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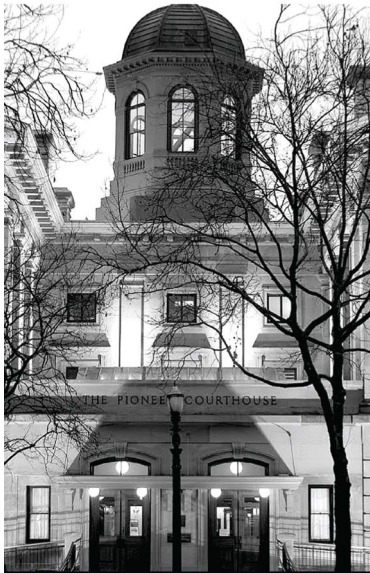
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**STATE OF HAWAII  
LAND USE COMMISSION**

Meeting held on April 12, 2023

Commencing at 9:30 a.m.

Held at

West Hawai'i Civic Center  
Community Meeting Hale, Haynes Room  
74-5044 Ane Keohokalole Highway  
Kailua-Kona, Hawai'i 96740

I. **CALL TO ORDER**

II. **ADOPTION OF MINUTES**

February 8-9, 2023

III. **TENTATIVE MEETING SCHEDULE**

IV. **A81-525 Y-O LIMITED PARTNERSHIP (Hawai'i)**

To Consider Petitioner's Motion For Extension of Time To Apply For Redistricting Of Phase II That Consists Of Approximately 195.246 Acres Of Land Situation In The Agricultural District T At Kaloko And Kohanaiki, North Kona, Hawai'i. Tax Map Key No. (3)7-3-09:19,20 And 57 To 62.

V. **RECESS**

**BEFORE :**

**PARTICIPANTS**

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**LUC COMMISSIONERS:**

- Nancy Cabral, Vice Chair
- Gary Okuda
- George Atta
- Lee Ohigashi
- Mel Kahele
- Michael Yamane
- Ku'ikeokalani Kamakea-'Ohelo

**LUC COMMISSIONERS EXCUSED:**

- Dan Giovanni, Chair

**LUC STAFF:**

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

**OPSD:**

- Alison Kato, Deputy Attorney General
- Katia Balassiano, Planning Program Administrator

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**PARTICIPANTS (CONTINUED)**

**COUNTY OF HAWAII:**

Jean Campbell, Deputy Corporation Counsel

Zendo Kern, Director, Hawaii Planning Department

**PETITIONER**

William Yuen, Esquire, Petitioner's Attorney

**PETITIONER'S WITNESSES**

William Moore

Keith Kato

Mark Mayer

**PUBLIC TESTIMONY (ROUND 1)**

Kimberly Crawford

Ruth Aloua

**PUBLIC TESTIMONY (ROUND 2)**

Kimberly Crawford

Ruth Aloua

Thomas Yeh

1           **VICE-CHAIR CABRAL:** Aloha, mai kakou, and  
2 good morning and welcome to the Big Island, the week  
3 of Merrie Monarch. This is the April 12th, 2023,  
4 Land Use Commission meeting. This is an in-person  
5 meeting which is being held at the West Hawai'i  
6 Civic Center, which is 74-5044 Ane Keohokalole  
7 Highway.

8           My apologies. I am tone deaf, and now I'm  
9 getting deaf, so all of this is so much harder than  
10 it should be, but that's age and disability, so.  
11 And this meeting is open to the public. I'm usually  
12 loud enough.

13           Court reporting transcriptions are being  
14 done from this meeting on Zoom, so for all meeting  
15 participants, we would like to stress the importance  
16 of speaking slowly, clearly, and directly into your  
17 microphone. Before speaking, please state your name  
18 and identify yourself for the record.

19           Even though this is an in-person meeting,  
20 please be aware that all meeting participants are  
21 being recorded on the digital record of the Zoom  
22 meeting for the court reporting purposes. Your  
23 continued participation is your implied consent to  
24 be a part of the public record for this event. If  
25 you do not wish to be part of the public record, you

1 should exit this meeting at this time.

2 I will also share with all participants  
3 that we will take breaks from time to time.

4 My name is Nancy Cabral, and I currently  
5 serve as the Land Use Commission vice-chair. We  
6 currently have eight seated commissioners. We have  
7 Commissioner Lee Ohigashi to my left, Commissioner  
8 Gary Okuda to my left, Commissioner Ku'ike Kamakea-  
9 'Ohelo to my right, Commissioner Michael Yamane to  
10 my right, and Commissioner Mel Kahele to my left,  
11 and Commissioner George Atta to my right.

12 Commissioner Dan Giovanni is excused from this  
13 meeting.

14 Also in attendance is the Land Use  
15 Commissioner Chief Planner Scott Derrickson, Planner  
16 Riley Hakoda, Staff Planner Martina Segura, and our  
17 Chief Clerk Ariana Kwan, and our Executive Officer  
18 Dan Orodener. And via Zoom we have, representing  
19 the Attorney General's Office for the Land Use  
20 Commission, Dan Morris.

21 Our first order of business would be the  
22 adoption of the February 8th and 9th, 2023, minutes.  
23 Do I hear anything from our commissioners on those  
24 minutes?

25 **COMMISSIONER OHIGASHI:** I move we adopt

1 them.

2 **VICE-CHAIR CABRAL:** We have a motion and a  
3 second. Okay. Got the motion. Commissioner  
4 Ohigashi and 'Ohelo moved to second. Moving on, all  
5 those in favor?

6 (A chorus of ayes).

7 **VICE-CHAIR CABRAL:** Anyone oppose? Thank  
8 you. We consider the minutes approved.

9 Ms. Kwan -- Mrs. Kwan, do you have any  
10 written testimony submitted on those minutes?

11 **MS. KWAN:** No, Madam Chair.

12 **VICE-CHAIR CABRAL:** I should have asked  
13 that first, so thank you with no further ado of  
14 adoption of the minutes. We could reconsider that  
15 vote if necessary. Okay.

16 All right. Okay. The next order on the  
17 agenda is a tentative meeting schedule.

18 Executive Director Orodener, can you  
19 please provide us our meeting schedule?

20 **MR. ORODENKER:** Thank you, Madam Chair.

21 On the 26th of April, we will be at the  
22 airport on O'ahu for the Waiawa Correctional  
23 Facility. On May 10th, we will be at the Foreign-  
24 Trade Zone on O'ahu and for the Waiawa Correctional  
25 Facility matter. That may actually move to Thursday

1 the 11th, so we have to confirm those dates, so.

2 On June 21st, we will be in Hilo for the  
3 Kamehameha Schools Status Report, and June 22nd we  
4 will also be in Hilo for the Bencorp Status report.  
5 On July 26, we will be on O'ahu at the airport for  
6 the Waimanalo Gulch matter. And that takes us  
7 through August.

8 **VICE-CHAIR CABRAL:** Okay. Thank you very  
9 much for letting us know of our future.

10 Commissioners, do you have any questions  
11 on that schedule?

12 Okay. Our first order of business is A81-  
13 525 Y-O Limited Hawai'i. This agenda item is to  
14 consider the petitioner's motion for extension of  
15 time to apply for redistricting of Phase 2. Let me  
16 briefly explain the procedure.

17 First, I will ask the parties to identify  
18 themselves, and I will ask if there are any  
19 disclosures from the commissioners. Then I will  
20 update the record.

21 Next, I will give the opportunity for the  
22 petitioners to comment on the commission's policy  
23 governing reimbursement of hearing expenses.

24 I will then recognize the written public  
25 testimony that may have been submitted in this

1 matter, and then I will be identifying the persons  
2 or organizations who have submitted such testimony.  
3 I will then call for individuals in the audience  
4 desiring to provide public testimony for this  
5 docket.

6 After completion of the public testimony,  
7 the commission will then consider the exhibits that  
8 all the parties wish to offer into evidence,  
9 starting with the petitioner, followed by the County  
10 Planning Department, and then the State Office of  
11 Planning and Sustainable Development.

