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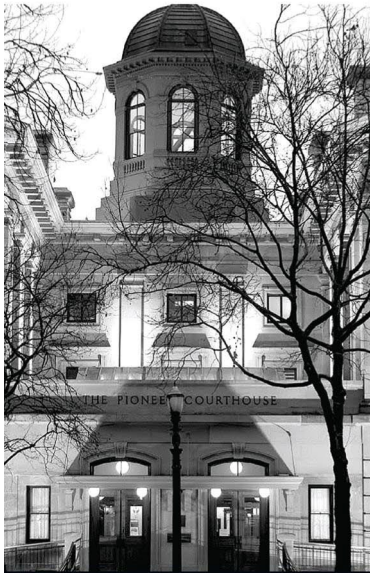
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**STATE OF HAWAII  
LAND USE COMMISSION**

Meeting held on August 24, 2022

Commencing at 9:15 a.m.

Held at

Airport Conference Center  
Hawaiian Airlines Terminal Building  
400 Rodgers Blvd., 7th Floor  
IIT Suite 700, Room 1  
Honolulu, HI 96819

**I. CALL TO ORDER**

**II. ADOPTION OF MINUTES**

July 26-27, 2022

**III. TENTATIVE MEETING SCHEDULE**

**IV. STATUS AND PROGRESS REPORT AND ACTION  
(IF NECESSARY)**

A17-804 HAWAIIAN MEMORIAL LIFE PLAN, LTD.  
(OAHU)

Approximately 53.449 acres of Land at Kaneohe,  
Island or Oahu, State of Hawaii

TMK(1)4-5-033: por.01

**V. ADJOURNMENT**

**BEFORE :**

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**APPEARANCES :**

**COMMISSIONERS PRESENT :**

- Dan Giovanni, Chair (Via Zoom)
- Nancy Cabral
- Gary Okuda
- Dawn Chang
- Kuikeokalani Kamakea-Ohelo
- Michael Yamane
- Lee Ohigashi

**COMMISSIONERS EXCUSED/RECUSED :**

- Melvin Kahele (excused)
- George Atta (recused)

**STAFF PRESENT :**

- Daniel Orodener, Executive Officer
- Scott Derrickson, Chief Planner
- Riley Hakoda, Staff Planner
- Martina Segura, Staff Planner
- Ariana Kwan, Chief Clerk
- Dan Morris, Esq. Deputy Attorney General (Via Zoom)

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**APPEARANCES (CONTINUED)**

**PETITIONER:**

Curtis Tabata, Esq., Counsel for Hawaii Memorial Park

**OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:**

Bryan Yee, Esq., Deputy Attorney General

Lorene Maki, Planner

**CITY AND COUNTY OF HONOLULU:**

Dina Wong, Department of Planning and Permitting

Franz Kraintz, Department of Planning and Permitting

**INTERVENOR:**

Grant Yoshimori

**PUBLIC SPEAKERS:**

Laura Hokunani Edmunds Kaakua, Hawaii Land Trust

Aaron Mahi, Koolau Foundation

Mahealani Cypher, Koolaupoko Hawaiian Civic Club

1           **CHAIR GIOVANNI:** This is the August 24th,  
2 2022, Land Use Commission meeting. This is a hybrid  
3 meeting, which is being held at the Airport  
4 Conference Center in Hawaiian Airlines Terminal  
5 Building at 400 Rodgers Blvd., 7th Floor, IIT Suite  
6 700, Room No. 1.

7           It's open to the public and also by  
8 interactive conference technology, which links the  
9 videoconference participants and the other  
10 interested individuals of the public via Zoom. All  
11 this is to comply with state law.

12           Members of the public are able to attend  
13 in person or view the meeting via Zoom webinar  
14 platform.

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

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

1 meeting now.

2           Zoom conferencing technology allows the  
3 parties and each participating commissioner  
4 individual remote access to the meeting proceedings  
5 via their personal digital devices. So please note  
6 that due to matters entirely outside of our control,  
7 occasional disruptions to connectivity may occur for  
8 one or more members of the meeting at any given  
9 time. If such disruptions occur, please let us know  
10 and be patient as we try to restore the audiovisual  
11 signals to effectively conduct business.

12           For members of the public that are wishing  
13 to testify during the public witness portions of the  
14 meeting and who are accessing this meeting by  
15 telephone rather than by smartphone or desktop  
16 software, you'll need to use the \*9 to virtually  
17 raise your hand and the \*9 to virtually lower your  
18 hand. You should also use the \*6 function to mute  
19 and the \*6 to unmute.

20           I will also share with all participants  
21 that we will be taking breaks from time to time,  
22 approximately once per hour, and depending on the  
23 length of our meeting today, we will also take a  
24 lunch break.

25           My name is Dan Giovanni, and I have the

1 pleasure to serve as the chairman of the Land Use  
2 Commission. I am attending the meeting today by  
3 Zoom conferencing technology.

4 We have nine seated commissioners  
5 currently. Attending in the conference room are  
6 Commissioner Dawn Chang, Commissioner Nancy Cabral,  
7 Commissioner Kuike Kamakea-Ohelo, Commissioner Gary  
8 Okuda, Commissioner Lee Ohigashi, and Commissioner  
9 Michael Yamane.

10 Two commissioners are excused today --  
11 Commissioner Melvin Kahele and Commissioner George  
12 Atta, who has recused himself from the meeting.

13 Also attending from the staff are the LUC  
14 Executive Officer Daniel Orodener, LUC Chief  
15 Planner Scott Derrickson, LUC Staff Planner Riley  
16 Hakoda, LUC Staff Planner Martina Segura, and LUC  
17 Chief Clerk Ariana Kwan. Representing the Attorney  
18 General's Office is LUC Attorney General Dan Morris.

19 Court reporting transcripts are being done  
20 from the Zoom recording of this meeting.

21 In accordance with Chapter 92-3 HRS, the  
22 LUC will allow for public testimony before and after  
23 deliberation on major agenda items. That's two  
24 times.

25 Our first order of business is the

1 adoption of the minutes from our meetings of July 26  
2 and 27, 2022.

3 Ms. Kwan, has there been any written  
4 testimony submitted on the matter of the minutes for  
5 July 26 and 27?

6 **MS. KWAN:** No, chair.

7 **CHAIR GIOVANNI:** I think -- was that Ms.  
8 Kwan?

9 **MS. KWAN:** Yes. It was, chair.

10 **CHAIR GIOVANNI:** Thank you.

11 I will need assistance from those of you  
12 on the LUC staff to help me recognize members in the  
13 audience and fellow commissioners who may be raising  
14 their hand that I need to call upon. So are you  
15 seeing any members of the public who wish to testify  
16 on the adoption of the minutes? Please let me know.

17 **MR. ORODENKER:** No, we do not, chair.

18 **CHAIR GIOVANNI:** You do not see any.

19 Okay. Thank you.

20 **COMMISSIONER CABRAL:** This is Commissioner  
21 Cabral, and I'd like to make a motion to adopt the  
22 minutes as presented by the staff.

23 **COMMISSIONER OHIGASHI:** Second.

24 **CHAIR GIOVANNI:** Who seconded the motion?

25 **COMMISSIONER OHIGASHI:** Me.

1           **COMMISSIONER CABRAL:** Commissioner Ohigashi.

2           **CHAIR GIOVANNI:** Who said "me"?

3           **COMMISSIONER OHIGASHI:** It's me.

4           **CHAIR GIOVANNI:** A motion has been made by  
5 Commissioner Cabral and seconded by Commissioner  
6 "Me" to adopt the July 26 and 27, '22, minutes. All  
7 in favor, please say aye.

8           **(A chorus of ayes.)**

9           **CHAIR GIOVANNI:** Any opposed?

10           Hearing none, the minutes are adopted.

11 Thank you.

12           Next agenda item is the tentative meeting  
13 schedule. Mr. Orodenger, would you please present  
14 the tentative schedule to the commissioners?

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

16           On September 7th, we will be at UH Hilo in  
17 Hilo, Hawaii, for the Yamada & Sons special permit  
18 matter. On September 14th, 15th, and 16th, the  
19 commissioners in their various capacities will be  
20 attending the HCPO Conference on Kauai.

21           On September 21st, we will again be in  
22 Hilo for potential adoption of order on the Yamada &  
23 Sons special permit matter.

24           October 5th we will be on Maui for the  
25 Puunene Quarry matter, and on October 6th we will



1 also be on Maui for the Waikapu Properties matter.  
2 On Wednesday, October 19th, we will be again on  
3 Maui, possibly on Maui or virtually, for the  
4 adoption of order for the Puunene Quarry matter and  
5 the Waikapu Properties matter.

6 On November 2nd, we are looking at being  
7 in Kona at UH Hilo for the U of N Bencorp matter --  
8 or I mean not Kona. We're looking at being at UH  
9 Hilo for the U of N Bencorp matter. On November  
10 16th, we will again be on Maui for the Pulama Lanai  
11 Miki Basin matter.

12 December is currently open; however, we  
13 are expecting a 201H project, perhaps, and another  
14 special permit matter, and so we would ask the  
15 commissioners to leave those dates open. And that  
16 brings us to the end of the year.

17 **CHAIR GIOVANNI:** Thank you, Mr. Orodener.

18 Commissioners, do you have any questions  
19 on the tentative meeting calendar?

20 Seeing and hearing none, we'll move  
21 forward.

22 Thank you, Mr. Orodener.

23 So our fourth order of business is a  
24 status and progress report and action, if necessary,  
25 for Docket A17- 804 Hawaiian Memorial Life Plan,

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

3 **MR. TABATA:** Good morning. Curtis Tabata  
4 for petitioner.

5 **MR. YEE:** Good morning. Deputy Attorney  
6 General Brian Yee on behalf of the Office of  
7 Planning and Sustainable Development. With me is  
8 Lorene Maki from the Office of Planning and  
9 Sustainable Development.

10 **MR. YOSHIMURA:** Good morning. This is  
11 Grant Yoshimori, and with me is Rich McCreedy. We  
12 are intervenors pro se in the matter.

13 **MR. ORODENKER:** Mr. Chair, the city has --  
14 is not present.

15 **MS. KWAN:** They're online.

16 **MR. ORODENKER:** Oh, they are? They're  
17 online. I'm sorry. I don't see them on the screen.

18 **CHAIR GIOVANNI:** Who are you looking for,  
19 Mr. Orodenker?

20 **MR. ORODENKER:** The City & County of  
21 Honolulu. We're trying to promote them so they're  
22 can be on the screen. There we go.

23 **MS. WONG:** Oh, good morning. This is Dina  
24 Wong with City & County of Honolulu Department of  
25 Planning and Permitting.

1           **CHAIR GIOVANNI:** Thank you, Ms. Wong.

2           So, Mr. Orodenker, it was unclear to me on  
3 the Zoom who introduced themselves following Mr.  
4 Yee.

5           **MR. ORODENKER:** Intervenor, would you like  
6 to restate your presence for the record?

7           **MR. YOSHIMORI:** This is Grant Yoshimori, and  
8 with me is Rich McCreedy. We're the intervenors pro  
9 se.

10          **CHAIR GIOVANNI:** Thank you, Mr. Yoshimori.  
11 Appreciate it.

12          Let me update the record on this docket.  
13 On September 23, 2020, the commissioner heard the  
14 petitioner's closing arguments via virtual  
15 conference technology and the Zoom webinar platform.  
16 Thereafter, a motion was passed to grant the  
17 petitioner's District Boundary Amendment petition  
18 subject to conditions.

19          On Thursday, October 8th, 2020, the Order  
20 was adopted amending the conservation land use  
21 district boundary to the urban district for  
22 approximately 53.449 acres.

23          Between October 8th, 2020, and August  
24 15th, 2022, the commission received a Notice of  
25 Imposition of Conditions, and the 2021 Annual Report

1 was received October 13th, 2021.

2           On Friday, August 12th, 2022, the  
3 commission mailed out the August 24th, 2022, Notice  
4 of Agenda to the parties to statewide and O'ahu  
5 regular and email lists requesting that the  
6 petitioner appear at this hearing to provide a  
7 status report on the progress report of meeting the  
8 conditions that are set forth in the Decision and  
9 Order.

10           Let me briefly explain our procedure.  
11 First, I will recognize the written public testimony  
12 that has been submitted in this matter, identifying  
13 the person or organizations who have submitted the  
14 testimony. Next, I will call for members of the  
15 public who wish to testify on the Hawaiian Memorial  
16 Life Plan, Ltd. status and progress report.

17           Also, individuals will be called in turn  
18 by the chair. If testifiers wish to testify  
19 virtually, we'll enable their audio and video to our  
20 virtual witness box, where they will be sworn in.  
21 If a witness chooses to testify in person, I will  
22 ask them to come forward to the witness box and  
23 provide testimony.

24           Members of the public will have two  
25 minutes to provide their testimony and should stand

1 by after their testimony to respond to any questions  
2 by the parties or the commissioners, any questions  
3 they may have.

4           When all questions have been completed,  
5 the chair will excuse the witness and, if virtual,  
6 put them back into the viewing audience and call for  
7 the next witness to enter the virtual witness box or  
8 the in-person witness box.

9           After completion of the public testimony  
10 portion of the proceedings, the chair would like the  
11 petitioner to provide its status report.

12           Fourth, the chair will then call on the  
13 City & County of Honolulu's Planning Department,  
14 Office of Planning and Sustainable Development, and  
15 the intervenor, Hui O Pikoiloa, for comments  
16 regarding the status report.

17           Petitioner will then be allowed to respond  
18 to comments made by the county, OPSD, and the  
19 intervenor.

20           The commissioners will ask questions of  
21 the parties at the conclusion of their  
22 presentations. At the conclusion of the parties'  
23 testimony and commissioners' questions, the public  
24 will again be granted the opportunity to provide  
25 public testimony in the same manner that was set

1 forth earlier.

2           The chair will also note for the parties  
3 and the public that from time to time I will be  
4 calling short breaks. Are there any questions by  
5 the parties or the commissioners on our procedure  
6 today?

7           **MR. TABATA:** Petitioner has no questions.

8           **MR. YEE:** OPSD has no questions.

9           **MS. WONG:** And City & County has no  
10 questions.

11           **MR. YOSHIMORI:** Intervenors have no  
12 questions.

13           **CHAIR GIOVANNI:** Thank you.

14           **COMMISSIONER CHANG:** Excuse me, Mr. Chair.  
15 This is Commissioner Chang. I'd like to make a  
16 disclosure at this time.

