a Happy  
12 holidays.

13           **COMMISSIONER SCHEUER:** Thank you, Mr.  
14 Chipchase. Happy holidays to you and your client as  
15 well. And I hope you do feel that we gave you all  
16 the time that you needed.

17           **MR. CHIPCHASE:** I do feel that way.

18           **COMMISSIONER SCHEUER:** Okay. There being  
19 no further business for today, we will recess until  
20 9:00 a.m. for the continuation of our agenda.

21           Good evening.

22           **(Meeting adjourned at 2:38 p.m.)**

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1 CERTIFICATE

2  
3 I, Valerie J. Morrison, do hereby certify  
4 that the proceeding named herein was professionally  
5 transcribed on the date set forth in the certificate  
6 herein; that I transcribed all testimony adduced and other  
7 oral proceedings had in the foregoing matter; and that the  
8 foregoing transcript pages constitute a full, true, and  
9 correct record of such testimony adduced and oral  
10 proceeding had and of the whole thereof.

11  
12 IN WITNESS HEREOF, I have hereunto set my  
13 hand this 12th day of January, 2022.

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19 \_\_\_\_\_  
20 Valerie J. Morrison  
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