12 Then the petitioner will make its  
13 presentation and receive questions and comments from  
14 the commissioners.

15 Next, the County Planning Department will  
16 be able to make its presentation and receive  
17 questions and comments from the commissioners.

18 Then the Office of Planning and  
19 Sustainable Development, which will be possibly  
20 called OPSD, will then follow with its presentation  
21 and receive questions and comments from the  
22 commissioners.

23 The petitioner will then be given an  
24 opportunity to provide any rebuttal on that  
25 information.



1 The public will then again be given  
2 another opportunity to provide public testimony in  
3 the same manner as set forth previously.

4 After all parties have presented their  
5 arguments, the commission will conduct formal  
6 deliberations and issue a decision on the motion.

7 I would also note for the parties and the  
8 public that from time to time I will be calling for  
9 short breaks of possibly ten minutes every hour, and  
10 we will have a longer lunch break in the middle of  
11 the day. Are there any questions on the procedures  
12 for today? Okay. Thank you.

13 Do any of our commissioners have any  
14 disclosures to make at this time?

15 Commissioner Okuda?

16 **COMMISSIONER OKUDA:** This is Gary Okuda.  
17 Thank you, Ms. Chair. I'd like to make two  
18 disclosures. One disclosure is that Mr. Yuen's law  
19 firm, the Dentons law firm, represents the Hawai'i  
20 Medical Association's HMSA in an arbitration which  
21 involves myself as a claimant. My involvement in  
22 that case will not affect my impartiality in this  
23 matter.

24 My second disclosure is that Mr. Yuen's  
25 partner, Louise Ing, is married to my longtime high

1 school friend, Michael Sitch, although since the  
2 commencement of the pandemic, we have not socialized  
3 or met or done anything like that. So I make those  
4 two disclosures.

5 **VICE-CHAIR CABRAL:** Thank you very much.

6 Does anyone have a problem with the  
7 information provided of potential conflict from  
8 Commissioner Okuda? Okay.

9 Thank you very much for the information.

10 Anyone else with anything to disclose in  
11 regard to this case?

12 Petitioner Yuen?

13 **MR. YUEN:** Good morning, Chairman Cabral  
14 and commissioners. My name is William Yuen. I am  
15 the attorney for petitioner RCFC Kaloko Heights,  
16 LLC; Kaloko Heights B1A Holdings, LLC; and Kaloko  
17 Heights Investors LLC. With me is Mark Meyer, who  
18 is the project manager for the petitioners.

19 **VICE-CHAIR CABRAL:** Okay. Thank you for  
20 leading us into identifying all of those folks  
21 present. Okay. Thank you. Now let me go back. I  
22 skipped that part.

23 Office of Planning and Sustainable  
24 Development, can you folks go ahead and identify  
25 yourself, please? Who's present today?

1           **MS. KATO:** Alison Kato, deputy attorney  
2 general, and Katia Balassiano from Office of  
3 Planning and Sustainable Development. Thank you.

4           **VICE-CHAIR CABRAL:** Okay. Thank you very  
5 much.

6           And County of Hawai'i?

7           **MS. CAMPBELL:** Good morning, everyone. We  
8 on? I think we were on; right?

9           **VICE-CHAIR CABRAL:** Okay.

10          **MS. CAMPBELL:** Good morning, everyone.  
11 Jean Campbell, deputy corporation counsel,  
12 representing the Planning Department of the County  
13 of Hawai'i, and with me is Director Zendo Kern, our  
14 planning director.

15          **VICE-CHAIR CABRAL:** Okay. Thank you very  
16 much.

17               Okay. Now let me review the record and  
18 update it for everyone concerned. On January 20th,  
19 1983, the commission issued its Decision & Order to  
20 amend the district boundary property situated in  
21 North Kona, Island of Hawai'i. That's the 1983 D&O.

22               On November 22, 2022, petitioner filed a  
23 Motion of Extension of Time to Apply for  
24 Redistricting of Phase 2, Memorandum in Support of  
25 Motion, Declaration of William W. L. Yuen. That's

1 Exhibits A and B, the Certificate of Service.

2 On November 29, 2022, the Land Use  
3 Commission received the Office of Planning and  
4 Sustainable Development extension request.

5 On July 19, 2022, the petitioner filed the  
6 Motion to Amend Condition 1, Condition 4, Condition  
7 8B of the Decision & Order filed on February 26,  
8 2018.

9 On July 29, 2022, the Office of Planning  
10 and Sustainable Development filed its request for  
11 the extension of time.

12 On November 29, 2022, the Land Use  
13 Commission granted the Office of Planning and  
14 Sustainable Development its request for extension.

15 On January 4, 2023, the petitioner filed a  
16 Second Supplemental Memorandum in Support of the  
17 Motion for Extension of Time to Apply for  
18 Redistricting of Phase 2, the Declaration by William  
19 W. L. Yuen, Exhibits 33 through 38, Certificate of  
20 Service.

21 On January 19, 2023, the Office of  
22 Planning and Sustainable Development had a second  
23 extension request.

24 On January 31, 2023, petitioner filed  
25 Petitioner's Third Supplemental Memo in Support of

1 the Motion for Extension of Time Apply for  
2 Redistricting, Exhibits 39-1 AIS dated October 20,  
3 2005, Part 1 through 3, and Exhibits 40 to 43.

4 On March 13, 2023, OPSD filed their  
5 response to the motion brought before the  
6 commission.

7 On March 20, 2023, the Land Use Commission  
8 received an email from the county stating the county  
9 had no objection to the petitioner's motion. The  
10 County of Hawai'i submitted an article as public  
11 testimony on April 2nd -- oops, okay, not part of  
12 the public record, but it didn't get crossed off.  
13 Okay. My apologies not being up to date.

14 On April 3rd, 2023, the agenda for the  
15 April 12, 2023, meeting was distributed to statewide  
16 and to the Hawai'i list.

17 On April 4th, the Land Use Commission  
18 received Petitioner's Reply Memorandum to the Office  
19 of Planning and Sustainable Development's Response  
20 to the Motion, Declaration of Mark Meyer, COS.

21 On April 5th, the Land Use Commission  
22 received public testimony from Deborah Chang. The  
23 Land Use Commission also received a letter from the  
24 County of Hawai'i, which states no objection to the  
25 motion.

1 On April 10th, petitioner filed the Fourth  
2 Supplemental Declaration of William W. L. Yuen,  
3 Exhibit List, Exhibit 44, Certificate of Service  
4 dated 2023-04-07.

5 On April 10th, the Land Use received three  
6 public testimonies from Kaloko-Honakohau NHP and  
7 from Isaac "Paka" Harp and from Tanya Souza.

8 On April 10th, the staff report signed and  
9 made publicly available -- was made publicly  
10 available.

11 On April 10th, the petitioner filed the  
12 Fifth Supplemental Memorandum in Support of the  
13 Motion for Extension of Time to Apply for  
14 Redistricting of Phase 2, Exhibit List, Exhibit 45,  
15 Certificate of Service dated 2023-04-10.

16 On April 11th, the Land Use received  
17 public testimony from Antu Harvey, petitioner's  
18 Stipulated Agreement.

19 Thank you. Reimbursement policy. Good  
20 morning, Mr. Yuen. Have you reviewed HAR 15-15-45.1  
21 regarding the reimbursement of hearing expenses?

22 **MR. YUEN:** Yes.

23 **VICE-CHAIR CABRAL:** Could you state your  
24 client's position with respect to this policy?

25 **MR. YUEN:** Petitioner is agreeable to

1 reimburse the commission for hearing expenses.

2 **VICE-CHAIR CABRAL:** Okay. Thank you very  
3 much.

4 Public testimony. I will now recognize  
5 the written public testimony submitted in this  
6 matter, identifying the person and organization  
7 submitting the testimony.

8 Ms. Kwan, have we had any written  
9 testimony submitted in this order?

10 **MS. KWAN:** You already got all the  
11 testimony received so far. We haven't received  
12 anything as of yesterday.

13 **VICE-CHAIR CABRAL:** Okay. So I'm showing  
14 that there was something from Deborah Chang  
15 submitted on April 5th, and that was submitted as  
16 public comments. Okay. All right.