17           **CHAIR GIOVANNI:** Your timing is excellent.  
18 I was just going to call for disclosures, if any.  
19 Commissioner Chang, please proceed.

20           **COMMISSIONER CHANG:** Thank you very much.  
21 I do want to disclose that about two weeks ago we  
22 buried -- well, we had a funeral service for my  
23 husband at Hawaiian Memorial, and they were very  
24 helpful. But I don't believe if any action is to be  
25 taken, that their assistance in any way would affect

1 my ability to be objective in this matter. Thank  
2 you.

3 **CHAIR GIOVANNI:** Thank you very much.

4 Does anyone have any comment or objection  
5 to Commissioner Chang proceeding on this docket in  
6 this proceeding?

7 **MR. TABATA:** Petitioner has no objection.

8 **MR. YEE:** OPSD has no objection.

9 **CHAIR GIOVANNI:** Ms. Wong, could you  
10 restate, please?

11 **MS. WONG:** Yes. The county has no  
12 objection.

13 **CHAIR GIOVANNI:** Thank you.

14 **MR. YOSHIMORI:** Intervenors have no  
15 objection.

16 **CHAIR GIOVANNI:** Thank you.

17 Commissioner Chang, please continue with  
18 us without objection.

19 All right. Any other commissioners have  
20 any disclosures to make at this time?

21 **COMMISSIONER KAMAKEA-OHELO:** Yes, Mr.  
22 Chair. This is Commissioner Kamakea-Ohelo.

23 **CHAIR GIOVANNI:** Please proceed.

24 **COMMISSIONER KAMAKEA-OHELO:** I'd like to  
25 disclose that for several years now I have been

1 friends with the Ohana McCreedy, who sit today as  
2 intervenors, because of their support for Waimanalo  
3 community in our efforts to preserve our cultural  
4 sites in Waimanalo.

5 And with that disclosure, I want to also  
6 acknowledge my grandma today, Alice Hewett, who was  
7 interviewed in the consultation as a restaurant  
8 owner as well as a cultural practitioner.

9 That said, let me finish the time here  
10 acknowledging that although I recognize these  
11 relationships, I believe that it will not affect my  
12 ability to participate in today's hearing as well as  
13 proceed with an unbiased opinion.

14 **CHAIR GIOVANNI:** Thank you very much,  
15 Commissioner Kamakea-Ohelo.

16 Do any of the parties have an objection or  
17 questions at this time regarding the disclosure?

18 **MR. TABATA:** Petitioner has no objection.

19 **CHAIR GIOVANNI:** State?

20 **MR. YEE:** OPSD has no objection.

21 **CHAIR GIOVANNI:** County?

22 **MS. WONG:** No objection.

23 **CHAIR GIOVANNI:** Intervenor?

24 **MR. YOSHIMORI:** Intervenor have no  
25 objection.



1           **CHAIR GIOVANNI:** Very well. So we will --  
2 Commissioner Kamakea-Ohelo, please proceed without  
3 objection to participate in this matter.

4           Any other disclosures by members of the  
5 commission?

6           Hearing none, we'll proceed.

7           We'll start with the public testimony.  
8 This is on the current subject that we're talking  
9 about in this hearing, which is the matter of  
10 Hawaiian Memorial.

11           For members of the public, again, please  
12 be reminded the commission will not be considering  
13 the merits of this petition. Rather, the commission  
14 is interested in learning about the current state of  
15 the activities related to the docket, including  
16 compliance with conditions, and will consider  
17 whether action is necessary.

18           I will now recognize written public  
19 testimony submitted in this matter, identifying the  
20 person and organizations who have submitted the  
21 testimony.

22           Ms. Kwan, has there been any written  
23 testimony submitted on this matter?

24           **MS. KWAN:** Mr. Chair, we received four  
25 organizations on August 22nd. That was Hawaii

1 Laborers, Hawaii Operation Engineers Industry  
2 Stabilization Fund, Pacific Resource Partnership,  
3 Hawaii Regional Council of Carpenters. And on  
4 August 23rd, we received one organization submittal  
5 for Hawaii Laborers Union. That is all.

6 **CHAIR GIOVANNI:** Thank you, Ms. Kwan. Can  
7 you confirm that those written testimonies have been  
8 posted to the LUC website?

9 **MS. KWAN:** They are on the website under  
10 Public Comments for the Status Report for 2022.

11 **CHAIR GIOVANNI:** Thank you very much.

12 Next, I will call for any members of the  
13 public to provide testimony on the agenda item.  
14 First, I will ask if there are any members of the  
15 public present in the room there who would like to  
16 testify, and then I will ask for those in the public  
17 who may wish to testify virtually by raising their  
18 hand using \*9 and \*6 to unmute their Zoom feature.

19 Ms. Kwan, has anyone signed up to testify  
20 in person?

21 **MS. KWAN:** Mr. Chair, nobody has signed up  
22 at this time.

23 **CHAIR GIOVANNI:** Thank you. Ms. Kwan, are  
24 there any public witnesses who wish to testify  
25 virtually by Zoom or by their phone?

1           **MS. KWAN:** I don't see anyone raising  
2 their hands, Mr. Chair.

3           **CHAIR GIOVANNI:** Thank you.

4           Mr. Tabata, the petitioner, will you  
5 please provide your status report?

6           **MR. TABATA:** Thank you, chair. I'm going  
7 to try and be efficient and address questions that  
8 have been raised so far. Then afterward, when the  
9 commissioners have an opportunity to ask questions,  
10 then they can inquire into areas that they may be  
11 interested in. So that's my plan, so.

12           **CHAIR GIOVANNI:** Sounds good to me.  
13 Please proceed.

14           **MR. TABATA:** Thank you.

15           I want to start with the staff report, the  
16 commission's staff report that was submitted  
17 yesterday, posted on the website.

18           I believe there's one question raised in  
19 the staff report that has to do with the guarantee  
20 by SCR. That's Services Corporation International.  
21 And it stems from a representation made during the  
22 hearing.

23           So the representation was that SCI would  
24 guarantee the obligations of Hawaiian Memorial Park.  
25 And that includes financial and other obligations.

1 So -- and the staff report goes on to cite HRS  
2 Section 656-1, which the staff report says Hawaii  
3 law required a personal guarantee to be in writing  
4 and signed by the party making the guarantee.

5 Let me start by pointing out that we have  
6 provided two documents. One is a letter dated May  
7 1st, 2020. This is Exhibit 57 that we submitted  
8 back during the DBA hearing, and this letter made by  
9 SCI, signed by Sumner J. Warring, III.

10 And he said in his letter SCI recognizes  
11 the commitments made, and SCI is deeply committed.  
12 "We are deeply committed to supporting the  
13 communities that we serve. As part of this core  
14 principle, we want to be clear that this project has  
15 and will continue to be 'shovel ready'. SCI is  
16 financially strong and is absolutely committed to  
17 begin construction immediately upon receiving  
18 necessary approvals."

19 Okay. We provided that back then during  
20 the hearing to confirm our representation that SCI  
21 would stand behind this project.

22 Now, upon learning that the status  
23 conference was being scheduled because of this issue  
24 of this guarantee, SCI took it upon themselves to  
25 issue another letter dated August 10th, 2022,

1 wherein SCI by this letter -- and this letter was  
2 sent by what's called the Office of the Chairman of  
3 SCI, so it's signed by seven individuals, including  
4 the chairman of the board, chief executive officer,  
5 and various offices of the corporation.

6 We provided this letter and a copy of  
7 Exhibit 57, the May 1st, 2020, letter, as  
8 attachments to our letter that I sent on August 16,  
9 2022, to the commission. So you folks should have  
10 copies of these letters.

11 In this August 10th, 2022, letter, SCI  
12 states that "We have been involved in different  
13 aspects of Hawaiian Memorial Park's proposal to the  
14 Land Use Commission as well as the Declaration of  
15 Conditions that resulted from the proposal. We have  
16 committed \$25 million for the development creating  
17 an infrastructure of Hawaiian Memorial Park. This  
18 includes the set aside of 100 interment spaces  
19 within the cultural preservation area for the  
20 benefit of the Koolaupoko Hawaiian Civic Club to use  
21 for traditional Hawaiian burial practices as well as  
22 access to the cultural preservation area and  
23 protecting and monitoring the endangered damselfly  
24 habitat on cemetery property."

25 This letter is significant, because what

1 they're saying is that they've committed and they've  
2 set aside \$25 million. So this letter goes beyond  
3 the guarantee. They have committed the money. It's  
4 set aside. It exists. We are not looking for  
5 financing. We do not have to apply for these funds.  
6 The funds are ready to be spent.

7           There was a question raised, I believe, by  
8 the intervenor in a recent letter that they  
9 submitted that our representation was that SCI would  
10 guarantee the \$30 million project, because at the  
11 time of the hearing, we estimated the project to be  
12 \$30 million. I believe that estimate is still  
13 accurate. What SCI has already done is for this  
14 project they've already spent over \$5 million just  
15 to get here today.

16           It's incurred and it's paid for and spent  
17 over \$5 million on this project. So combine that  
18 with this \$25 million set aside. There's your \$30  
19 million plus.

20           But if this commission wants another set  
21 aside, then let us know. If there's \$5 million more  
22 we need to set aside, then they can consider the  
23 request. But this has been set aside. The money is  
24 there.

25           I like to make analogies, so I would say

1 try to picture a mountain of \$100 bills stacked to  
2 my left. It's there, and it's ready to be spent.  
3 There's no contingencies, and there's no ifs. The  
4 money is there. It's going to be spent, if we are  
5 allowed to continue with this project.

6 So that covers that as far as -- and it's  
7 a signed document, so if people are looking for a  
8 signed document by SCI, here we have two of them.

9 As far as 656-1 being the basis for  
10 requiring some other written agreement, 656-1 is  
11 what we lawyers refer to as our statute of fraud  
12 statute. So this document says that certain  
13 agreements must be in writing. They can't be oral.  
14 They have to be reduced to writing and signed by the  
15 parties. And it applies to various scenarios.

16 The classic scenarios where written  
17 agreement is required is where you have a contract  
18 for lands like, say, a deed, or if I want to sell  
19 land to somebody, it has to be in writing. It  
20 cannot be an oral contract. Or if we do a contract  
21 and it's going to take more than one person to  
22 perform, again, it needs to be in writing.

23 In this situation, I believe 656-1  
24 paragraph 2 is being referred to. What the statute  
25 says is that no action shall be brought and

1 maintained in any of the following cases. Paragraph  
2 2 goes on to say, "To charge any person upon any  
3 special promise to answer for the debt, default, or  
4 misdoings of another."

5 Now, our position is that this statute  
6 does not apply to Hawaiian Memorial, SCI, or this  
7 docket at all. There is no debt. There is no debt  
8 involved. There's obligations that we must perform  
9 under this commission's Decision and Order, the  
10 conditions or representations, but there is no debt  
11 that we owe to this commission or any party in this  
12 proceeding.

13 There is no default. Default in this --  
14 so this statute that I just read I believe refers to  
15 lenders -- or borrowers, I should say, and land  
16 that's seized. So a default would be a default  
17 under these -- typically, failure to pay rent or  
18 lease payments.

19 Misdoings of another. I'm not sure what  
20 that means, but perhaps that's some kind of  
21 violation of a lease by the lessee, hazardous waste,  
22 destruction of property. But none of those things  
23 apply to this situation.

24 So what the staff is referring to or what  
25 it applies to is a situation where you have a lender



1 and borrower, a lessor/lessee. That's not what  
2 we're doing here. The Land Use Commission is not a  
3 lender. It is not a lessor. It is not a landowner.  
4 Therefore, we believe this statute is inapplicable  
5 to Hawaiian Memorial with respect to this document.

6 And, of course, our first and primary  
7 argument is that it's basically performed -- they've  
8 basically funded this project, SCI has. And if  
9 there's any other obligations, you know, there's --  
10 the representations made do refer to obligations  
11 other than the financial ones, and we've spoken with  
12 them, we've contacted them, and they said yes.

13 Whatever obligations there are, they agree  
14 with them. They will comply. They will perform,  
15 guarantee any obligations needed.

16 We should note, though, that Hawaiian  
17 Memorial itself has not defaulted. It's not failed  
18 to do any of its obligations. If certain  
19 obligations have not been completed yet, it's  
20 because we haven't had enough time. It's been less  
21 than two years, as this commission knows, so there  
22 is -- right now Hawaiian Memorial is doing  
23 everything it's supposed to be doing as best as it  
24 can, given the time that has been passed.

25 So that, I believe, covers the staff

1 report, the commission's staff report.

2 Now, the petitioners have provided their  
3 letters and pointed out the areas of concern, so let  
4 me respond to those. Construction drainage  
5 improvements. Construction timetables. We expect  
6 to have a clearer schedule when we can expect design  
7 approval and development. We have not received any  
8 information on the construction and timetables.

9 We did provide a development timetable in  
10 our status report on October 13, 2021. And in that  
11 timetable, we said, "Petitioner anticipates that  
12 construction plans will be completed by the third  
13 quarter of 2022, and permitting will be completed by  
14 the end of 2022. Development of the project should  
15 be completed by the end of 2024."

16 Our construction plans have been delayed.  
17 What we need to do is perform borings, geotechnical  
18 exploratory borings, drill down and take out cores.  
19 Our geotechnical expert, Robin Lim of Geolabs, he'll  
20 analyze that, and based upon his results,  
21 conclusions, our engineers will then take that  
22 information and do a final grading plan.

23 With that information, there will be a  
24 detention basin analysis. That is also dependent  
25 upon those exploratory borings. The problem we ran

1 into is that we did not anticipate that we would  
2 need a grading permit to do those borings.

3 To do those borings, equipment has to be  
4 set up, and that equipment is -- it's large. It's  
5 fairly large. You can't just carry it there. You  
6 can't hike it in. You need to -- basically, you  
7 have to truck it in. You have to wheel it in. So  
8 they have to create a roadway, a dirt road. And  
9 this dirt road requires approximately 3.7 acres of  
10 grading.

11 So the City & County -- BPT told us, look,  
12 you need a grading permit. But in order to get a  
13 grading permit, your Land Use Commission conditions  
14 requires you to first record your conservation  
15 easement and provide a tree replacement plan.

16 Now, at that time, we weren't anticipating  
17 recording the easement or doing a tree replacement  
18 plan at that very stage, so we had to then put that  
19 on the critical -- those two items on the critical  
20 path and get them done. And that was a challenge.