17 So, Ms. Kwan, are there any members in the  
18 public signed up to testify on A81-525 Y-O Limited?

19 **MS. KWAN:** Yes, Madam Chair. You have the  
20 list on your computer.

21 **VICE-CHAIR CABRAL:** Thank you. I do see  
22 that, but I wasn't sure it was up to date. Okay.  
23 I'd like to go ahead and call up public testimony.

24 Kimberly Crawford? Thank you for finding  
25 your seat there. May I swear you in?

1 MS. CRAWFORD: Yes.

2 VICE-CHAIR CABRAL: Okay. Do you swear or  
3 affirm that the testimony that you're about to give  
4 is the truth?

5 MS. CRAWFORD: Correct.

6 VICE-CHAIR CABRAL: Thank you. Please  
7 state your name and address for the record, and  
8 proceed with your testimony.

9 MS. CRAWFORD: My name is Kimberly  
10 Crawford. My address is 73-1167 Loloa Drive.

11 VICE-CHAIR CABRAL: That's in Kailua-Kona?

12 MS. CRAWFORD: Kailua-Kona, Hawai'i 96740.

13 VICE-CHAIR CABRAL: Okay. Thank you very  
14 much.

15 MS. CRAWFORD: Thank you.

16 VICE-CHAIR CABRAL: Go ahead and proceed.

17 MS. CRAWFORD: Good morning, commission.  
18 Today I am asking you to defer the project in front  
19 of you. I would like to ask you to update the EIS.  
20 I'd like to ask you to update the traffic impact  
21 analysis, and I'd like to ask you to update the  
22 water impact analysis.

23 I am speaking to you today as a mother. I  
24 have three girls that are born and raised in  
25 ahupua'a of Kalala, and we have for eight years been



1 a family of kia'i loko at Kaloko-Honokohau National  
2 Park. We are not affiliated with the national park  
3 in any way. We are a community-led group working  
4 for the restoration of the fishpond.

5 Our fishpond is an 11-acre fishpond, and  
6 over the course of eight years, we've had the  
7 privilege of learning about the system and the way  
8 that the fishpond operates and feeds the larger  
9 ocean. But that happens only from the correct  
10 management of the ahupua'a above the fishpond as  
11 well.

12 So I'd like to just give you a little bit  
13 of background of what we know about the fishponds  
14 and my expertise.

15 So when the rain falls on the mountains in  
16 this project zone, which was once of the Kona Field  
17 System, which had kui ulu kahalo, plenty plants to  
18 collect and furnish that rain and put it into the  
19 aquifer.

20 That water then makes its way to our  
21 fishpond. It's purified. It's full of microbes.  
22 Those microbes then feed our diatoms and our  
23 planktons, and that is the base of the food system  
24 in our fishpond. And without that base, our  
25 fishpond couldn't exist or flourish.

1 So from then, from the diatoms, we have  
2 our herbivores fish, our 'ama'ama, our anai, which  
3 are mullet, and our awa, our milkfish, which are the  
4 main fish we raise. So without that bottom food  
5 chain, those fish that we target to raise would not  
6 be able to thrive.

7 From then in our fishpond, it goes up to  
8 the apex predator, the barracudas, who then wean out  
9 the fish that are unhealthy.

10 But the magic happens when our fish go out  
11 into the ocean to reproduce. They lay their larvae  
12 from 2,000 to 7,000 feet in the ocean, leaving our  
13 10-foot fishpond; right? And that larvae then  
14 smells that concentration of fresh water that comes  
15 from our fishpond, those diatoms, those planktons.

16 As they photosynthesize, they create  
17 sugars, and those sugars attract them back to our  
18 fishpond. So we need to have a mass concentration  
19 of those diatoms and those planktons flourishing to  
20 call them back into our fishpond once they're done  
21 mating.

22 And also the larvae get called back into  
23 our fishpond, from tiny little larvae to fingerlings  
24 that make their way from the deep ocean into our  
25 pond often. And those larvae, when they're out in

1 the ocean, they also do the favor of feeding our  
2 pelagics.

3 If you've ever looked into the ocean  
4 outside of Kona, you see different color streaks in  
5 the ocean. Those are ma'oki'oki streaks, and those  
6 often carry huge currents of plankton and larvae of  
7 our fish, the reef fish, mussels, everything you can  
8 think of. And that feeds the pelagics in the ocean.

9 Kona is known for being wonderful fishing  
10 grounds. Sports fishing is very popular in Kona.  
11 And that is attributed to the amount of food that  
12 those pelagics get in our area.

13 So I believe that with this development,  
14 instead of restoring the Kona Field System, or at  
15 least partially putting it into your project, that  
16 you will be impacting our fishpond detrimentally  
17 beyond repair. And I believe that's something that  
18 needs to be considered moving forward.

19 **VICE-CHAIR CABRAL:** Thank you very much  
20 for your testimony. Might I ask that you would note  
21 -- you referenced an organization that's your  
22 volunteer organization, but you didn't name it. Are  
23 you willing to give us the name of your group?

24 **MS. CRAWFORD:** Hui Kaloko-Honokohau.

25 **VICE-CHAIR CABRAL:** Thank you very much.

1 And fantastic, interesting information. Thank you.  
2 Okay. I did give you extra time, so thank you.  
3 Wait, any questions? Hold on. Hold on. Wait,  
4 wait, in case we have questions from the  
5 commissioners.

6 **MS. CRAWFORD:** Okay.

7 **MR. YUEN:** No questions from the  
8 petitioners.

9 **VICE-CHAIR CABRAL:** Okay. No questions  
10 from petitioners.

11 Office of Planning and Sustainable  
12 Development?

13 **MS. CAMPBELL:** County of Hawai'i has no  
14 questions.

15 **VICE-CHAIR CABRAL:** Okay. Thank you.  
16 Yeah. Well, you're the Office of Planning. You're  
17 the Office of Planning. Yes.

18 State Office of Planning?

19 **MS. KATO:** No questions from OPSD. Thank  
20 you.

21 **VICE-CHAIR CABRAL:** All right.

22 Commissioners, any questions?

23 Commissioner Okuda?

24 **COMMISSIONER OKUDA:** This is Gary Okuda.

25 Ms. Crawford, thank you very much for your

1 testimony. Let me frame my question.

2 My question is designed to elicit more  
3 information to help us determine whether or not  
4 under the Hawai'i Supreme Court case Unite Here!  
5 Local 5 versus City and County of Honolulu -- it's  
6 found at 123 Hawai'i Reports 190; I'm sorry, 150 231  
7 P.3d 423A 2010 Hawai'i Supreme Court case -- whether  
8 or not an environmental impact statement is required  
9 here or whether if an environmental impact statement  
10 had been prepared, whether or not, because of the  
11 passage of time, such statement is stale, and so an  
12 updated EIS needs to be prepared.

13 So my question is basically this. When  
14 did your group start this work on the fishpond that  
15 you have described in your testimony?

16 **MS. CRAWFORD:** In 2015.

17 **COMMISSIONER OKUDA:** Okay. And at any  
18 time since the time that you started work on the  
19 fishpond, or your group started work on the  
20 fishpond, were you consulted in any way about the  
21 potential environmental impacts of this development  
22 on your fishpond or the area around your fishpond?

23 **MS. CRAWFORD:** No.

24 **COMMISSIONER OKUDA:** Okay. The order --  
25 the initial order in this case was entered in 1983,

1 so just so that I'm clear, since 1983 no one has  
2 contacted you as far as potential impacts on your  
3 fishpond with respect to this development.

4 **MS. CRAWFORD:** Well, I was born in '92, so  
5 -- but, no, not since 2015.

6 **COMMISSIONER OKUDA:** Okay. Well, to the  
7 best of your knowledge, and since administrative  
8 agencies can rely on hearsay or secondhand stories,  
9 as long as it's reliable, are you aware of any  
10 inquiries being made to anyone that you know of  
11 connected with the fishpond as far as the potential  
12 environmental impacts to your fishpond by the  
13 development?

14 **MS. CRAWFORD:** Absolutely not.

15 **COMMISSIONER OKUDA:** How far is your  
16 fishpond from the development?

17 **MS. CRAWFORD:** Oh, I can't tell you for  
18 certain, but maybe less than three miles.

19 **COMMISSIONER OKUDA:** Less than three  
20 miles. And I know this might sound like a  
21 commonsense question, but I'll ask anyway for  
22 completeness of the record. Is the development  
23 upland from your fishpond, or on the side, or what's  
24 the geographic relationship?

25 **MS. CRAWFORD:** It's directly upland of our

1 fishpond. It's in one of the -- it is in the  
2 ahupua'a that our fishpond occupies. Our ahupua'a  
3 is named after our fishpond by locals.

4 **COMMISSIONER OKUDA:** Okay. Have you at  
5 any time personally observed any runoff coming from  
6 upland properties into your fishpond? Water runoff?

7 **MS. CRAWFORD:** No.

8 **COMMISSIONER OKUDA:** Okay. Thank you very  
9 much.

10 Ms. Chair, I have no further questions.

11 **VICE-CHAIR CABRAL:** Thank you very much.

12 Thank you, Ms. Crawford.

13 And another person signed up at this time.  
14 Ruth Aloua?

15 **MS. ALOUA:** Aloha mai k?kou. 'O Ruth Aloua  
16 ko'u inoa. Mauna Haleakala ko'u mauna. 'O Kona pu  
17 'aina kupuna o Kalapaku loko. 'O Kona kai malino o  
18 ko'u kai. 'O loko wai 'awa'awa, wai'ula, wai  
19 'ula'ula, wai loli pu'uwai.

20 **(Hawai'ian language provided by the Land  
21 Use Commission for inclusion in the transcript.)**

22 My name is Loke Aloua, Ruth Aloua. My  
23 mountain is Hualalai. My ancestors, they come from  
24 Kona, both from my grandfather's lineage, the  
25 Hoapili lineage, also the Hoomahunui family, which

1 is a South Kona family. My fishpond is Kaloko, and  
2 my waters are all the waters that are named --

3 **VICE-CHAIR CABRAL:** Wait, wait. May I  
4 swear you in first?

5 **MS. ALOUA:** Okay.

6 **VICE-CHAIR CABRAL:** Thank you. Thank you  
7 for letting us know your name, and I would like your  
8 address also. Can I swear you in? Do you swear and  
9 affirm that the testimony that you're about to give  
10 is the truth?

11 **MS. ALOUA:** Yes.

12 **VICE-CHAIR CABRAL:** Thank you. Go ahead  
13 and proceed. Four minutes more.

14 **MS. ALOUA:** Okay. So the project, it's a  
15 lot to take in in just, you know, I don't know,  
16 maybe a week or so or two weeks. But the project is  
17 '83 -- began in 1983. The agreements were made.  
18 That's a long time ago, and a lot has changed.

19 I would have been here in 1983 testifying,  
20 but I wasn't born yet. And so that's why I'm here  
21 today is to influence the future of this project,  
22 and so requesting a delay of decision to look  
23 further into this matter, and also requesting that  
24 supplemental studies be done.

25 One of the supplemental studies is updated



1 archaeological inventory survey, that given the  
2 recent find that happened after the initial survey  
3 was approved, it should be enough of a reason to  
4 require an updated survey, given that this project  
5 size is so huge and that the archaeological record  
6 is limited. And this really flowed out of our Kona  
7 families.

8           And so we're looking at Kaloko and  
9 Kohanaiki. We're not just looking at these two  
10 ahupua'a. We're looking at the Kekahas, which is  
11 the entire region which you folks didn't look at in  
12 you folks' studies.

13           Another thing I want you folks to look at  
14 is the water units. This project has been approved  
15 for approximately 1,500 water units. There has been  
16 things such as climate change that is before us  
17 which should be considered, which hasn't been  
18 considered.

19           Another thing is traditional and customary  
20 practices and how additional withdrawal is going to  
21 impact these practices and the groundwater-dependent  
22 ecosystems that are relying on the water credits.  
23 So you might have the water credits, but you haven't  
24 done the proper analyses for this project to move  
25 forward.

1 I'm also going to ask you to look into the  
2 infrastructure improvements on a broader scale.  
3 Kona Hospital is on the verge of shutting down on a  
4 daily basis. The project before you will add stress  
5 to the current system. We have a nurse shortage.  
6 We don't have the funding for the improvements.

7 Others don't have anywhere to go, and yet  
8 we're going to say, hey, bring more folks here? The  
9 time that it would take for an ambulance to get  
10 mauka to the hospital at rush hour. Those things  
11 need to be analyzed before this project can be  
12 allowed to move forward.

13 Another thing I'm curious about is the  
14 Kona Community Development Plan, which actually  
15 called for additional housing. But it's not calling  
16 for a gated community. If I was here in 1983, I  
17 would have argued for more than just 10 percent of  
18 this housing to go for affordable homes. Ninety  
19 percent is going to be sold at market price. Who  
20 exactly is going to be able to afford these homes?

21 I don't know. I'm curious.

22 This doesn't solve or acknowledge the  
23 things that are listed in the Kona Community  
24 Development Plan that specifically called for  
25 multiple economic zones that are mixed use for

1 people who are here who buy homes and to live here.

2           It's a 400-acre project. A lot has to be  
3 done, and I just ask you for more time and asking  
4 for you folks to delay, to come to the fishpond  
5 even, to look at the fishpond, to see that it's the  
6 only one out in Kona of its size. It's so unique in  
7 the state that it's worthy, and it's deserving of  
8 further inquiry. So please delay the matter.

9           **VICE-CHAIR CABRAL:** Thank you.

10           Any questions from the petitioner?

11           **MR. YUEN:** No questions.

12           **VICE-CHAIR CABRAL:** Okay. Questions from  
13 County of Hawai'i?

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

15           **VICE-CHAIR CABRAL:** Questions from OPSD?

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

17           **VICE-CHAIR CABRAL:** Okay. Commissioners,  
18 questions?

19           Commissioner Okuda?

20           **COMMISSIONER OKUDA:** Thank you, Ms. Chair.  
21 This is Gary Okuda.

22           Thank you for your testimony. My  
23 questions again relate to the Hawai'i Supreme Court  
24 case, Unite Here! Local 5 versus City and County of  
25 Honolulu and the requirements that that case spells

1 out.

2           You testified or you mentioned  
3 archaeological discoveries. Can you tell me when  
4 these discoveries were last found or first  
5 discovered in a timeframe? And then I'm going to  
6 ask you if you can describe exactly what types of  
7 archaeological discoveries were discovered.

8           **MS. ALOUA:** Yeah. So I'm referring to --  
9 and this is also mentioned in the testimony of Tanya  
10 Souza, Deborah Chang, and a Hawai'i article that was  
11 also submitted as testimony.

12           And in particular, what I remember is the  
13 burial that was found, which is a pretty big deal.  
14 The other thing is the complex, the ceremonial  
15 complex, the other contradictory statements  
16 regarding the historic trail system. So those are  
17 the three that I could think of, and I think in the  
18 exhibit submissions, the final AIS was for 2005, and  
19 it was post that that these things were discovered.

20           **COMMISSIONER OKUDA:** Can you give an  
21 approximate date to the best of your knowledge when  
22 these items were discovered post any type of  
23 environmental report?

24           **MS. ALOUA:** I received consultation with  
25 individuals -- I think it was in 2017 or '18 --

1 regarding the burials that were found regarding  
2 realignments. I don't have the exact date, but it  
3 was just a few years ago, right before COVID -- or  
4 right during COVID, actually. I think that's when  
5 this happened.

6 **COMMISSIONER OKUDA:** Okay. And when you  
7 say you received consultations, what do you mean by  
8 you received consultations?

9 **MS. ALOUA:** Just receiving contact from  
10 archaeologists who were trying to basically mitigate  
11 the impacts to the things that were found post the  
12 AIS, the original AIS.

13 **COMMISSIONER OKUDA:** So you were contacted  
14 by archaeologists.

15 **MS. ALOUA:** Yes.