21 So the conservation easement, we recorded  
22 that on July 5th, 2022, just, you know, last month.  
23 It took that much time. The fact that they had to  
24 do the conservation easement before we could do our  
25 exploratory borings gave us a challenge.

1 We needed to describe our work in the  
2 conservation easement, but we couldn't describe our  
3 work until we could do our mass grading plans. And  
4 we couldn't do our mass grading plans until we did  
5 our exploratory borings, but we needed a grading  
6 permit to do the borings.

7 Okay. You know, we were in a chicken and  
8 egg situation, and it took a while for us to work  
9 out language so that the parties would be satisfied  
10 and we could execute, finalize our conservation  
11 easement.

12 So basically, we got pushed back nine  
13 months on the schedule. So all those required  
14 deadlines I mentioned or, you know, projected  
15 completion dates, gets pushed back to the point  
16 where originally we thought our project would be  
17 completed by the end of 2024, but now we're looking  
18 at the third quarter of 2025 to complete the  
19 project. So that is our development schedule right  
20 now.

21 Let me go back to the letter, intervenor's  
22 letter. Okay. Community outreach. So community  
23 outreach is a requirement, and we need to -- let me  
24 go directly to the condition.

25 Okay. This is condition 15 from this

1 commission's D&O. "Petitioner shall establish an  
2 ongoing construction- related community outreach  
3 program to inform area residents and businesses of  
4 construction milestones and activities occurring on  
5 the property. In addition, the Petitioner shall  
6 establish a hotline and a dedicated email address to  
7 for immediate and prompt responses to questions,  
8 concerns or comments from the community and other  
9 stakeholders."

10 So what we did was we took our website,  
11 hmpfacts.com, and posted in there information  
12 relating to our construction schedule, the  
13 damselfly, and cultural facts and updates, and also  
14 this hotline. There's a telephone number to call.  
15 There's an email address to, where you can post  
16 information or make inquiries. So that's been done.

17 And we have -- okay. We pulled our  
18 grading permit for the trail clearing last week, and  
19 that has started, I believe on Monday. So we did  
20 update our website so that we posted the information  
21 regarding that work and giving notice to the public  
22 that that work has commenced. So the website has  
23 been updated. So there have been recent updates for  
24 the website, but we believe it's complete as far as  
25 what we're supposed to provide.

1 Construction drainage improvements.

2 Again, we need to do our borings first. And once we  
3 do our borings, we'll know what the grading  
4 requirements will be, what our drainage requirements  
5 will be.

6 So the detention basin analysis that we're  
7 required to do pursuant to condition 5 -- condition  
8 5 is our detention basin analysis. We are  
9 approximately 40 percent done on that. It's a rough  
10 estimation. I pestered our engineers until they  
11 gave me a substantial completion, but they cannot  
12 finish it until we get the borings information, and  
13 that borings haven't started.

14 We're not sure exactly when we can start.  
15 We're negotiating a contract right now, but I'm  
16 pretty sure it's going to be done before the end of  
17 the year -- hopefully, a lot sooner. I'm trying to  
18 be conservative in my estimates, but it's going to  
19 be done. Hopefully, we're going to start in the  
20 month of September. That's what we're hoping.

21 Construction and timetables. I think I  
22 went over that. Okay.

23 Tree replacement plan was done. We have  
24 to do that before the grading permit for the trail  
25 clearing to do our borings. So petitioner says,

1 "DPP noted that Petitioner did not specify where the  
2 required replacement trees would be planted for the  
3 already removed existing trees."

4           It is a work in progress. What we've done  
5 is in our plan we've identified potential receivers  
6 of trees, including the Koolau Foundation and the  
7 Koolaupoko Hawaiian Civic Club. So, you know, we're  
8 dealing with state agencies, other organizations.

9           We're at the stage of finding people who  
10 want trees, basically. And also, of course, we'll  
11 plant trees on our own property. So that's the  
12 stage we're at. So we don't know exactly who is  
13 going to be getting trees right now. We have to  
14 work on that. That's true.

15           Execute a conservation easement and  
16 restrictive covenant. So the conservation easement  
17 and restrictive covenant, which is one document, we  
18 -- like I said, we signed it June 30th, 2022, and  
19 recorded it in the Bureau of Conveyances July 5th,  
20 2022. So that's done.

21           Create a cultural preserve. We've got a  
22 management agreement. We call it the MOA. It's  
23 pretty short, but we did sign it. So we signed it  
24 -- Hawaiian Memorial did -- along with the Koolau  
25 Foundation. The Koolau Foundation, I believe, is

1 affiliated with the Koolaupoko Hawaiian Civic Club.

2 And it's signed. They have their access.

3 But access to the cultural preserve will  
4 be provided through Hawaiian Memorial, and that  
5 access will actually go through the expansion area.  
6 So basically, we have to finish our expansion area  
7 in order to connect to the cultural preserve to  
8 provide more accessible access. I'm not sure how  
9 else to put it.

10 Access is still -- it's presently  
11 available. People walk through -- basically hike  
12 into the cultural preserve, if that's possible. But  
13 for people who may find a hike difficult, we need to  
14 create proper access. And that'll be done as soon  
15 as we can as development progresses.

16 Protect blackline damselfly. Okay. So  
17 our damselfly mitigation is ongoing. We have been  
18 doing our monitoring. So the monitoring has been  
19 going on for the past 12 months, and they're  
20 monitoring for water level in the well.

21 Let me back up a little bit. So -- and we  
22 have new commissioners. So what we have is on the  
23 property we have damselfly habitat, a blackline  
24 damselfly habitat. It's an endangered species that  
25 we've agreed to, we're required to protect, to help



1 preserve.

2           And they exist in what's called a seep.  
3 And what it is is what we have -- so it's like a  
4 little hillside. It goes downhill. At the top  
5 there's a well. We don't know where it came from,  
6 who built it. It's a dug well with a cement top,  
7 and it's covered right now, and it's being  
8 monitored.

9           We installed a monitoring gauge, as  
10 required, on September 15, 2021. And from this well  
11 -- well, in this well is a water level which we've  
12 been monitoring. It's approximately 213 feet mean  
13 sea level. It fluctuates maybe a couple of inches  
14 throughout the year.

15           Below the well is the sea, and what it is,  
16 it's a linear body of water that goes down about 200  
17 feet and exits or drains into a city drainage inlet.  
18 So our monitoring includes recording the water level  
19 in the well. It includes the water rate.

20           So about 150 feet below the well, there's  
21 what we call a weir, or a dam, and it's a mechanism  
22 that measures the flow rate of the water. So how  
23 much water passes through the weir, we monitor that.  
24 We measure that.

25           In addition to the flow rate, we monitor

1 the rainfall. There's a rainfall gauge that records  
2 the rainfall. And we monitor for water quality.

3 Now, as far as the biota and habitat goes,  
4 we monitor the blackline damselfly for the numbers.  
5 You know, they try to count the damselfly. And they  
6 look for predators like fish, toads, frogs, pigs,  
7 and they log every month. They go down, you know,  
8 they monitor.

9 If they find toads, they remove them. No  
10 fish. Fish like mosquito fish, they're the most  
11 serious threat to the damselfly. Luckily, we  
12 haven't seen any fish in there. The reason why the  
13 damselflies are able to survive, my understanding is  
14 that because there's no fish. And there's no fish  
15 because this linear body of water does not connect  
16 with any other body of water.

17 When it drains into the city's inlet, it  
18 waterfalls. It doesn't connect to the water in the  
19 drainage. I mean, if it did connect to the water in  
20 the drainage, I'm sure there's mosquito fish  
21 everywhere, right, and it's probably down there in  
22 the city's drainage system.

23 But it's a waterfall, so the fish cannot  
24 go upstream, you know, and therefore, there's no  
25 fish in the seep, and the damselfly has been able to

1 survive ever since they've been discovered, which is  
2 at least three years.

3           So the damselfly, they're being counted.  
4 They're still there. And, you know, just this month  
5 Steve Montgomery, our entomologist, and Anita  
6 Manning, they both went down, and they both observed  
7 and counted damselfly. So all those factors are  
8 monitored and recorded every month. And overall, I  
9 think the overall assessment is so far so good.

10           We've also installed a temporary water  
11 line. They dug a trench. They laid PVC piping,  
12 cranked in a hose. So if there's ever a need for  
13 additional water, we will turn on the water under  
14 the guidance of Steve Montgomery.

15           Now, okay, the people conducting the  
16 monitoring. We have Lesley Davidson and Susan Burr  
17 from AECOS. They're biologists. They are recording  
18 the water for the seep, the rainfall, and water  
19 quality. Tom Nance is our hydrologist, and he's  
20 monitoring the water level in the seep. And Steve  
21 Montgomery and Anita Manning, they are monitoring  
22 the seep habitat, the biota. And so that's being  
23 done.

24           I believe that answers the questions -- or  
25 the issues raised by the intervenor.

1 So the intervenor's had a second letter I  
2 mentioned. They said there's a discrepancy between  
3 our representations and the project's 30 million,  
4 and SCI's August letter is only 25 million. So I  
5 think I spoke about that already, that they already  
6 spent 5 million-plus. So I believe they've already  
7 basically, yeah, SCI's already done their 30  
8 million.

9 I believe that covers everything that's  
10 been raised so far. I'll let the commission ask me  
11 questions later to follow up on any other items they  
12 want to follow up on. That's all I have for now.  
13 Thank you.

14 **CHAIR GIOVANNI:** Thank you, Mr. Tabata.

15 Now I'd like to turn to our commissioners.  
16 I see the time is currently 10:10. We've been going  
17 for almost an hour. I'm going to recommend we take  
18 a 10-minute break, and then when we return, we will  
19 have questions by the commissioners to the  
20 petitioner. So I'm going to call for a break, and  
21 we will reconvene at 10:20.

22 **(Recess taken from 10:10 - 10:20 a.m.)**

23 **CHAIR GIOVANNI:** Let's go back on the  
24 record. I heard the recording has started, so it's  
25 10:20 by my clock. So, commissioners, do you have

1 any questions for the petitioner regarding his  
2 presentation today?

3 Commissioner Cabral?

4 **COMMISSIONER CABRAL:** Yes. I have,  
5 hopefully, a simple question in regard to the  
6 damselfly, which was most fascinating. I think the  
7 commitment was to be putting a fenced area around  
8 the known area where the damselfly, you know, is  
9 nesting and that. So has that fencing been put up  
10 or not at this point?

11 **MR. TABATA:** The fencing is not yet  
12 complete.

13 **COMMISSIONER CABRAL:** Okay.

14 **MR. TABATA:** We did do the topographic  
15 survey, but we still need to consult with OFA and  
16 U.S. Fish & Wildlife to finalize the area to be  
17 fenced. And then we need to contract a contractor  
18 to install the fence. I mean, they need a building  
19 permit, because it's -- it has to be a fence capable  
20 of keeping pigs out, so it's probably going to be  
21 pretty heavy duty.

22 **COMMISSIONER CABRAL:** Okay. So the area  
23 that -- so in other words, you indicated that you  
24 have a waterline going down to supplement what might  
25 naturally be coming, but other than that, the whole

1 area is really not yet disturbed by your roadways or  
2 your construction or your changes.

3 **MR. TABATA:** That's right. So there is a  
4 buffer area, 50 meters, which is 164 feet. From the  
5 top, the sides of the seep, no construction is  
6 allowed there. That's something that is there, so  
7 there's an order, and we cannot have construction,  
8 except we have to build a fence.

9 **COMMISSIONER CABRAL:** Okay. All right.  
10 Thank you very much for the update.

11 **MR. TABATA:** Thank you.

12 **CHAIR GIOVANNI:** Thank you, Commissioner  
13 Cabral.

14 Other commissioners who may have  
15 questions?

16 **COMMISSIONER YAMANE:** Mr. Chair,  
17 Commissioner Yamane.

18 **CHAIR GIOVANNI:** Say again?

19 **COMMISSIONER YAMANE:** Commissioner Yamane.

20 **CHAIR GIOVANNI:** Commissioner Yamane,  
21 please proceed.

22 **COMMISSIONER YAMANE:** Thank you, Mr.  
23 Chair.

24 On the question of the boring  
25 requirements, the technical boring requirements, was

1 that a requirement that was not anticipated, or was  
2 the fact that the grading permit was required that  
3 kind of caused the --

4 **MR. TABATA:** I believe it was the grading  
5 permit that was not anticipated.

6 **COMMISSIONER YAMANE:** Thank you.

7 **MR. TABATA:** Thank you.

8 **CHAIR GIOVANNI:** Commissioners? I can't  
9 see everyone, so I need a little help, if anybody  
10 else has a question.

11 **COMMISSIONER OKUDA:** Chair, this is Gary  
12 Okuda.

13 **CHAIR GIOVANNI:** Commissioner Okuda,  
14 please proceed.

15 **COMMISSIONER OKUDA:** Thank you very much.

16 Mr. Tabata, thank you very much for your  
17 very comprehensive report. You answered a lot of  
18 questions that I was going to ask, especially the  
19 fact that the conservation easement has not only  
20 been signed off and recorded. So that actually, you  
21 know, eliminates a lot of questions that I was  
22 asking.

23 I would like to ask you a question  
24 regarding condition number 11, which deals with the  
25 management of the cultural preserve and the

1 participation of the Koolaupoko Hawaiian Civic Club.  
2 Tell me if I'm stating part of that condition with  
3 respect to the Koolaupoko Hawaiian Civic Club wrong,  
4 but let me see if I can state it, and let me quote.  
5 "Petitioner" -- meaning Hawaiian Memorial Park, your  
6 client -- "shall cover reasonable expenses incurred  
7 by the group associated with the management of the  
8 preserve, including rockfall hazard mitigation and  
9 liability." Did I accurately quote the condition  
10 that's stated in the D&O, specifically part of  
11 condition number 11?

12 **MR. TABATA:** I'm reading condition 11. I  
13 believe that's accurate.

14 **COMMISSIONER OKUDA:** Yeah. I recognize  
15 it's not the entire condition. It's one part of the  
16 condition. So just so that we are on the same page  
17 about what the words mean, the word "petitioner"  
18 really refers or is intended to describe your  
19 client; correct?

20 **MR. TABATA:** Correct.

21 **COMMISSIONER OKUDA:** And the word "group",  
22 g-r-o- u-p, which is in that condition which says  
23 "Petitioner shall cover reasonable expenses incurred  
24 by the group associated with the management of the  
25 preserve", is it your understanding that "group"



1 refers to the Koolaupoko Hawaiian Civic Club?