16 **COMMISSIONER OKUDA:** Okay. And that was  
17 in 2017, approximately.

18 **MS. ALOUA:** Yeah. I actually might be  
19 wrong. It might be 2019, because it was digital, so  
20 it could have been during COVID.

21 **COMMISSIONER OKUDA:** Oh, okay. Well, it  
22 wasn't back in 1983.

23 **MS. ALOUA:** Oh, no.

24 **COMMISSIONER OKUDA:** Your family has lived  
25 in this area for how many generations, if you know?

1           **MS. ALOUA:** It's a very long time. It's  
2 pre- contact, like for seven of the chiefs, several  
3 chiefs that have ruled Kona specifically, and so my  
4 lineage goes back to the chiefdoms of Kona.

5           **COMMISSIONER OKUDA:** So your lineage is  
6 actually rooted in the area of this project; is that  
7 correct?

8           **MS. ALOUA:** It's rooted in the Kona  
9 district. Yes.

10          **COMMISSIONER OKUDA:** Yeah. And I don't  
11 mean to mischaracterize your testimony or put words  
12 in your mouth, so tell me if, you know, anything I'm  
13 saying is mischaracterizing it, but you would want  
14 to be able to have consultation or give input on  
15 these types of matters and the matters that you've  
16 described in your testimony; is that correct?

17          **MS. ALOUA:** That is correct.

18          **COMMISSIONER OKUDA:** Okay. Thank you very  
19 much.

20          Madam Chair, I have no further questions.

21          **VICE-CHAIR CABRAL:** Thank you,  
22 Commissioner Okuda.

23          Any other commissioners have any questions  
24 or comments?

25          All right. Thank you very much.

1 All right. Is there anyone else in the  
2 audience today who would like to provide public  
3 testimony at this time?

4 Okay. I'd now like to ask for the  
5 admission of exhibits that have been submitted.

6 Petitioner, Mr. Yuen, would you please  
7 describe your exhibits that you wish to have  
8 admitted to the record?

9 **MR. YUEN:** I've submitted 45 exhibits that  
10 I'd like to move into evidence. Each consists  
11 primarily of the -- a lot of it is the  
12 archaeological studies that were done, the approvals  
13 by SHPD, and primarily other information that the  
14 Office of Planning requested from us in order to  
15 evaluate the request for the time extension.

16 **VICE-CHAIR CABRAL:** Okay. Are there any  
17 objections from the parties accepting these exhibits  
18 that have been submitted?

19 County of Hawai'i, any objection?

20 **MS. CAMPBELL:** No objections from us.  
21 Thank you.

22 **VICE-CHAIR CABRAL:** Office of Planning and  
23 Sustainable Development, any objections?

24 **MS. KATO:** No objections. Thank you.

25 **VICE-CHAIR CABRAL:** Commissioners, any

1 questions?

2 Okay. Hearing none, the petitioner's  
3 exhibits, 45 of them, are now admitted to the  
4 record.

5 County of Hawai'i, do you have any  
6 exhibits that you would like to have admitted to the  
7 record?

8 **MS. CAMPBELL:** We have no exhibits. Thank  
9 you.

10 **VICE-CHAIR CABRAL:** Okay. Thank you very  
11 much.

12 Okay. Office of Planning and Sustainable  
13 Development, do you have any exhibits that you would  
14 like to have admitted to the record?

15 **MS. KATO:** No exhibits. Thank you.

16 **VICE-CHAIR CABRAL:** Okay. Thank you very  
17 much.

18 Okay. At this time we'd now like to  
19 proceed with our presentations. Mr. Yuen, would you  
20 like to provide us your presentation at this time?

21 **MR. YUEN:** Yes. I'm going to call three  
22 witnesses. First, Mr. William Moore, who is our  
23 planning consultant. Second will be Keith Kato, who  
24 is going to describe the affordable housing project  
25 that's presently being constructed in the petition



1 area. And third would be Mark Meyer.

2 **VICE-CHAIR CABRAL:** Okay. Can I go ahead  
3 and have -- it would be Mr. William Moore, witness,  
4 come forward to make his presentation at this time?

5 **MR. YUEN:** Yes.

6 **VICE-CHAIR CABRAL:** Okay. May I swear you  
7 in?

8 **MR. MOORE:** Yes.

9 **VICE-CHAIR CABRAL:** Do you swear or affirm  
10 that the testimony you will give is the truth?

11 **MR. MOORE:** I do.

12 **VICE-CHAIR CABRAL:** Thank you. Go ahead  
13 and proceed.

14 **MR. YUEN:** First, please state your name  
15 and address for the record.

16 **MR. MOORE:** My name is William Moore. My  
17 address is 159 Halai Street in Hilo.

18 **MR. YUEN:** Please describe your experience  
19 in land use planning.

20 **MR. MOORE:** I have been doing client  
21 consulting as a consultant since 1990 for over 30  
22 years. I've been working with large landowners,  
23 developers, different county and state agencies, as  
24 well as the federal agency, as well as with other  
25 engineering and consulting businesses.

1 Prior to starting my client consulting, I  
2 worked in the government for 15 years, so I tell  
3 people my last real job was as deputy planning  
4 director for the County of Hawai'i. I also served  
5 as the executive assistant to the chairman of  
6 Department of Hawaiian Home Lands and spent five  
7 years as a housing and community development planner  
8 with the Office of Housing and Community Development  
9 for the County of Hawai'i.

10 My educational background, my high school,  
11 I went to Hilo High, but I also have an  
12 undergraduate degree in economics from Beloit  
13 College in Wisconsin and a graduate diploma in  
14 economics from York University in the United  
15 Kingdom.

16 **MR. YUEN:** I'd like to move to qualify Mr.  
17 Moore as an expert in land use planning.

18 **VICE-CHAIR CABRAL:** Can I ask if there's  
19 any comments or objections to that, County of  
20 Hawai'i?

21 **MS. CAMPBELL:** We have no objections.  
22 Thank you.

23 **VICE-CHAIR CABRAL:** Okay. Office of  
24 Planning and Sustainable Development, any  
25 objections?

1           **COMMISSIONER OKUDA:** No objections. Thank  
2 you.

3           **VICE-CHAIR CABRAL:** Okay. Commissioners,  
4 any comments or objections?

5           Okay. Go ahead and proceed.

6           **MR. YUEN:** Please describe your  
7 responsibilities with respect to the Kaloko Heights  
8 project.

9           **MR. MOORE:** I started working with the  
10 Kaloko Heights project about 2014 or so, primarily  
11 started working on due diligence background  
12 information, so looking at the zoning, looking at  
13 all the entitlement works, looking at what has been  
14 done as part of providing information to the  
15 developer as to what the paths were, what the issues  
16 were.

17           I then got involved in the land planning  
18 and entitlement strategy, so looking at how do we  
19 resolve issues related to the project -- and there  
20 were a number of them -- and then what are the steps  
21 to move forward in terms of proceeding with the  
22 development of this property.

23           I have now been getting more involved in  
24 the project coordination, looking at what it takes  
25 in the background information. For example, I did

1 most of the planning and background work on the  
2 sewer line project, which we'll talk about more for  
3 this. So a role has been kind of expanding through  
4 time.

5 **MR. YUEN:** May we have slide 2, please?

6 Please describe the location of the Kaloko  
7 Heights project.

8 **MR. MOORE:** Yes. We have a map up there.  
9 They're oriented a little differently. The first  
10 one is in a north-south, so the ocean is to the west  
11 makai side. The project site is located about two-  
12 thirds of the way up from Queen Kaahumanu Highway  
13 and the Hawaii Belt Road. It's about four miles  
14 from Keahole airport and about five-and-a-half  
15 miles from Kailua, so it's right in the center of  
16 this Kailua Village-Keahole airport center.

17 The next slide on the right is orientated  
18 in a mauka-makai direction, and it gives you the  
19 orientation of the site. I have a pointer, but it  
20 doesn't show up on this screen. It just absorbs the  
21 light, but the area is outlined in red. The yellow  
22 side is Phase 1 with existing zoning.