2 **MR. TABATA:** I think that's accurate.

3 **COMMISSIONER OKUDA:** Okay. In the  
4 memorandum of understanding, or MOU, that your  
5 client has signed with the Koolaupoko Hawaiian Civic  
6 Club or its affiliated entity, did that memorandum  
7 of understanding make clear to the Koolaupoko  
8 Hawaiian Civic Club that the petitioner, your  
9 client, has an obligation to cover the reasonable  
10 expenses incurred by the Civic Club or its  
11 affiliated entity?

12 And I apologize for having to ask this  
13 question because I didn't, you know, I haven't seen  
14 the MOU.

15 **MR. TABATA:** It is covered. I know that.  
16 We have a comprehensive provision in the MOA. We're  
17 required -- we confirm our requirement to comply  
18 with all of our obligations, all requirements of the  
19 D&O as it pertains to the cultural preserve. So,  
20 you know, because we need to cover those expenses,  
21 yes, they're covered by the petitioner.

22 **COMMISSIONER OKUDA:** If you know, either  
23 orally or in writing, just so that the  
24 understandings are clear, did you or your client  
25 specifically explain or tell the Koolaupoko Hawaiian

1 Civic Club that its expenses, its reasonable  
2 expenses, incurred with managing the cultural  
3 preserve would be paid?

4 I'm not saying it had to be in words like  
5 "pay". Just do what you think is necessary --  
6 reasonably, of course; the expenses would be paid.  
7 But, you know, kind of words to that effect so that  
8 they have an understanding and maybe are put at ease  
9 that, you know, some of the burdens of cultural  
10 preservation, the financial burdens, they're not  
11 going to have to carry out these burdens alone.

12 Was that promise or intent communicated to  
13 the civic club?

14 **MR. TABATA:** I believe so. I mean, all  
15 the work that's going to be required, we're going to  
16 do -- access, any maintenance. But understand that  
17 as far as the work that's done, you know, we're  
18 going to have to -- it'll be at the direction of the  
19 Koolau Foundation and the Koolaupoko Hawaiian Civic  
20 Club, and also the Hawaiian Islands Land Trust. The  
21 conservation easement calls for cultural preserve  
22 also, so they're one of our partners, so we have to  
23 consult with them.

24 But we're going to pay for everything, do  
25 all the work. I'm pretty sure that's been made

1 clear. If not, then they're here now, and they're  
2 hearing it.

3 **COMMISSIONER OKUDA:** Yeah.

4 **MR. TABATA:** So, yes, we'll do all of  
5 that.

6 **COMMISSIONER OKUDA:** Yeah. Because I'll  
7 tell you -- and it's just a personal concern; I'm  
8 not saying it's shared by any other commissioner or  
9 anything like that -- but I do believe that one  
10 reason why this boundary amendment was approved was  
11 because, frankly speaking, the Koolaupoko Hawaiian  
12 Civic Club put its reputation behind this project,  
13 and so, you know, I just want to make sure that  
14 whatever commitments are being made are, you know,  
15 as a practical matter, also kept.

16 Can I ask you this? And I'll tell you  
17 I'll frame the question so you understand where I'm  
18 coming from. You know, you and I, we've been  
19 practicing law for probably the same amount of time.  
20 One of my concerns is always unequal -- not unequal  
21 bargaining position, but unequal level of knowledge  
22 of the law in things that are being negotiated and  
23 put down in writing, because what's put down writing  
24 often becomes binding contracts.

25 Was the Koolaupoko Hawaiian Civic Club

1 represented by an attorney in the course of the  
2 preparation or agreement of the memorandum of  
3 understanding or memorandum of agreement or, you  
4 know, that document we're talking about? Did they  
5 have an attorney representing them?

6 **MR. TABATA:** I don't know.

7 **COMMISSIONER OKUDA:** Okay. If you don't  
8 know, that's fine.

9 **MR. TABATA:** Direct communications was --  
10 I wasn't involved. But when we did the management  
11 agreement, the civic club provided us a form that  
12 they were familiar with. So we used that form, and  
13 it was very convenient because it was short.

14 But I did have to put in a provision  
15 requiring Hawaiian Memorial to comply with all of  
16 the requirements of the D&O. You can call it a  
17 catch-all, but in any event it's all the  
18 requirements. They're in there.

19 But, yes, to answer your question, I'm not  
20 sure if they had an attorney review.

21 **COMMISSIONER OKUDA:** Well, do you -- would  
22 you consider it to be a reasonable expense if, in  
23 connection with this cultural management area or  
24 preserve or in connection with the Koolaupoko  
25 Hawaiian Civic Club or its affiliates' performance

1 or management of the cultural preserve, would your  
2 client consider it a reasonable expense for the  
3 Hawaiian Civic Club to retain an attorney so it's  
4 clear they have independent legal representation,  
5 and your client pay for it under this provision of  
6 condition 11?

7 **MR. TABATA:** You've already pointed out  
8 the requirement that we pay for their expenses. You  
9 know, if attorney's fees fall into that category,  
10 then so be it.

11 **COMMISSIONER OKUDA:** Yeah. Well, I'm  
12 asking so that we don't have to, you know, go over  
13 this in the future.

14 Would you, speaking on behalf of your  
15 client, believe that the retention and the cost  
16 incurred by the Koolaupoko Hawaiian Civic Club to  
17 retain an attorney to advise it regarding the  
18 cultural preserve would be considered a reasonable  
19 expense for which, under condition number 11,  
20 Hawaiian Memorial Park should reimburse its costs or  
21 pay for those costs?

22 **MR. TABATA:** Yeah. I agree to that.

23 **COMMISSIONER OKUDA:** Okay. Thank you very  
24 much.

25 Do you anticipate any additional

1 agreements that have to be signed or approved with  
2 the Koolaupoko Hawaiian Civic Club with respect to  
3 its role as the manager of the cultural preserve?

4 **MR. TABATA:** There may be. One other  
5 agreement we did sign was a separate indemnification  
6 agreement, where SCI agreed to indemnify the Koolau  
7 Foundation. So we did that, too. So SCI's involved  
8 with the Bishop cultural preserve; right?

9 As far as future agreements, it may be.  
10 You know, if they want more specific provisions,  
11 agreement, amendments, we will execute those. I'm  
12 not sure what more is needed, but if more is needed,  
13 we will execute them.

14 **COMMISSIONER OKUDA:** Well, it very well  
15 may not be that more is needed, because, you know, I  
16 know you, Mr. Tabata. You're a fair person. You do  
17 represent your client to the best of your ability.

18 But from what you've described, I can see  
19 you're trying to, you know, accurately and in good  
20 faith implement all of these things. So I don't  
21 want my questions, you know, to indicate any  
22 negative comment about what you're doing. It's not  
23 intended that way.

24 May I just ask maybe one last question in  
25 this area? Would your client object to the

1 Koolaupoko Hawaiian Civic Club at this time  
2 retaining an attorney of its own choice to be paid  
3 by Hawaiian Memorial Park to review the existing  
4 agreements that it has with Hawaiian Memorial Park  
5 so that the Koolaupoko Hawaiian Civic Club will, you  
6 know, have its own independent assurance from  
7 competent legal counsel that it has what it needs?

8           And maybe if its own independent attorney  
9 tells them or advises them they might need some  
10 additional documentation, that, you know, that can  
11 be accomplished for the civic club? Would there be  
12 an objection to something like that?

13           **MR. TABATA:** No. I don't object to that.  
14 I would assume that they would choose their own  
15 lawyer. We wouldn't presume to choose the lawyer  
16 for them.

17           **COMMISSIONER OKUDA:** Yeah. And my  
18 question is not so much that you would choose the  
19 lawyer for them, but that there would be no  
20 objection to Hawaiian Memorial Park reimbursing or  
21 paying the cost that the Koolaupoko Hawaiian Civic  
22 Club incurs to get this independent representation.

23           Of course, the fees have to be reasonable;  
24 right? I mean, you can't retain somebody who's  
25 going to charge a million dollars for this; okay?

1 So we're talking reasonable fees; yeah?

2 **MR. TABATA:** Yes. I believe our  
3 confirmation, our response just prior to this  
4 question did, yes. We will pay for their lawyer,  
5 reasonable attorney's fees, to review this document  
6 or to give other advice as needed.

7 **COMMISSIONER OKUDA:** You know, in your  
8 status report on page 2, there was reference to a  
9 preservation plan. Has that preservation plan been  
10 prepared? And if not, can you tell us where -- or  
11 what the status is of the preservation plan?

12 **MR. TABATA:** We need to work on it, I  
13 mean, and we're going to need to work with the civic  
14 club, the Koolau Foundation, Hawaiian Islands Land  
15 Trust, our own cultural experts. We have not had a  
16 chance to finish that.

17 **COMMISSIONER OKUDA:** Has the work on the  
18 preservation plan even started?

19 **MR. TABATA:** As far as I know, no.

20 **COMMISSIONER OKUDA:** Okay. And I don't --  
21 again, I don't mean to imply or suggest anything  
22 negative; I'm just trying to find out status. Do  
23 you have an anticipated date when you think the work  
24 on the preservation plan would start?

25 **MR. TABATA:** We are prepared to start when



1 all of our partners are prepared to start. It's not  
2 the thing we do -- we can do unilaterally.

3 The cultural preserve is critical. It is  
4 important, and it's because it's for all of us  
5 involved. And we will do what we need to do when we  
6 need to do it, unequivocally. I mean, we will do  
7 it. But we need to work with our partners,  
8 basically.

9 **COMMISSIONER OKUDA:** Well, Mr. Tabata, I'm  
10 only asking this question because I believe on page  
11 2 of your status letter, it said that the  
12 preservation plan was estimated to be completed by  
13 the end of January 2022. Did I misunderstand what  
14 the estimated completion date was?

15 **MR. TABATA:** If that's what it says, then  
16 it was optimistic.

17 **COMMISSIONER OKUDA:** Okay. Yeah, yeah,  
18 and, you know, I mean, we all know from our decades  
19 of practicing law, you know, stuff gets delayed, and  
20 it's many times delayed without fault of anyone.  
21 Things just happen.

22 Can you tell me what, if anything, is  
23 preventing the start of the preservation plan to be  
24 started, at least to start creating the preservation  
25 plan? Is there any real impediment that prevents

1 getting the ball rolling, to use that term, to get  
2 the preservation plan done?

3 **MR. TABATA:** Okay. I'm sorry. I've been  
4 corrected; okay?

5 **COMMISSIONER OKUDA:** Yeah.

6 **MR. TABATA:** Preservation plan has been  
7 drafted.

8 **COMMISSIONER OKUDA:** Okay.

9 **MR. TABATA:** There is a draft in  
10 existence, but it needs to incorporate data from --  
11 we need to incorporate the data recovery and  
12 cultural preserve. We need information from our  
13 data recovery. The data recovery plan has been  
14 done. Now they need to work on a data recovery  
15 report. And then information from that and the  
16 cultural preserve is necessary for the preservation  
17 plan.

18 **COMMISSIONER OKUDA:** Okay. That makes  
19 sense. Thank you very much for that information.

20 So with that information, do you have any  
21 anticipated date when the plan would be completed,  
22 or still it's maybe a little bit premature to  
23 determine a completion date?

24 **MR. TABATA:** We expect it to be finalized  
25 by the end of the year.

1           **COMMISSIONER OKUDA:** Okay. Can you  
2 explain to what extent you're involving the  
3 Koolaupoko Hawaiian Civic Club in the preparation  
4 and decision making of what's going to be in the  
5 preservation plan?

6           **MR. TABATA:** They do need to be consulted.

7           **COMMISSIONER OKUDA:** Okay. So have they  
8 been consulted at all with respect to the  
9 preservation plan? When I say "they", I mean the  
10 Koolaupoko Hawaiian Civic Club.

11          **MR. TABATA:** Yes.

12          **COMMISSIONER OKUDA:** Okay. Can you have  
13 an estimate of when you plan further consultation  
14 with them? Is it going to be before or after the  
15 completion of these surveys? Or what's the plan of  
16 action, if you can tell us?

17          **MR. TABATA:** September.

18          **COMMISSIONER OKUDA:** Okay. Of this year?

19          **MR. TABATA:** Yes.

20          **COMMISSIONER OKUDA:** Okay. Thank you.

21            You know, on page 2 of your status report,  
22 you also have stated that you've confirmed -- or  
23 petitioner has confirmed that native Hawaiian seeds  
24 and cuttings propagation will be managed by a Native  
25 Hawaiian nonprofit organization that operates

1 nurseries specializing in native Hawaiian plants.

2 Can you tell me or identify what  
3 organization is going to be involved or is involved  
4 with the propagation and the actions with respect to  
5 native Hawaiian seeds and cuttings?

6 **MR. TABATA:** That's the Koolau Foundation.

7 **COMMISSIONER OKUDA:** Oh, okay. Great.

8 Thank you very much.

9 And can you give us any more background  
10 about what is being done with respect to the  
11 propagation of native Hawaiian seeds and cuttings?

12 **MR. TABATA:** Pretty sure they're already  
13 in the process of securing those. I can get more  
14 details about the number of cuttings in the pipes  
15 and put them in our annual report, which is due  
16 October 13, 2022. So it's coming up. It's probably  
17 more efficient --

18 **COMMISSIONER OKUDA:** Okay. Fine.

19 **MR. TABATA:** -- to gather that information  
20 for that document.

21 **COMMISSIONER OKUDA:** Yeah. That makes  
22 sense. You know, my uncle, who had an orchid farm,  
23 told me that I'm not fit to be a farmer. But I  
24 would, you know, I'd be interested to know  
25 specifically what types of native seeds, cuttings,

1 plants are being considered, you know, with respect  
2 to the subject area so that maybe people with more  
3 expertise and knowledge can, you know, consider that  
4 as far as, you know, the pending issues.

5 Mr. Tabata, thank you very much. You've  
6 answered all my questions. I appreciate very much  
7 the time you've spent in this project and, you know,  
8 for all your work that you do in this community. So  
9 thank you very much, Mr. Tabata.

10 Thank you, Mr. Chair. No further  
11 questions.

12 **CHAIR GIOVANNI:** Thank you, Commissioner  
13 Okuda.

14 Do any other commissioners have questions  
15 for the petitioner?

16 **COMMISSIONER CHANG:** Yes, Mr. Chair. This  
17 is Commissioner Chang.