23 The road coming down is Hina Lani Street,  
24 and on the lower part of that project you'll see an  
25 area in purple. That is the Kaloko industrial area

1 and the West Hawai'i Business Park industrial area.

2 The area right below the industrial areas  
3 is Kaloko-Honokohau National Historic Park. And the  
4 area to the right is Honokohau boat harbor, and the  
5 area to the left along the shoreline is the  
6 Kohanaiki resort development.

7 So the project area is situated right  
8 below Kona Heavens, which is the area in blue, mauka  
9 side of that project area.

10 **MR. YUEN:** Next slide, please.

11 Please describe the original site plans  
12 for the development of the Kaloko Heights project  
13 and the 1983 project zoning.

14 **MR. MOORE:** The development, both the  
15 representations and plans, goes through the Land Use  
16 Commission and the county for us to develop a  
17 residential subdivision with a mix of single and  
18 multi-family projects or units.

19 The representations included a maximum  
20 development of 1,433 residential units with the mix  
21 of about 75 percent single-family and 25 percent  
22 multi-family units.

23 The original site plan again, which is  
24 shown there, was based on -- you know, this is  
25 really the classic maximized development. There was

1 no detailed topo work, so it's just how do you  
2 maximize development on the layout. And that was the  
3 basis for the coming up with the projected 1,400  
4 units.

5 And you'll notice that there's no  
6 preserved sites. This site plan was done before the  
7 archaeological work had been completed.

8 **MR. YUEN:** Next slide, please.

9 Please discuss how the petitioners  
10 complied with the commission's conditions of  
11 reclassification imposed in 1983.

12 **MR. MOORE:** Yes. The conditions in the  
13 order started. There was an affordable housing  
14 condition, and it was a 10 percent requirement. In  
15 compliance with that in addressing the need for the  
16 community, the developer has agreed and dedicated a  
17 ten-plus acre site to Hawai'i Island Community  
18 Development Corporation for the development of a  
19 100-unit affordable rental project.

20 What's critical about that is they did not  
21 just get the land, which is readily available, but  
22 it gave water, which is really the critical factor  
23 here in making things happen in West Hawai'i. So it  
24 was a water and land contribution in order to  
25 provide housing.

1 The second condition with respect to  
2 access. So as part of that, the developer back  
3 around 1990, I believe, completed construction of  
4 its portion of Hina Lani Street along with the other  
5 developer. This Hina Lani Street is a major mauka-  
6 makai connector between Hawaii Belt Road and Queen  
7 Kaahumanu Highway. And again, that has been  
8 completed, again, way in advance of any impacts.

9 Just for the record, that work was done  
10 approximately 1990 at a cost of \$9 million. In  
11 today's costs that dollar value would have been over  
12 \$20 million, and the road standards would have  
13 required a much more expensive road than that.

14 In addition, in respect to access, the  
15 zoning conditions required the construction of  
16 intersection improvements at the Hawaii Belt Road  
17 and Hina Lani Street, which is offsite. So those  
18 improvements were put in in the mid-1990s, turning  
19 lanes and a traffic signal.

20 In terms of public facilities, the site  
21 was required to provide water facilities. It has  
22 constructed and dedicated an offsite one-million  
23 gallon reservoir to the County Department of Water  
24 Supply. And in addition, it has dedicated a 1.4-  
25 acre to the County Department of Water Supply for a

1 future reservoir.

2 That site does not serve this project  
3 area. It really is in anticipation of, you know,  
4 with makai. So it was not required to build  
5 anything on that site within the project area that  
6 was dedicated.

7 The other condition related to this is  
8 substantial compliance, and we believe that the  
9 project development as planned is in substantial  
10 compliance with the representations to the  
11 commission.

12 **MR. YUEN:** Please describe the  
13 petitioner's objectives in revising its  
14 predecessor's site planning.

15 **MR. MOORE:** There's a number of factors  
16 and information that has come in since this project  
17 started. The first major factor was that in 2013 the  
18 County of Hawai'i Planning Department developed a  
19 plan for a road connection from Hawai'i Road to  
20 Kaiminani Drive.

21 **MR. YUEN:** Next slide, please.

22 **MR. MOORE:** So this was a new north-south  
23 connector that extends through the project area.  
24 The original plan had the --

25 **MR. YUEN:** Next slide, please.



1           **MR. MOORE:** The original plan had a loop  
2 road within the project area, and this Holoholo  
3 Street extension would have intersected with that  
4 loop road. The Planning Department asked and worked  
5 with the developer to see if they could redo their  
6 master plan to have that Holoholo Street extension  
7 go through as a through street rather than as  
8 intersection.

9           So the box on the right shows the  
10 conceptual plans in the black. It's the area in red  
11 where now the loop road would intersect into  
12 Holoholo rather than Holoholo intersecting into the  
13 loop road.

14           The developers agreed to do this, which  
15 required it to rethink its master plan, because that  
16 whole initial plan was based on this loop road with  
17 everything radiating off of it.

18           The other major factor that came in is the  
19 topographic work were limited development areas.  
20 The project owner decided to do a topographic, a  
21 detailed construction-grade topographic survey for  
22 the entire Phase 1 area, the 200 acres, at a two-  
23 foot contour. And what we found was that while we  
24 knew the property was steep, it was a lot steeper  
25 than had been anticipated.

1 Less than 10 percent of the project site  
2 has a slope of 5 percent, and 5 percent is pretty  
3 steep, when you really look at it. About a third of  
4 the project is over 15 percent, and with a  
5 significant portion of that over 20 percent in  
6 grade. So this area is very steep and difficult to  
7 work with.

8 The other key factor in this is that in  
9 working with HICDC for their affordable housing  
10 project area, we agreed to give a multi-family zone  
11 site. When HICDC -- and Mark's with us to talk  
12 about this in more detail -- looked at that site,  
13 that area was a great location on Hina Lani and the  
14 future Holoholo extension. The problem was that  
15 area exceeded 20 percent in slope.

16 So based on that assessment, the numbers  
17 just didn't work from a site work standpoint. It  
18 was unfeasible. So HICDC asked us to consider  
19 relocating the affordable housing site to what was  
20 kept in a park area, which was the broadest area of  
21 the property. And in order to make sure this  
22 housing project worked, we agreed.

23 So that required rethinking the park plan  
24 and all of the planning components in laying out the  
25 master plan.

1           **MR. YUEN:** Next slide, please.

2           **MR. MOORE:** So again, if I can go back to  
3 the Holoholo Street, the previous slide, let's find  
4 -- yes. Again, this slide is oriented a little  
5 differently. The first slide is in a north-south  
6 direction, so makai is to your left and the Kohala  
7 Waimea is to the right.

8           If you look at it, you'll see that  
9 Holoholo Street doesn't start within the project  
10 area. So that is the original plan, was to loop  
11 off, come off the existing loop road. And that  
12 slide to the right shows you the realigned  
13 configuration which we agreed. And again, it just  
14 changed how all of the roads work within the system.

15           Because of the steepness going straight  
16 mauka- makai, it became really difficult to -- just  
17 from a site planning standpoint.

18           **MR. YUEN:** Next slide. Next slide,  
19 please.

20           When did the petitioner complete its  
21 archaeological inventory survey, its data recovery  
22 plan, and its final preservation plans?

23           **MR. MOORE:** The archaeological inventory  
24 survey was completed in October of 2005. The SHPD,  
25 State Historic Preservation District's approval

1 occurred that year in October 2005. In addition,  
2 because of the findings in there, a burial treatment  
3 plan was required, a preservation plan was required,  
4 a data recovery plan was required.

5 This work was completed, and the data  
6 recovery plan was approved in 2006. The  
7 preservation plan was approved again in June of  
8 2006. The burial treatment plan, which required  
9 more coordination with the families, was approved in  
10 November of 2006. And the developer also undertook  
11 some data recovery work, and that report was  
12 completed in 2009.

13 **MR. YUEN:** Please describe how the  
14 location of the cultural sites and the historic  
15 Trail to the Sea have influenced the revisions to  
16 the site plan.