18 **CHAIR GIOVANNI:** Please proceed,  
19 Commissioner Chang.

20 **COMMISSIONER CHANG:** Thank you.

21 I, too, Mr. Tabata, appreciated your  
22 presentation. I felt it was responsive to the  
23 different concerns that were raised either by the  
24 commission as well as by the intervenors.

25 I just want to follow up. I also

1 appreciated the questioning by Commissioner Okuda  
2 regarding the cultural preserve and the conservation  
3 easement. And I know that you tried your very best  
4 to answer those questions.

5 I also see representatives of the Koolau  
6 Foundation, the Koolaupoko Hawaiian Civic Club, and  
7 the Hawaiian Land Trust.

8 And, Mr. Chair, this may be a little out  
9 of order, because we were just going to be hearing  
10 from the actual parties, but I would ask that we  
11 actually hear from representatives of the Koolau  
12 Foundation, the Koolaupoko Hawaiian Civic Club, and  
13 the Hawaiian Land Trust, if you have no objections,  
14 to at least provide us an update on the discussions.

15 Are you satisfied with the current  
16 negotiations with Hawaiian Memorial Park? Are you  
17 moving at a speed that you feel comfortable with?  
18 Do you feel like you are participating in the  
19 decision making?

20 If I may -- again, it is out of order, but  
21 if you would permit, and if they're willing to --

22 **CHAIR GIOVANNI:** Commissioner Chang, you  
23 know, our format does provide for a second round of  
24 public testimony following the presentations of the  
25 parties, and I would join with you in encouraging

1 those parties that you just named to come forth at  
2 the time that we invite a second round of public  
3 testimony today.

4           Would that be adequate for you, or are you  
5 looking for something more?

6           **COMMISSIONER CHANG:** Nope. That's fine.  
7 I mean, I think they understand the kind of  
8 questions I have, and there will be an opportunity  
9 for them, as well as any other members of the  
10 public, to provide testimony. So thank you very  
11 much.

12           **CHAIR GIOVANNI:** They will be able to make  
13 a short -- their remarks, and then the commissioners  
14 are going to ask them more specific questions to  
15 them, if they're willing to come forward.

16           **COMMISSIONER CHANG:** Very good.

17           **CHAIR GIOVANNI:** Okay. Commissioners, any  
18 further questions for the petitioner?

19           I don't see any hands raised. The chair  
20 has a couple of questions.

21           Mr. Tabata, I would like to add my  
22 appreciation to the others for you coming forward  
23 today and preparing and your forthgoing presentation  
24 to this commission on progress that you've been  
25 making and the delays that you've encountered.

1 My question in particular is a follow-up  
2 to that of Commissioner Yamane having to do with  
3 what is currently labeled a nine-month delay to the  
4 project due to the need for geotechnical boring that  
5 became apparent once you applied for your grading  
6 permits.

7 I harken back to your annual report of  
8 October 13, 2021, which had no mention of this  
9 potential delay. Is that correct?

10 **MR. TABATA:** Right. I believe we never  
11 discussed this potential delay.

12 **CHAIR GIOVANNI:** Should I conclude that  
13 you didn't know about it at the time of that report?

14 **MR. TABATA:** Yes. It was a surprise. It  
15 was a very unpleasant surprise because of the  
16 difficulty we had in doing -- in writing out and  
17 agreeing to our conservation easement. It was  
18 unanticipated.

19 **CHAIR GIOVANNI:** So let me encourage you  
20 in some detail. When you write your next annual  
21 report, which you mentioned is due October 13th,  
22 2022, on condition 16, development timetable, that  
23 you put a lot more detail in that report regarding  
24 the detail, the detail timetable, and how the parts  
25 fit together.



1 And then I'd like to go to a hypothetical,  
2 if I may, because you made another very fascinating  
3 statement today having to do with the financial  
4 commitment of the owner of Hawaiian Memorial.

5 And I am concerned that as we proceed from  
6 the geotechnical boring, which was not anticipated,  
7 to a road that we have to put in for the boring,  
8 which was not anticipated, and then leading into a  
9 final grading plan, and then leading into the design  
10 of the retention basins -- and these are pretty  
11 large retention basins, I might add -- that you  
12 won't even have a firm ability to obtain firm cost  
13 estimates or commitments on those aspects of the  
14 project until you complete those plans.

15 That's my perspective. Is that a  
16 reasonable expectation, that you'll get much more  
17 accurate cost estimates once those plans are  
18 developed?

19 **MR. TABATA:** That is reasonable.

20 **CHAIR GIOVANNI:** So if the statement --  
21 the provocative statement that you made was if it  
22 turns out that more than \$30 million is needed for  
23 this project and, in fact, that more than \$25  
24 million needs to be satisfied if this commission  
25 should come forth and ask for it, and it probably --

1 and then it will be done. Is that what you said to  
2 us today?

3 **MR. TABATA:** Yes.

4 **CHAIR GIOVANNI:** Or you'd consider the  
5 request, I think you said. So let me encourage you  
6 to, once these more detailed -- once the boring is  
7 finally done and these plans are developed and you  
8 get a better cost estimate, we are -- I am  
9 requesting that you come forth with a more accurate  
10 estimate for the total cost of the project so that  
11 if this commission sees a number which is in excess  
12 of \$30 million, we'll be in a position to make that  
13 request that more dollars be set aside. Is that  
14 reasonable to you?

15 **MR. TABATA:** That sounds reasonable to me.

16 **CHAIR GIOVANNI:** Okay. Thank you for  
17 that. I don't have any further questions for the  
18 petitioner at this time, so I'd like to proceed with  
19 the hearing today and ask the county if the county  
20 would like to make a presentation on this matter.

21 **MS. WONG:** Hello. This is Dina Wong with  
22 the county. We don't have a presentation, but I  
23 just had one question for Mr. Tabata.

24 So thank you for your status report. I  
25 just wanted to touch upon condition 15, your

1 community outreach. I know you're doing a lot with  
2 the website and providing a hotline and email  
3 address for concerned residents to send in comments,  
4 but have you folks done other type of outreach  
5 specifically, like going to the neighborhood boards  
6 just periodically to give an update, especially as  
7 you approach milestones like the grading for the  
8 roadway?

9 **MR. TABATA:** We did do a mailer. We sent  
10 1,800 letters out back in March, I believe, of this  
11 year, informing them of the website and information  
12 that would be on the website. We have not gone back  
13 to the neighborhood boards.

14 Does that answer the question?

15 **MS. WONG:** Yes. That answers the  
16 question. Yeah, I did see the mailer on the website  
17 from March, but I think I would just encourage the  
18 petitioner to use the neighborhood boards as a venue  
19 for getting the word out to the community, because a  
20 lot of folks perhaps are not -- maybe not a lot, but  
21 there are some residents who may not be connected to  
22 the Internet and don't have the capabilities and get  
23 their news in other ways. Thank you.

24 So I don't have any other questions.  
25 Franz Kraintz from DPP is also here.

1 Franz, did you have any?

2 **MR. KRAINTZ:** Thanks, Dina.

3 Good morning, everyone. Franz Kraintz for  
4 DPP. I just wanted to --

5 **CHAIR GIOVANNI:** May I interject for a  
6 moment? You know, our procedures do not, you know,  
7 provide for direct questioning of the petitioner.  
8 But if there's any -- and I appreciate that a  
9 question was asked and answered, and it just helps  
10 clarify the matter, so it worked pretty well.

11 But if you can, please frame your remarks  
12 in the form of a statement or presentation, and then  
13 if we need clarification, the commissioners can ask  
14 for those clarifications that you might be seeking.

15 **MS. WONG:** Okay. Thank you. Understood.

16 **MR. KRAINTZ:** Thanks, chair. Again, Franz  
17 Kraintz with DPP.

18 I just want to illuminate a little bit  
19 about the grading permit. I suppose it was our  
20 branch, our division that was responsible for this  
21 delay. But we took very seriously the condition,  
22 the Decision and Order language, that said none of  
23 those -- none of the grading can occur until the  
24 conservation easement was recorded, until a  
25 landscape plan and tree replacement was submitted to

1 the department and approved.

2           So we realize it may have been  
3 inconvenient, but again, we took very seriously the  
4 literal wording of the conditions in the D&O on this  
5 particular matter.

6           And while the geo exploration, the road  
7 cutting for the boring seems to be somewhat of a  
8 preliminary phase of the entire grading, we regret,  
9 again, the inconvenience for the delay, but in our  
10 mind we could not -- even for that minor amount of  
11 grading, we could not in good faith issue any  
12 grading permit until those items were completed to  
13 our satisfaction.

14           So we'll go on the record with that.

15           **CHAIR GIOVANNI:** Thank you very much for  
16 that. So does that conclude your remarks, county?

17           **MS. WONG:** Yes.

18           **MR. KRAINTZ:** Yes.

19           **CHAIR GIOVANNI:** Great.

20           **MS. WONG:** Thank you.

21           **CHAIR GIOVANNI:** Commissioners, do you  
22 have any questions for the county?

23           **COMMISSIONER OKUDA:** Chair, this is Gary  
24 Okuda, if I may.

25           **CHAIR GIOVANNI:** Please proceed, Mr.

1 Okuda.

2 **COMMISSIONER OKUDA:** Thank you, chair.

3 This is more a statement as follow-up to the  
4 statement that was just made by DPP.

5 We all regret delays that take place in  
6 development. However, I don't want my silence or  
7 lack of questions to be taken as any criticism of  
8 DPP, because we are clearly dealing with property  
9 which previously was in the conservation district,  
10 which creates a higher standard of care in my view,  
11 together with the fact that there's documented  
12 Hawaiian cultural resources and resources,  
13 landmarks, a heiau, endangered species.

14 So a higher level or more careful level of  
15 scrutiny and being careful in taking the time, while  
16 it may lead to a delay, under these circumstances, I  
17 do not believe what DPP has done or required is  
18 unreasonable.

19 Thank you, Mr. Chair.

20 **CHAIR GIOVANNI:** Thank you, Commissioner  
21 Okuda.

22 Other commissioners, are there any  
23 comments or questions for the county?

24 Seeing none, the chair would like to also  
25 add its perspective, commending the county for

1 taking it seriously and making sure it's done in  
2 proper order with all the detail that you did. So  
3 thank you.

4 Okay. We will now proceed to Office of  
5 Planning and Sustainable Development. Mr. Yee, do  
6 you have any remarks or presentation on the matter  
7 today?

8 **MR. YEE:** OPSD has no comments or remarks.  
9 Thank you very much for the opportunity.

10 **CHAIR GIOVANNI:** Thank you.

11 Hearing none, I would presume we don't  
12 have any questions on Mr. Yee's remarks; is that  
13 right? I don't ever want to give the commissioners  
14 -- take away an opportunity to question Mr. Yee if  
15 they so like.

16 **COMMISSIONER OKUDA:** Chair, this is Gary  
17 Okuda. I'm really sorry, but I have a question for  
18 Mr. Yee.

19 **CHAIR GIOVANNI:** I'm actually happy you  
20 do, Mr. Okuda.

21 **COMMISSIONER OKUDA:** Thank you very much.

22 Mr. Yee, you heard Mr. Tabata's  
23 explanation and argument with respect to the  
24 applicability of the statute of fraud or the non-  
25 applicability -- in other words that there's really

1 no need to have the parent company sign off on a  
2 personal guarantee here.

3 Do you agree with that analysis, or are  
4 you -- or do you feel like you can't really comment  
5 on that right now?

6 **MR. YEE:** I think the statute of frauds  
7 argument relates to the question of whether you  
8 believe the document is a binding contract between  
9 SCI and another party.

10 I don't think it's relevant, because I  
11 don't think the LUC requirement asked for that.  
12 That was for a commitment, the commitment that is  
13 simply something from SCI to the LUC.

14 I don't think the LUC would prefer a  
15 contract between the LUC and SCI. It was looking  
16 for reassurance, and I think that was adequately  
17 supplied by the letter. So actually, I think the  
18 statute of frauds question is actually irrelevant to  
19 your analysis.

20 **COMMISSIONER OKUDA:** Okay. I understand  
21 your position, but in the transcript I did ask  
22 during the hearing, will SCI personally guarantee  
23 the obligations of Hawaiian Memorial Park, and the  
24 answer was yes. So it was something specific.

25 But I just wanted to get your input on the



1 commentary. Thank you very much, Mr. Yee.

2 Appreciate your input.

3 **CHAIR GIOVANNI:** Thank you.

4 Commissioners, any further questions or  
5 follow-up for Mr. Yee?

6 Hearing none, we'll proceed to the  
7 intervenor.

8 So, Intervenor, Mr. Yoshimori, do you have  
9 any remarks or presentation for the commission  
10 today?

11 **MR. YOSHIMORI:** Thank you.

12 I guess what's key for us is that we  
13 really would like to request that we get to see the  
14 grading plan and the retention analysis when it's  
15 completed. And we hope for continued timely  
16 communication of project status.

17 And we really wanted to thank the  
18 commission for calling this hearing, because it  
19 really helped us get informed about the status of  
20 the development. And we also wanted to thank HMP  
21 for the comprehensive status. It was a really good  
22 update, so thank you, everyone.

23 **CHAIR GIOVANNI:** Thank you, Mr. Yoshimori.

24 Commissioners, any questions for  
25 intervenor?

1 Commissioner Cabral?

2 **COMMISSIONER CABRAL:** Thank you, chair.

3 I want to thank the intervenors in this  
4 hearing, because I was in the hearing several years  
5 ago, did the tour. It was pre-pandemic, you know,  
6 getting informed about this.

7 And I really wanted to say that I think  
8 because of your input and the questions throughout  
9 all of these hearings, that a lot of protection and  
10 a lot more thought has gone into some of our  
11 decision making.

12 And I think that that's going to be better  
13 overall for the general public as this project moves  
14 forward including, I was thinking, as the county  
15 indicated yes, that the delays with being able to  
16 move forward are in part -- are because of the  
17 language we put into our stipulations.

18 And I think that as much as -- I don't  
19 think that we realized that's what it was going to  
20 take, you know, not understanding what grading and  
21 that the -- what that was going to take and the  
22 delays it could cause, but I think in the long run,  
23 we're all better for that because of the fact that  
24 in the past I think our land use language may not  
25 have been specific enough, and then therefore later

1 on, the public says how come you didn't take care of  
2 this, how come you didn't protect us?