17 **MR. MOORE:** As you can see on the graphic,  
18 the areas in green are the open space areas. And  
19 again it's a little difficult to point out, but the  
20 area in the upper left is a really interesting  
21 occupational area as well as a water cave.

22 Excuse me, get my notes here.

23 There's two caves in there that served as  
24 a water source so people didn't have to go makai to  
25 collect water. There was gourds and drippings in

1 there, so they could just collect water and live in  
2 that area. There's a permanent habitation as part  
3 of that complex.

4 The area to the right, the upper green  
5 area, is -- they're portions of the Koahanaiki  
6 Homestead. The Koahanaiki Homestead extends in the  
7 area mauka of that as well. A whole number of  
8 homesteads were in that area. So all the homestead  
9 sites are being preserved.

10 Within the homestead side is the Road to  
11 the Sea trail, and you'll see that extending in a  
12 makai direction in a ribbon down to the green area.  
13 The green area is the new park area that was  
14 required, and the trail has been incorporated into  
15 that. The trail has been set aside as part of a 30-  
16 foot wide corridor, and that will be open to the  
17 public and incorporated as part of the  
18 archaeological sites.

19 The other sites in there are either  
20 burials or preservation sites. And so part of this  
21 is that especially the burials, the cultural lineal  
22 descendants need access to that, so a road network  
23 has been set up to allow, make sure that those  
24 access points are allowed or are available as part  
25 of our burial treatment plan requirements.

1           **MR. YUEN:** Next slide, please.

2           Can you compare and describe the primary  
3 difference between the original site plan and the  
4 revised site plan?

5           **MR. MOORE:** The site plan to the left  
6 there is the original site plan that was -- we call  
7 it the conceptual plan that was included as part of  
8 the state land use boundary amendment. That same  
9 information was included in the county zoning.

10           The area, the plat to the right, is the  
11 current conceptual plan, or the current master plan  
12 for the site that was approved by the county. This  
13 new master plan was the one that incorporated the  
14 relocation of the Holoholo Street alignment, the  
15 relocation of the affordable housing project site,  
16 as well as addressing the archaeology.

17           The zoning areas and boundaries are being  
18 respected, so there's no change to the zoning areas.  
19 So it's consistent.

20           The major difference is the road network.  
21 And again, when we relocated Holoholo Street, which  
22 -- and the agreement with the county in this revised  
23 master plan is that Holoholo Street is a collector  
24 road. It's a major north-south connector. This  
25 road will be developed with applicable standards and

1 dedicated to the county as part of the project area.

2 So this will be a public road.

3 And then the major intersections with Hina  
4 Lani have not changed, so in terms of the  
5 configuration, well, the internal road network has  
6 changed a little bit, are actually changed.

7 The major intersection points with Hina  
8 Lani, the Holoholo-Kealaka'a Street intersection,  
9 and the access point to the current development  
10 proposals are the same -- approximately the same, or  
11 actually the same locations. So the changes have  
12 been, I think, incorporated into a way that's  
13 consistent with the original representations.

14 **MR. YUEN:** Please describe how the budget  
15 will comply with existing planning and zoning  
16 controls.

17 Next slide.

18 **MR. MOORE:** The Kaloko Heights project  
19 continues to be a residential mixed single-family  
20 and multi-family residential project, again  
21 consistent with the representations.

22 As I stated, the zoning boundaries have  
23 been respected, so we have a mix of larger lots at  
24 the top, minimum 15,000 square feet, minimum 10,000  
25 square feet lots in the middle section, minimum

1 7,500 square foot lots in the lower section. The  
2 multi-family locations are the same, located along  
3 the Hina Lani Street frontage.

4 As I said, the overall road network is  
5 consistent. The Hina Lani Street improvements have  
6 been set aside and constructed and dedicated to the  
7 county. Again, the internal road networks have  
8 changed, but the intersection points with Hina Lani  
9 have not changed.

10 The project has completed its offsite  
11 infrastructure requirements in terms of the water  
12 improvements, construction and dedication of a  
13 million- gallon reservoir, the construction of water  
14 lines within Hina Lani Street and from the reservoir  
15 to Hina Lani Street that services not just this  
16 project but the region.

17 And we have completed -- or the plan  
18 incorporates the park requirements that were  
19 required by the county and as represented to the  
20 Land Use Commission.

21 **MR. YUEN:** When did the current owner  
22 acquire the project?

23 Next slide.

24 **MR. MOORE:** So petitioner acquired the  
25 project in 2013 under a purchase and sale agreement



1 as a result of a financial workout involving the  
2 prior developer, which was a result of the market  
3 fracas and the bank failures in 2008 and 2009.

4 **MR. YUEN:** Please describe the prior  
5 petitioner's efforts to develop the project through  
6 the end of 2012, before the current owner acquired  
7 the project.

8 **MR. MOORE:** So as part of the due  
9 diligence work, I had to go back and look at the  
10 history of activities here. So as indicated --

11 **MR. YUEN:** Next slide.

12 **MR. MOORE:** This project started really  
13 with the Land Use Commission approval of the  
14 boundary amendment, followed the next year by the  
15 zoning approval by the County of Hawai'i, or again  
16 for the original project concept.

17 The prior developers completed the  
18 construction of Hina Lani Street, again providing a  
19 major link, a mauka-makai link. It constructed, as  
20 I indicated earlier, the intersection improvements,  
21 offsite intersection improvements at Hina Lani  
22 Street/Hawaii Belt Road, completed the reservoir  
23 tanks, dedicated the reservoir site.

24 The project, as part of regional  
25 development water agreements, secured the water

1 commitments for almost 600,000 gallons of water. It  
2 paid for these water commitments, so these are  
3 secure, which allows up to 1,500 residential units,  
4 100 of which have been assigned to the affordable  
5 housing project.

6 The project also, again in advance of its  
7 requirements, constructed an electrical substation,  
8 a 10- megawatt substation. And the development is  
9 going through the process to secure the necessary  
10 archaeological approvals, including the inventory  
11 survey, the burial treatment plan approval, the  
12 preservation plan approval, and the mitigation and  
13 monitoring approval.

14 **MR. YUEN:** To your knowledge, Mr. Moore,  
15 did this project require an environmental impact  
16 statement or environmental assessment in 1983?

17 **MR. MOORE:** No. The project did not, nor  
18 has there been any subsequent activity that has  
19 triggered the requirements for an environmental  
20 assessment.

21 As you may be aware, there are certain  
22 activities that require an environmental assessment  
23 in compliance with Chapter 343. None of those have  
24 been triggered by this development, so there has not  
25 been an environmental assessment or environmental

1 impact statement prepared for the project.

2 **MR. YUEN:** That's for the entire project.

3 **MR. MOORE:** For the entire project. Yes.

4 **MR. YUEN:** Now, an environmental  
5 assessment was prepared recently for a portion of  
6 the project; wasn't there?

7 **MR. MOORE:** Yes. And I think Mr. Kato  
8 will speak to this, but as part of the affordable  
9 housing project, there were state moneys being used  
10 for that project. So as part of that, an  
11 environmental assessment was prepared, and that in  
12 fact looked at a lot of the issues and concerns  
13 raised by this.

14 **MR. YUEN:** When was that document  
15 prepared?

16 **MR. MOORE:** I'm not sure exactly. I think  
17 in 2019, 2020.

18 **MR. YUEN:** Okay. We'll get that with Mr.  
19 Kato, then. That's all my questions. Thank you.

20 **VICE-CHAIR CABRAL:** Thank you. Please  
21 stay for other questions.

22 Okay. County of Hawai'i, do you have any  
23 questions at this time of our, I guess, witness  
24 testifier?

25 **MS. CAMPBELL:** Thank you. The county

1 doesn't have any questions for Mr. Moore.

2 **VICE-CHAIR CABRAL:** Okay. Office of  
3 Planning and Sustainable Development, any questions?

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

5 **VICE-CHAIR CABRAL:** Okay. Commissioners,  
6 questions of Mr. Moore?

7 Commissioner Atta?

8 **COMMISSIONER ATTA:** I was just wondering.  
9 You folks have done a lot of work for the project,  
10 but why you have not spoken to the other people?  
11 I'm just wondering.