3           Because, you know, we all thought we  
4 understood what we were talking about when in fact  
5 we don't -- you know, the consequences of some of  
6 this general language is to make sure it's graded  
7 properly, to make sure it's permitted properly.  
8 Those really have broad-reaching effects and so on.

9           And I think a lot of that has occurred  
10 because of your being the intervenor, and also the  
11 civic clubs and the participation of the  
12 communities. So I wanted to personally thank you  
13 for being a part of this and making sure that we  
14 make the community better as the community is going  
15 to grow, you know, instead of just having mistakes  
16 happen. So thank you.

17           **CHAIR GIOVANNI:** Thank you, commissioner.

18           Other commissioners, any comments or  
19 questions for the intervenor?

20           Seeing none, I do have a question. I may  
21 go back to DPP. We heard the intervenor ask for  
22 access to review or comment upon the final grading  
23 plan and the design of the retention basins. Are  
24 those documents -- I presume those documents are  
25 part of what is reviewed by DPP when issuing its

1 permits. Is that true? Question to county.

2 **MS. WONG:** Yes.

3 **CHAIR GIOVANNI:** When they are -- do they  
4 become publicly available when that --

5 **MS. WONG:** On what --

6 **CHAIR GIOVANNI:** If the petitioner in  
7 submitting for its permit provides the county copies  
8 of its final grading plan and its design of its  
9 retention basins, is that -- do those documents  
10 become available to the public?

11 **MS. WONG:** Once the permits are issued,  
12 they're public record.

13 **CHAIR GIOVANNI:** So I think that would  
14 adequately address the interest of the intervenor.  
15 They would have access to those documents.

16 Intervenor, does that -- does the timing  
17 of that adequately address your interest?

18 **MR. YOSHIMORI:** We were actually hoping we  
19 could see it prior to the release of the decision by  
20 the permit. So we wanted to see it when it was  
21 filed with the DPP. We were hoping we'd get access  
22 to it at that time so we could comment on if it did  
23 comply with the 10-year 24-hour rain event.

24 We want to make sure that -- we want to  
25 ask our expert to review them and make sure that it

1 is compliant with that requirement.

2 **CHAIR GIOVANNI:** So let me go back to  
3 petitioner.

4 Petitioner, would you have any -- would  
5 you agree to provide copies of those -- of the final  
6 grading plan and retention basin plan when they are  
7 completed and submitted to the county in support of  
8 an application for permit? Would you agree to make  
9 those available contemporaneously, same time, to the  
10 intervenor and to this commission?

11 **MR. TABATA:** So long as the plans are  
12 final, there may not be a problem with that request.  
13 I'd need to consult with my client and engineers.  
14 This is our engineers' work product, so they do have  
15 a say in this process. But what we generally avoid  
16 doing is releasing draft information. Those are  
17 work in progress, incomplete.

18 So there's a big difference between a  
19 draft plan and a final plan, just as, you know, we  
20 lawyers don't like to send out drafts of our briefs  
21 to the public.

22 We would consider the request and consult  
23 with people involved.

24 **CHAIR GIOVANNI:** I think you said two  
25 things. One is that you had no problem sending out

1 finals, but you also said you wanted to consult with  
2 your engineers. So are you qualifying your --

3 **MR. TABATA:** I'm sorry. We're willing to  
4 consider the request for the final plan, for it to  
5 come from us. And that's what we're agreeable to  
6 do. We are agreeable to consider the request,  
7 especially if it's public record at that point in  
8 time.

9 **CHAIR GIOVANNI:** I think what we're all  
10 trying to get to, and I share the interest of the  
11 intervenor, is that if for some reason, you know,  
12 there's an oversight or an error that can be found,  
13 we want to find it early, not after the fact.

14 And not that we want to have third parties  
15 second-guessing designs and approaches of the  
16 details, but this is -- if you recall, this is a  
17 design that is unique in that we've required this  
18 criterion for the comprehensive rain event, and it's  
19 not normally been designed to this level of  
20 consideration, so.

21 And it was a very important aspect of the  
22 overall D&O was that condition. I forget the number  
23 of the condition -- 5, I believe. So I don't think  
24 we're in a position today to make a specific -- at  
25 least not at this point in time, to make a specific

1 -- let me put it in the form of a request by the  
2 commission.

3           So, Mr. Tabata, as you proceed -- as you  
4 proceed forward with this project with the  
5 geotechnical boring leading to the final grading  
6 plan and the final retention basin plan, let me  
7 encourage you and your clients to share that  
8 information with those involved in this petition and  
9 hearing before the LUC for the purposes of getting  
10 it right, that we don't want any mistakes to be made  
11 here.

12           We're not trying to change the criterion  
13 for the -- or criteria for these plans, but they're  
14 so darned important we want to make sure they're  
15 done right. And we do -- we are sympathetic to the  
16 interests of the intervenor, who live in houses  
17 right below this project, and we don't want to get  
18 it wrong.

19           So let me just ask you when you take that  
20 into consideration, that you take it very seriously.

21           **MR. TABATA:** Yes, chair. We understand  
22 the request, and we do take it seriously. We do.

23           **CHAIR GIOVANNI:** Okay. I'm going to leave  
24 it at that for today.

25           So let me get my -- so we're at the point

1 now so that, I presume -- so with that final,  
2 commissioners, do we have any final comments or  
3 questions for the intervenor?

4 **COMMISSIONER CHANG:** Mr. Chair, this is  
5 Commissioner Chang. I want to make a --

6 **CHAIR GIOVANNI:** Please proceed.

7 **COMMISSIONER CHANG:** Thank you. I just  
8 wanted to make a comment on the last line of  
9 questioning.

10 And I realize, Mr. Tabata, that Chair  
11 Giovanni has made a request, and I know you guys are  
12 obviously taking every condition extremely  
13 seriously. You know, I think what we've found is  
14 being more proactive, getting the key players at the  
15 table early on. So I, too, would encourage to the  
16 extent that you could, your engineers could possibly  
17 meet with the intervenors and their experts.

18 At the end of the day, it is ultimately  
19 your engineers' decision. But liability will fall  
20 on your engineers, and I think the intervenors would  
21 be very cautious about -- I mean, I think they want  
22 to participate. They want to see what your proposal  
23 is. And I think we would all agree it's better to  
24 have them participate beforehand to avoid any delays  
25 and oppositions. So I would just encourage you.



1           And like I said, I have seen your  
2 presentation today as we affirm Hawaiian Memorial  
3 Park will fully comply with all the conditions in a  
4 very genuine way. So I am optimistic that you will  
5 find working with the intervenors, especially on  
6 this matter, given where they reside and how  
7 important this is to them, to consider working with  
8 them early on.

9           I realize rather than at the final, but  
10 perhaps before you submit to DPP, I suspect DPP  
11 would appreciate if in your applications you mention  
12 that you met with the intervenors. That would  
13 facilitate DPP's review. That's my suspicion.

14           So that's my only -- that's what I would  
15 encourage, based upon Chair Giovanni's request, that  
16 this collaboration with Hawaiian Memorial Park  
17 really seems to be committed to. So thank you.

18           **CHAIR GIOVANNI:** Thank you, commissioner.

19           **COMMISSIONER OKUDA:** Chair, this is Gary  
20 Okuda, if I may.

21           **CHAIR GIOVANNI:** Please.

22           **COMMISSIONER OKUDA:** Thank you. Mr. Chair,  
23 this is a follow-up to your comment and to  
24 Commissioner Chang's comment.

25           I actually do agree with what I think is

1 Mr. Tabata's analysis that there really -- from a  
2 strict legal standpoint, not -- there is no strict  
3 requirement that nonpublic, nonfinal documentation  
4 or plans be released.

5           However, I join in the urgings of the  
6 chair and Commissioner Chang because, you know, the  
7 flipside of the strict legal analysis is, okay,  
8 intervenors, we don't have to show you anything, and  
9 we'll just file, you know, and get our permit.

10           Well, because the rules regarding standing  
11 is really broad, which allow citizens in the  
12 community to file lawsuits to enforce environmental  
13 laws, intervenors at that point, if they believe  
14 that there was noncompliance with a condition, could  
15 bring an action, and that action itself can create  
16 further delays and roadblocks and, frankly, just a  
17 whole bunch of us lawyers getting involved in  
18 useless activities in the big picture.

19           So I would join in the chair and the other  
20 commissioner's request that we try to do things  
21 which I'm not saying violate the law, because we got  
22 to follow the law very strictly, but do things in a  
23 way so that we can minimize disputes which might be  
24 able to be avoided.

25           You know, we're here to hear whatever the

1 disputes really are, but if it's possible to avoid  
2 it to get the job done, then I think we should look  
3 at getting the job done in a way consistent with the  
4 law.

5 So thank you very much, Mr. Chair.

6 **CHAIR GIOVANNI:** Thank you, Commissioner  
7 Okuda, for your comments.

8 **COMMISSIONER OHIGASHI:** Chair, I have a  
9 question. This is Lee Ohigashi.

10 **CHAIR GIOVANNI:** Commissioner Ohigashi,  
11 please proceed.

12 **COMMISSIONER OHIGASHI:** And that goes --  
13 my question is sort of along this line, but my  
14 question is related to DPP. Is the standard of  
15 review to issue grading permits that include a  
16 review of your department as to the engineering work  
17 done by the petitioner and to ensure that they meet  
18 the standards that are contained within the D&O  
19 issued in this matter?

20 **MS. WONG:** This is Dina with the DPP. So  
21 our grading permits get reviewed by our site  
22 development division, and they're looking at it for  
23 compliance with, I guess, all the grading  
24 requirements of the county. Looking at the  
25 conditions of the D&O is something that DPP does

1 overall, not just only on that grading permit.

2 **COMMISSIONER OHIGASHI:** So my question  
3 would be when they apply for grading permit, will  
4 DPP review it in light of the D&O decision?

5 **MS. WONG:** Yes.

6 **COMMISSIONER OHIGASHI:** And that makes me  
7 conclude that whatever Mr. Tabata decides, that the  
8 main agency that is involved in making sure that the  
9 grading permit addresses the concerns that were in  
10 the D&O is your department, DPP, and that it would  
11 behoove, maybe, the intervenors to work with your  
12 department also to enlighten and maybe educate your  
13 department as to what their concerns were in the  
14 D&O.

15 As I see it, our statements made here,  
16 statements made here by individual commissioners,  
17 were encouragements but not requirements contained  
18 in the D&O. And your agency being the end agency,  
19 the one that's actually responsible, maybe should be  
20 the one that would take into heart the intervenor's  
21 concerns and educate themselves as to what their  
22 concerns would be.

23 That's all I have.

24 **CHAIR GIOVANNI:** Thank you, Commissioner.

25 Yeah, I think what we are -- myself and

1 several of our commissioners are trying to express  
2 -- let me summarize -- is that we would all be  
3 heartened by continued, serious consideration by DPP  
4 as it proceeds, including a comprehensive review of  
5 these plans.

6 And we've encouraged you to include in  
7 that review a means for addressing the concerns of  
8 the intervenor, who has played a very important role  
9 in this whole process, as Commissioner Cabral has  
10 pointed out, to make it a better and more successful  
11 project.

12 Okay. We're going to move forward and to  
13 a second round of public testimony. So are there  
14 any members of the public, including members that  
15 maybe have a particular interest in cultural matters  
16 that were expressed earlier today, who wish to  
17 testify at this point in time on the status and  
18 progress of what you've heard here today to date on  
19 their plans? If so, please raise your hand, or if  
20 you are in the room and if you are using Zoom  
21 software, use the \*9 function to be recognized.

22 So, Ms. Kwan, is there anyone who would  
23 like to provide public testimony?

24 **MS. KWAN:** Mr. Chair, we have one person  
25 in the audience interested in giving testimony

1 today.

2 **CHAIR GIOVANNI:** Can you admit that person  
3 to the panel? And we'll recognize them.

4 **MS. KAAKUA:** Aloha, chair and  
5 commissioners. My name is Laura Kaakua. I'm the  
6 CEO for Hawaii Land Trust. Nice to be with you all  
7 again.

8 At Commissioner Chang's encouragement and  
9 being followed by the chair's encouragement, I just  
10 wanted to come forward, mainly if there's any  
11 questions from commissioners regarding the  
12 conservation easement.

13 I know that there are some new members of  
14 this commission, and so maybe just to provide a  
15 little bit of background on conservation easements  
16 and our role in this project, Hawaii Land Trust is a  
17 nonprofit that works on all islands to protect and  
18 steward land and connect people to that land.

19 And we work in two ways to protect land.  
20 Either we purchase the land for conservation and  
21 steward it with community in that area, or we  
22 acquire conservation easements that restrict  
23 privately owned land.

24 And so we did not participate in the  
25 hearings of this commission and did not seek a

1 position on the proposed expansion of the cemetery.  
2 We're not an advocacy organization, so we only work  
3 with willing landowners that are open to  
4 conservation of their lands.

5           And so after this commission put forward  
6 its Decision and Order, that's really when we got  
7 involved for the first time and reviewed the  
8 Decision and Order and were asked by Hawaiian  
9 Memorial Park if we would be willing to hold a  
10 conservation easement over the property.

11           And I think we are probably responsible  
12 for a lot of the delay in that we -- one, we had to  
13 get up to speed. And then, secondly, we used the  
14 Land Use Commission's Decision and Order as sort of  
15 our starting point and baseline for the terms of the  
16 conservation easement.

17           But for us, this conservation easement was  
18 our 49th conservation easement that we own and  
19 monitor annually. That's the role of the  
20 conservation easement holder is to monitor  
21 properties regularly and see if all of the terms of  
22 the conservation easement are being followed by the  
23 landowner, and then take any steps to intervene and  
24 enforce if there's a violation of the conservation  
25 easement terms.

1 And so we use the Decision and Order of  
2 that -- really that starting point, and then we  
3 wanted to add in our own lessons learned over the  
4 years. We wanted to ensure that there was proper  
5 oversight.

6 We pushed for additional requirements,  
7 such as native plants. If there's areas that are  
8 disturbed, we wanted to expand that. So there was  
9 some language that was already encouraged by the  
10 commission that we wanted to see more of in the  
11 final conservation easement terms.

12 And so, I guess that's it may be relevant  
13 to the fine line. I'm happy to answer questions, if  
14 there are any.

15 **CHAIR GIOVANNI:** Thank you for your  
16 testimony.

17 Commissioners, questions for the witness?

18 **COMMISSIONER CHANG:** Mr. Chair, this is  
19 Commissioner Chang.

20 **CHAIR GIOVANNI:** Please proceed.

21 **COMMISSIONER OHIGASHI:** Aloha, Laura.  
22 Thank you for being here this morning. I just  
23 wanted to confirm the role of Koolau Foundation and  
24 the role of Koolaupoko Hawaiian Civic Club in the  
25 conservation easement.



1           **MS. KAAKUA:** Sure. So the parties to the  
2 conservation easement are Hawaiian Memorial Park,  
3 Hawaii Land Trust. The conservation easement puts  
4 the requirement on Hawaiian Memorial Park to take a  
5 number of follow-up actions such as establishing the  
6 cultural preserve.

7           We acknowledge in the conservation  
8 easement that Koolau Foundation and Koolaupoko  
9 Hawaiian Civic Club will have -- we acknowledge that  
10 Hawaiian Memorial Park has a requirement and  
11 intention to work with the community groups to  
12 establish a cultural preserve and create a  
13 management plan and do everything that the Decision  
14 and Order require.

15           But the conservation easement itself does  
16 not place particular obligations on Koolaupoko  
17 Hawaiian Civic Club or the Koolau Foundation.

18           **COMMISSIONER CHANG:** I appreciate the  
19 clarification. So while Koolau Foundation or  
20 Koolaupoko Hawaiian Civic Club are not parties to  
21 the conservation easement, were they part of the  
22 discussions with Hawaii Land Trust and Hawaiian  
23 Memorial Park in establishing the conservation  
24 easement?

25           **MS. KAAKUA:** No, because we didn't go into

1 specifics on the cultural preserve. And so the  
2 cultural preserve is really -- they were all in  
3 agreement that, you know, the vision, the direction,  
4 what the community wants to happen there, really  
5 falls into the court of Koolaupoko Hawaiian Civic  
6 Club and Koolau Foundation.

7 And so we just didn't think it was  
8 appropriate to put any of those terms in, because  
9 that's really -- bears to the side and to be  
10 decided, and, of course, the preservation plan that  
11 they mentioned as well as a management plan, that  
12 will come later.

13 **COMMISSIONER CHANG:** So let me understand.  
14 So once Koolau Foundation and Koolaupoko Hawaiian  
15 Civic Club developed the cultural conservation plan  
16 and the cultural preserve, will that now become  
17 incumbent upon Hawaiian Land Trust to ensure that  
18 that plan is implemented and all of you by Hawaiian  
19 Memorial Park?

20 **MS. KAAKUA:** Just in the broad terms;  
21 right? So the conservation easement speaks broadly  
22 about the requirement of the cultural preserve, but  
23 doesn't go into detail. And so the -- I imagine  
24 that the following plans will go into a lot of  
25 detail, and so we won't take it a step down and look

1 at that plan. We're going to stick to the exact  
2 language of the conservation easement to make sure  
3 that all of those terms are followed.

4 So I guess I'm kind of seeing it in this  
5 really complicated project as, like, the Decision  
6 and Order is sort of the foundation, and then our  
7 conservation easement as an -- incorporates all of  
8 the requirements pertaining to the conservation  
9 easement, and then adds an additional level of, I  
10 guess, land use restrictions that Hawaiian Memorial  
11 Park needs to follow.

12 And then sort of layered onto that might  
13 be any further plans that Hawaiian Memorial Park  
14 develops with Koolaupoko Hawaiian Civic Club and  
15 Koolau Foundation.

16 **COMMISSIONER CHANG:** I know it does appear  
17 to be a very complicated relationship. I understand  
18 that the role of the trust -- the Land Trust is to  
19 monitor compliance with the conservation easement.  
20 But the details of the conservation easement,  
21 specifically the cultural preserve, hasn't been  
22 fully vetted out -- I'm sure the kuleana of Koolau  
23 Foundation and Koolaupoko Hawaiian Civic Club.

24 I guess I'm looking at -- I think you've  
25 heard some of the concerns by the commissioners

1 about not necessarily enforcement, but how to ensure  
2 that the cultural preservation plan and the role of  
3 the civic club and the foundation are moving to come  
4 into.

5 So who does the Koolaupoko Hawaiian Civic  
6 Club or Koolau Foundation -- if they're concerned  
7 that there's not a commitment, do they come and see  
8 the Land Trust? Do they come to see Hawaiian  
9 Memorial Park? Do they come to see the Land Use  
10 Commission? I mean, who enforces the conditions of  
11 the (inaudible)?

12 **MS. KAAKUA:** Anyone, correct me. Feel  
13 free to correct me if I'm speaking out of turn. But  
14 I would say, you know, they should absolutely come  
15 and talk to Hawaiian Memorial Park if they feel like  
16 there's something that's not in alignment with  
17 what's been previously committed to.

18 They absolutely can come to us. So we do  
19 have -- I would say the cultural preserve is a  
20 requirement, and so if there's -- you know, I don't  
21 anticipate this will happen, but if there's no  
22 progress on and there's no cultural preserve, it  
23 just hasn't happened for whatever reason, it would  
24 rise to the level of at least an inquiry for Hawaii  
25 Land Trust, you know, whether it's not -- we would

1 look at the exact language of the conservation  
2 easement, but we would absolutely get involved.

3           And the cultural preserve is part of --  
4 it's part of the terms of the conservation easement,  
5 and so it's part of our annual monitoring that we'll  
6 be doing, which is, you know, we physically will be  
7 onsite every year, because there's different  
8 components of the conservation easement, including  
9 the cultural preserve.

10           We anticipate that what will happen on the  
11 ground is that we'll prepare for the visit, and we  
12 would have -- you know, we would invite someone from  
13 Hawaiian Memorial Park, we would invite someone from  
14 Koolaupoko Hawaiian Civic Club and Koolau Foundation  
15 and just sort of annually monitor the land together  
16 so that we can get information for our own purposes  
17 in creating our annual monitoring report, which we  
18 do as part of our own processes.

19           **COMMISSIONER CHANG:** For me, sitting as a  
20 land use commissioner, I look to you and your  
21 organization as having the expertise. This is your  
22 49th.

23           And my preference is that -- and I'm  
24 extremely optimistic that Koolaupoko Hawaiian Civic  
25 Club, Koolau Foundation, and Hawaiian Memorial Park

1 have already demonstrated a relationship and a  
2 commitment to work together -- but that, rather than  
3 elevating to LUC, that there is a mechanism with  
4 intervention -- well, at least a collaboration with  
5 the Land Trust to address any concerns that they may  
6 have in implementation.

7           And so that raises my level of comfort  
8 through this conservation easement that there is  
9 this -- that you have a -- that the Land Trust has a  
10 quality assurance that these standards are going to  
11 be met.

12           And the fact that you've put in -- you've  
13 included some additional requirements beyond what  
14 the LUC put on, again, raises my assurance and  
15 comfort that this is going to be implemented in a  
16 timely and as intended by the parties.

17           So I'm satisfied by this relationship. I  
18 think it does in some ways insulate the Land Use  
19 Commission if we don't have the -- become the --  
20 where someone -- at least for the cultural preserve,  
21 they come to us for enforcement, but they have your  
22 organization, who has expertise to assist them in  
23 monitoring and implementation, as well as your own  
24 expertise on how to manage cultural preserves, so.

25           Okay. I'm satisfied with your responses.

1 Thank you very much, Laura.

2 **MS. KAAKUA:** Thank you.

3 **CHAIR GIOVANNI:** Thank you, Commissioner  
4 Chang.

5 And thank you for your response.

6 Any other commissioner have a question or  
7 a comment for this witness?

8 Seeing none, I'd like to thank you again  
9 for coming forward with your public testimony.

10 **MS. KAAKUA:** Yes.

11 **CHAIR GIOVANNI:** Ms. Kwan, is there any  
12 other party wishing to testify at this time?

13 Can you please state your name and your  
14 address or your affiliation and proceed with your --

15 **MR. MAHI:** Aloha mai kakou. I'm a  
16 resident of Maheaiakea Koolaupoko. I'm also at 47-  
17 066 Kamehameha Highway 96744. And I'm president of  
18 Koolau Foundation.

19 And I'm here to bear testimony on the  
20 appreciation that we come before you, the Land Use  
21 Commission, and to address the issue of -- well,  
22 it's not an issue, but it's a wonderful opportunity  
23 that we are being given this kuleana to participate  
24 in the preservation of the area of Kawaewae, of  
25 which this particular part of the property that is

1 being owned and managed by Hawaiian Memorial Park  
2 has allowed us to come forward and participate with  
3 them in creating a preservation of this particular  
4 ili.

5           The ili is situated near the hills of  
6 Kapa'a and has a lot of iconic historical what do  
7 you call -- places of Hawaiian history which date  
8 back thousands of years during the time of Olopana,  
9 who was the chief, the ruling chief of O'ahu.

10           And the foliage that surrounds that  
11 particular Kawaewae heiau is a wellspring of native  
12 plants which we want to restore and to preserve.  
13 And so we are elated by Hawaiian Memorial Park for  
14 their invitation to participate with them in this  
15 preservation feat of responsibility.

16           And so we want to just thank the  
17 commission for inviting us to come and share our  
18 mana'o on this particular area. And mahalo for your  
19 questions, which has brought up some things to our  
20 mind as we've been planning and talking about how  
21 our participation will again bring back to our  
22 Hawaiian people an education, a reference to the  
23 pride of our people as Hawaiians, and when they  
24 learn these areas of historical significance were in  
25 operation.



1 And this has been our purpose as Koolau  
2 Foundation. We offer the voice of our kupa 'aina,  
3 those that are born and raised and have functioned  
4 in Koolaupoko for centuries.

5 Many of the members of our foundation have  
6 generational ties to Koolaupoko dating back well  
7 over 400 years. And so this is -- we find this a  
8 wonderful opportunity for a re-establishment of that  
9 awareness of our Hawaiian culture and the meaning of  
10 those wahi panas we say in Hawaiian that bring  
11 further significance to our people up here and our  
12 families up here. Mahalo.

13 **CHAIR GIOVANNI:** Mahalo. Thank you very  
14 much for your testimony.

15 Commissioners, do you have any questions  
16 for the witness?

17 Commissioner Okuda?

18 **COMMISSIONER OKUDA:** Thank you very much,  
19 chair.

20 Thank you very much for getting involved  
21 in this project and in the roles that have been set  
22 out. You probably heard my questions.

23 And everybody can interpret on their own  
24 what the Land Use Commission Order and conditions  
25 say. It's my personal view, and I believe it's the

1 view of the law, that our conditions have  
2 essentially the force of law.

3           And my recollection of the hearings is  
4 that one of the reasons why the Land Use Commission  
5 was willing to go forward and have this boundary  
6 amendment changing conservation to urban, which is  
7 going to include or involve some significant grading  
8 and tearing down of parts of the Oneawa Hills, is  
9 this trade-off that there was going to be a  
10 commitment for preservation of these cultural  
11 resources and the things that you spoke about.

12           So I would really -- I really, really  
13 thank you on behalf of everyone that you're willing  
14 to take on this really important responsibility. At  
15 the same time, I hope that you heard the assurance  
16 that we intend to enforce the conditions that have  
17 been set forth in our Land Use Order.

18           And one of the conditions are that your  
19 reasonable expenses are supposed to be paid, because  
20 there are many, many good ideas that we all have,  
21 but these ideas never take place if there's no  
22 money. So this is an opportunity, I believe, to  
23 actually implement something to preserve things for  
24 future generations.

25           You know, I'm not Native Hawaiian, but I

1 grew up on the Windward side. I know personally  
 2 what it means to lose Hawaiian cultural resources.  
 3 You know, we regret a lot of stuff that happened in  
 4 the past, but that should be a lesson about what  
 5 we've got to do in the future.

6           So your reasonable expenses under the  
 7 Order are supposed to be paid for by Hawaiian  
 8 Memorial Park. If you believe that you should have  
 9 certain expertise to give you assistance, you heard  
 10 the statements by Hawaiian Memorial Park's attorney  
 11 about retention by you of the attorney of your  
 12 choice to make sure you're protected in whatever you  
 13 do.

14           So again, I thank you for what you're  
 15 doing. I think everyone thanks you. And please,  
 16 please take advantage of the support that the Order  
 17 and the conditions that we placed in there give to  
 18 the people who are providing this protection to  
 19 these important cultural and historic resources.

20           Thank you, Mr. Chair.

21           **MR. MAHI:** Mahalo nui, Commissioner Okuda,  
 22 for that foresight and that confidence. You know,  
 23 we work at nothing. You know, we work with just our  
 24 own resources. And when a landowner is so willing  
 25 to come forward to include us, this is like a

1 wonderful opportunity. But that counsel is well  
2 taken. Mahalo nui.

3 **CHAIR GIOVANNI:** Mahalo.

4 Thank you, Commissioner Okuda. We think  
5 your remarks reflect those of the feelings of many  
6 of our commissioners.

7 **COMMISSIONER CHANG:** Chair?

8 **CHAIR GIOVANNI:** Commissioner Chang, would  
9 you like to speak?

10 **COMMISSIONER CHANG:** I would.

11 **CHAIR GIOVANNI:** Please proceed. I know  
12 where you are. Let me just make a comment timewise.  
13 I know we've been going about an hour and 20  
14 minutes, but I would like to complete the public  
15 testimony and the questions for the public  
16 testifiers. So please proceed.

17 **COMMISSIONER CHANG:** Thank you very much.

18 Aloha, Aaron. Very good to see you on  
19 that side of the table and not on this side of the  
20 table. Mahalo for being here this morning.

21 You know, Koolau Foundation, you have  
22 given unselfishly, unconditionally to preserve many  
23 of the resources in our community. I mean, I know  
24 Mahealani is out there literally, and it is you  
25 operate on a shoestring budget. I am encouraged by

1 this project, because there is a -- you have a  
2 partnership. And, Aaron, I like the way that you  
3 presented this -- an opportunity, an invitation.

4 You know, Hawaiians, we're not maka oi.  
5 We're not going in somebody else's property without  
6 an invitation; right? That's not what we do.

7 **MR. MAHI:** Right.

8 **COMMISSIONER CHANG:** So I appreciate the  
9 way that you -- the spirit that you are coming into  
10 this. But as Commissioner Okuda said, this  
11 opportunity -- because this is a shared kuleana.  
12 Hawaiian Memorial Park as the landowner understands  
13 that you bring value to this process. You bring  
14 mana'o. You bring expertise. You also bring a  
15 family connection to this area. You are connected  
16 to this place.

17 So you should -- yeah, it is -- how do I  
18 say it? This partnership, the contribution --  
19 Hawaiian Memorial Park is making a financial  
20 contribution of money and land. You are bringing  
21 the value of your own expertise, your own hana, the  
22 community. It's equal value, not one is more than  
23 the other. So please, you know, take it very  
24 seriously, because I know the quality of work that  
25 you do.

1 So I would like to ask you, are you  
2 comfortable with -- and I know, I was just talking  
3 to Laura. This is a very complicated kind of  
4 relationship that you all have, but I appreciated  
5 the trust for public land stepping up.

6 Are you comfortable with what you are  
7 right now in this process? And are you comfortable  
8 with the relationship, you know, with Hawaiian  
9 Memorial Park and the trust for public -- the land  
10 trust in moving forward on developing the cultural  
11 preserve?

12 **MR. MAHI:** I can honestly at this point in  
13 time -- we've started our discussions, and I've  
14 already signed off on several agreements. But at  
15 this point, I feel very comfortable that we were  
16 stepping up.

17 I would like to introduce Mahealani  
18 Cypher, who is also a member of our Koolau  
19 Foundation, to attest to this.

20 **COMMISSIONER CHANG:** Thank you.

21 **MR. MAHI:** If she might be able to speak.

22 **COMMISSIONER CHANG:** Mr. Chair, can  
23 Mahealani also make contributions to the discussion?

24 **CHAIR GIOVANNI:** Could you say that again,  
25 please?

1                   **COMMISSIONER CHANG:** Aaron had asked that  
2 Mahealani Cypher, who's also a member of Koolau  
3 Foundation, contribute to this discussion at this  
4 time.

5                   **CHAIR GIOVANNI:** If she's so willing, we  
6 will admit her as a public testifier.

7                   Please state your name and affiliation.

8                   **MS. CYPHER:** Aloha mai kakou. My name is  
9 Mahealani Cypher. I am a member of the board of  
10 Koolau Foundation and a past president, as Auntie  
11 Alice, of the Koolaupoko Hawaiian Civic Club. So I  
12 can speak to the history and the -- I guess the  
13 feeling, the mana'o, of our members of both  
14 organizations.

15                   **CHAIR GIOVANNI:** Oh, great. Please  
16 proceed.

17                   **MS. CYPHER:** I agree with Aaron that this  
18 has been very interesting. And before I go any  
19 further, both our organizations would like to  
20 express our sincere appreciation to all of you, to  
21 the commissioners, to the intervenors, to the  
22 Hawaiian Memorial Park and everyone else who has  
23 worked with us.

24                   They have been nothing but aloha for us,  
25 and we are grateful, because in the beginning -- and

1 this is 10 or 15 years ago -- our club, civic club,  
2 debated over whether to support the objectives of  
3 Hawaiian Memorial Park.

4           And after much debate, they finally  
5 decided to support it after they were assured that  
6 the drainage would be addressed so that the  
7 community would be safe. That was an assurance we  
8 got from Planning and Permitting. And we were also  
9 made aware that they canceled the other subdivision  
10 they were planning next to Pohai Nani.

11           So when they committed to doing the  
12 cultural preserve for Kawaewae, that's what made our  
13 club more supportive, and so we have been supporting  
14 it ever since.

15           And it wasn't for the financial part. Our  
16 kuleana is more towards the spiritual part, the part  
17 that it's a wahi kapu. It's important to our  
18 people, past and future. And so out of respect for  
19 the wahi kapu, we feel called to do this work  
20 whether we're paid or not. Mahalo.

21           **CHAIR GIOVANNI:** Thank you, Ms. Cypher. I  
22 appreciate your testimony.

23           Commissioners, any comments or questions  
24 for this witness?

25           **COMMISSIONER CHANG:** Mr. Chair, this is



1 Commissioner Chang. I would just like to mahalo  
2 both Koolau Foundation and the Koolaupoko Hawaiian  
3 Civic Club for stepping up and accepting this  
4 kuleana. And it comes both ways. It is  
5 responsibility and burden.

6 **CHAIR GIOVANNI:** Yeah. Truly spoken.

7 **COMMISSIONER CHANG:** And as Commissioner  
8 Okuda said, to a large extent, I think many of the  
9 commissioners were swayed by the fact that the  
10 foundation and the civic club supported this  
11 project. The reputation and your own commitment, I  
12 mean, that was very critical for many of us. So we  
13 thank you.

14 And we also -- I know you guys growing up.  
15 You -- if something's not right, you're going to say  
16 something, you're going to do something. I know  
17 most people in Hawaiian Memorial Park, a willingness  
18 to have this partnership and this collaboration.

19 And I am really optimistic that this once  
20 covered cultural resource is now going to be shown  
21 in its glory with all of the interpretation and that  
22 the community is going to really get to enjoy and  
23 appreciate its stature in the Hawaiian community.

24 So mahalo to all of you. Thank you very  
25 much. Mahalo.

1           **CHAIR GIOVANNI:** Mahalo. Thank you very  
2 much.

3           I'd like to return to the petitioner.  
4 Petitioner, we've had a fair amount of testimony  
5 since you made your presentation. Do you have any  
6 further comments that you'd like to make at this  
7 time?

8           **MR. TABATA:** Mr. Chair, we'd just like to  
9 say thank you for intervenor's input, public  
10 testimony. This is a complicated process. We're  
11 moving forward, doing our best, and we hope to take  
12 the comments and guidance that we received today and  
13 to make a more comprehensive annual report and  
14 address concerns that were referred today. And  
15 thank you.

16           **CHAIR GIOVANNI:** Thank you, Mr. Tabata.  
17 Appreciate your comments.

18           And let me also comment, you know, looking  
19 back to our last hearing, it was the first time we  
20 had two rounds of public testimony, and we were  
21 saying, kind of scratching our head about the  
22 potential value of such.

23           And I think today's hearing really showed  
24 the value of two rounds of public testimony at a  
25 complicated hearing. So it worked, in my view. I

1 just want to put that on the record.

2 So looking at the time, it's 11:52. Where  
3 we need to go from here is a further discussion by  
4 the commission. So let me ask the commission for  
5 its preferences. I'll give you a choice. Would you  
6 like to plow through and do our discussion and  
7 potential deliberation now, or would you like to  
8 take a 45-minute lunch break?

9 **COMMISSIONER CHANG:** Now.

10 **CHAIR GIOVANNI:** Is it the consensus of  
11 the commissioners there in the room that we keep  
12 going right now?

13 **COMMISSIONER CHANG:** Yes. This is  
14 Commissioner Chang.

15 **COMMISSIONER YAMANE:** Yes, it is, Mr.  
16 Chair.

17 **CHAIR GIOVANNI:** Any commissioner object  
18 to that or need a short bio break?

19 Okay. Hearing none, we're going to  
20 proceed.

21 **COMMISSIONER CABRAL:** Can we turn the air  
22 conditioner down a little bit? I'm beginning to  
23 freeze.

24 **COMMISSIONER OKUDA:** Mr. Chair, this is  
25 Gary Okuda. I'd like to make a motion.

1           **CHAIR GIOVANNI:** One second, Commissioner.

2 I need to make some comments first.

3           Commissioner, this is a status report.

4 We're not required to take any action at this time.

5 If no action is taken, the requirement of continued

6 annual reports will remain the same. We've also

7 heard the commitment today of the petitioner that

8 the forthcoming annual status report will be more

9 comprehensive than what we saw last year.

10           However, if the commission feels that its

11 concerns have not been addressed, based on the

12 comments and responses provided by the petitioner,

13 the chair will entertain a motion that either the

14 petitioner's status report has not sufficiently

15 addressed the commission's concerns and that further

16 meetings or status updates are necessary to provide

17 the opportunity to do so at a future date to be

18 determined by the LUC staff or, thirdly, if there's

19 a reason to believe that the petitioner will not

20 adhere to the conditions set forth in the Decision

21 and Order, they may request the staff move forward

22 with a formal order to show cause -- for show cause

23 proceedings.

24           At this point I ask the commissioners for

25 further discussion and would entertain a motion.

1           **COMMISSIONER OKUDA:** Chair, this is Gary  
2 Okuda. I would like to make a motion.

3           **CHAIR GIOVANNI:** Please proceed,  
4 Commissioner Okuda.

5           **COMMISSIONER OKUDA:** I move that, based on  
6 what's taken place today, no further action be  
7 taken, with thanks to everyone for having come here  
8 today to bring us up to date on what's going on.  
9 Thank you.

10          **CHAIR GIOVANNI:** Thank you.

11           Is there a second to Commissioner Okuda's  
12 motion?

13          **COMMISSIONER CABRAL:** Yes. Commissioner  
14 Cabral. I'll second that motion. Thank you.

15          **CHAIR GIOVANNI:** Thank you.

16           Commissioner Okuda, would you like to  
17 speak to your motion?

18          **COMMISSIONER OKUDA:** Thank you, Mr. Chair.  
19 For once I really have nothing to add. I think  
20 everything is self-explanatory. Thank you.

21          **CHAIR GIOVANNI:** Commissioner Cabral,  
22 would you like to speak to your second?

23          **COMMISSIONER CABRAL:** I'll second that  
24 motion by Commissioner Okuda.

25          **CHAIR GIOVANNI:** That you have nothing to

1 add. Okay.

2 Commissioners, do you have comments that  
3 you'd like to make relative to the motion?

4 Seeing none, I think we're ready to act on  
5 the motion. So a motion has been made by  
6 Commissioner Okuda and seconded by Commissioner  
7 Cabral that no further action is required at this  
8 time.

9 If there is no further discussion, Mr.  
10 Orodenger, would you please poll the commission on  
11 the pending motion?

12 **MR. ORODENKER:** Thank you, Mr. Chair. The  
13 motion is to take no further action.

14 Commissioner Okuda?

15 **COMMISSIONER OKUDA:** Yes.

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

17 **COMMISSIONER CABRAL:** Yes.

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

19 **COMMISSIONER CHANG:** Aye.

20 **MR. ORODENKER:** Commissioner Kamakea-  
21 Ohelo?

22 **COMMISSIONER KAMAKEA-OHELO:** Aye.

23 **MR. ORODENKER:** Commissioner Kahele is  
24 excused.

25 Commissioner Ohigashi?

1           **COMMISSIONER OHIGASHI:** Aye.

2           **MR. ORODENKER:** Commissioner Yamane?

3           **COMMISSIONER YAMANE:** Aye.

4           **MR. ORODENKER:** Chair Giovanni?

5           **CHAIR GIOVANNI:** Aye.

6           **MR. ORODENKER:** Thank you, Mr. Chair. The  
7 motion passes with seven affirmative votes.

8           **CHAIR GIOVANNI:** Thank you, Mr. Orodenker.

9           And thank you, everyone involved. Thanks  
10 to all the parties and for your participation and  
11 presentations today. Thank you for our public  
12 testifiers. Very much appreciated.

13           This concludes our meeting for today,  
14 unless there's any further business to discuss. So  
15 does any commissioner have anything they want to  
16 bring up at this point in time?

17           **MR. ORODENKER:** Mr. Chair, staff is  
18 wondering whether you want to seek food for lunch at  
19 the next meeting on September 7.

20           **CHAIR GIOVANNI:** Would you clarify that  
21 question again?

22           **MR. ORODENKER:** We were wondering whether  
23 you wanted to require that lunch be brought in at  
24 the September 7th meeting at the UH location in  
25 Hilo.

1           **CHAIR GIOVANNI:** That's the one in Hilo?

2           **MR. ORODENKER:** Yes, Mr. Chairman.

3           **CHAIR GIOVANNI:** What do you recommend,  
4 Commissioner Cabral?

5           **COMMISSIONER CABRAL:** Unfortunately, I'm  
6 going to be on the mainland. Otherwise, I'd bring  
7 you a nice steak lunch.

8           But, yeah, you know, you might want to  
9 because when I -- we can check and see that the  
10 university is open if our hearing's at UH Hilo, and  
11 they do have a nice cafeteria and food service  
12 there. So I would probably recommend you just  
13 probably do a sandwich or bring it up from there,  
14 because that would be the most convenient and not  
15 require driving and that. Because the food is quite  
16 good. I had lunch there last week. So that would  
17 be what I would recommend.

18           **CHAIR GIOVANNI:** I think that's a great  
19 recommendation.

20           So, Mr. Orodenger, can you research if the  
21 cafeteria will be open and whether we would have  
22 access to that on the UH Hilo campus? We could  
23 proceed with that.

24           **COMMISSIONER OHIGASHI:** Mr. Chair, this is  
25 Lee Ohigashi. I think that in the event that that



1 is not possible, we should have a motion or a  
2 statement on the record indicating that because of  
3 its location that we will be providing lunch.

4 **CHAIR GIOVANNI:** Can I ask, commissioner,  
5 that you make that motion that you're suggesting we  
6 have?

7 **COMMISSIONER OHIGASHI:** I don't think a  
8 motion. I think it's probably by the chair that --

9 **CHAIR GIOVANNI:** Okay. If I can do it,  
10 then, Mr. Orodenger, the chair would like you to  
11 have lunch provided on premises for our hearing on  
12 September 7. Your options include access to or food  
13 to be provided by the onsite cafeteria, and in the  
14 absence of that, make other arrangements for it to  
15 be brought in.

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

17 **COMMISSIONER OHIGASHI:** Mr. Chair, I have  
18 one comment before we leave today.

19 **CHAIR GIOVANNI:** Does it have anything to  
20 do with baseball?

21 **COMMISSIONER OHIGASHI:** Yes, it does. I'd  
22 like to announce that Honolulu beat Texas today 13-  
23 0, and not one --

24 **CHAIR GIOVANNI:** I think that's really  
25 important, and let me tell you the extra reason why,

1 and actually the reason why I'm not in Honolulu  
2 today with you, is I have a once in a lifetime  
3 opportunity to see my 12-year-old grandson play in  
4 Cooperstown in a baseball championship series of 48  
5 teams, and I'm just thrilled to be here instead of  
6 with you. So it's all about baseball.

7           Okay. No further business? I'll see you  
8 on September 7th. This meeting is adjourned. Thank  
9 you very much.

10                   **(Meeting adjourned at 12:01 p.m.)**

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1 CERTIFICATE

2

3 I, Davilyn Payne, do hereby certify that the

4 proceeding named herein was professionally transcribed on

5 the date set forth in the certificate herein; that I

6 transcribed all testimony adduced and other oral

7 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 hand this

13 29th day of August, 2022.

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19 Davilyn Payne

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