12 **MR. MOORE:** I'm sorry. Just to be -- a  
13 lot of the trigger work was related to the HICDC  
14 project because of an environmental assessment. So  
15 they had to go back and look at it.

16 A critical part of that was that, I think,  
17 they were looking at federal funds, so they had to  
18 do a NEPA 343 assessment, which brought in a  
19 different level of review in terms of archaeology  
20 and endangered species and the like. But that was  
21 just for -- that wasn't for this overall project.  
22 That was because of the financing requirements for  
23 the HICDC project.

24 **VICE-CHAIR CABRAL:** Commissioners, any  
25 other questions?

1 Mr. Okuda?

2 **COMMISSIONER OKUDA:** Thank you, Ms. Chair.  
3 This is Gary Okuda.

4 Mr. Moore, when the project was first  
5 envisioned, how was sewage to be disposed of?

6 **MR. MOORE:** The representations to the  
7 Land Use Commission is that sewer was to be disposed  
8 of by cesspools.

9 **COMMISSIONER OKUDA:** Right. And because  
10 cesspool use is either frowned upon or illegal --

11 **MR. MOORE:** It's illegal.

12 **COMMISSIONER OKUDA:** -- that's not what's  
13 going to happen now; correct?

14 **MR. MOORE:** Absolutely not. Our next  
15 witness will speak to the activity since then.

16 **COMMISSIONER OKUDA:** Okay. Well, you know  
17 --

18 **MR. MOORE:** I'm happy to talk about it.

19 **COMMISSIONER OKUDA:** Because we don't need  
20 -- or I don't need the technical answers unless --  
21 or technical issue, but the bottom line is there is  
22 -- is it contemplated to have a sewer connection to  
23 a county sewer system?

24 **MR. MOORE:** A sewer line is under  
25 construction.

1           **COMMISSIONER OKUDA:** And that will be  
2 connected to a government facility.

3           **MR. MOORE:** To the Kealakehe Wastewater  
4 Treatment facility. So the sewer line will extend  
5 down Hina Lani and then to Ane Keohokalole and to  
6 tie in to the sewer line, in fact, right in front of  
7 this building here.

8           **COMMISSIONER OKUDA:** Yeah, you know, under  
9 HRS 343-5(A), and specifically this case called  
10 Umberger, U-m- b-e-r-g-e-r, versus Department of  
11 Land and Natural Resources that's found at 140  
12 Hawai'i 500, pages 515, 516 -- the Pacific Third  
13 citation is 403 P.3d 277, page 292, 293, which is a  
14 2017 Hawai'i Supreme Court case -- if there's going  
15 to be a sewer connection to a government facility,  
16 the Supreme Court has said that's a 343 trigger.

17           **MR. MOORE:** Yes. And as part of the HICDC  
18 project, they were required to either build an  
19 onsite sewer plant or to connect. So their EA did a  
20 full assessment of the connection to the sewer line.  
21 So that was included in their EA, so the 343  
22 requirements for the sewer line have been fully  
23 analyzed and assessed as part of the HICDC project,  
24 which was one of the alternatives for sewer  
25 treatment facilities for their development.

1           **COMMISSIONER OKUDA:** Yeah. But this sewer  
2 line is also going to or is intended to serve your  
3 project; correct?

4           **MR. MOORE:** The sewer line actually has to  
5 be sized to address all of the zoned lands along the  
6 sewer build project, so yes, it was -- it had to be  
7 sized under the county requirements to accommodate  
8 the project.

9           **COMMISSIONER OKUDA:** Well, just to make it  
10 clear, the sewage that's going to come off of your  
11 residential development is going to be put into that  
12 line; right? I mean, you're not going to dump it  
13 out on the ground; correct?

14           **MR. MOORE:** Oh, no. That line has been  
15 sized to service the HICDC project and the Kaloko  
16 Heights project.

17           **COMMISSIONER OKUDA:** Yeah. So just so  
18 that the record is clear, the sewage coming off of  
19 the toilets that are going to be located in the  
20 dwellings of your development, that stuff that goes  
21 in those toilets are going to end up in that line;  
22 correct?

23           **MR. MOORE:** That's correct.

24           **COMMISSIONER OKUDA:** And so isn't there at  
25 least some argument to be made that under 343-5(A)

1 HRS and under the Umberger case which I gave  
2 citation to, that there's at least some argument  
3 that there's a 343 trigger that applies to your  
4 development; correct? I mean, there's at least an  
5 argument that can be made.

6 **MR. MOORE:** The sewer line is completely  
7 offsite to the project, so we believe does the sewer  
8 line need to be assessed? Absolutely. No question  
9 about it for 343. And we believe that it was done,  
10 and that's that environmental assessment was  
11 approved and had a finding of no significant impact.

12 **COMMISSIONER OKUDA:** Okay. Well, I'm just  
13 looking at whether the requirements of 343 are  
14 triggered, because if they're triggered, then you  
15 have to go through this process. So I'm not talking  
16 about the process or what the ultimate result of the  
17 process is. But there's an argument to be made that  
18 with respect to your development as it's now  
19 constituted or as it's now being proposed, there's a  
20 343 trigger; correct?

21 **MR. MOORE:** We do not believe so.

22 **COMMISSIONER OKUDA:** Whether you believe  
23 it or not, because in the end, you know, my belief  
24 is probably not going to make a difference, and  
25 maybe your belief is not going to make a difference.



1 The belief that's going to make a difference is if  
2 somebody files a lawsuit and the Supreme Court of  
3 Hawai'i makes a decision.

4 And as you know, or do you agree, based on  
5 your experience, that, frankly, in environmental  
6 cases the Hawai'i Supreme Court has made it very  
7 clear that individuals have standing to bring these  
8 lawsuits. So virtually anyone in the community can  
9 file a lawsuit. That's why I'm asking about it.

10 There is a potential argument to be made  
11 here. Whether you believe it, whether I believe it,  
12 there's a potential argument that because your  
13 development is going to dump human waste into a  
14 government sewer line, that HRS 343 is triggered;  
15 correct? There's an argument that can be made.

16 **MR. MOORE:** Well, yes, an argument can be  
17 made at any level. Right. Yes.

18 **COMMISSIONER OKUDA:** Wouldn't it make  
19 sense that if you believe that you have a good  
20 project here, wouldn't it make sense to comply with  
21 343 and not wait for another five or six years for  
22 the Supreme Court to possibly tell you that you  
23 forgot to do something really important, like do an  
24 environmental assessment or, you know, who knows, an  
25 environmental impact statement? Wouldn't that make

1 better sense than gamble?

2 **MR. MOORE:** In terms of the sewer line,  
3 absolutely agree with you in terms of the need for  
4 an assessment of that. That was done. There was an  
5 assessment done for the sewer line and the impacts  
6 based on the full sewer flow from the project going  
7 into the Kalakehe Wastewater Treatment Plant.

8 **COMMISSIONER OKUDA:** Okay. And let's talk  
9 now about the affordable housing condition. The  
10 affordable housing condition is governed by a Land  
11 Use Commission order that was entered November 22,  
12 2016. And just for completeness of record, the name  
13 of that order is Order Granting in Part and Denying  
14 in Part Petitioner's Motion for an Order Regarding  
15 Satisfaction of Affordable Housing Condition;  
16 correct? That's the governing order.

17 **MR. MOORE:** That's correct.

18 **COMMISSIONER OKUDA:** And in fact, the  
19 order requires, and I quote -- in fact, let me start  
20 here. It says, quote, "Petitioner shall provide  
21 housing opportunities for low- and moderate-income  
22 residents by offering for sale or rental on a  
23 preferential basis on its own or in cooperation with  
24 both the Hawai'i Housing Finance and Development  
25 Corporation ('HFDC') and the County of Hawai'i

1 affordable housing units equivalent to 10 percent of  
2 the lots and residential units to be developed in  
3 the petition area." And then it continues on.

4 Did I accurately read the requirement of  
5 that order?

6 **MR. MOORE:** That's my understanding. Yes.

7 **COMMISSIONER OKUDA:** Okay. As of today,  
8 have any rental or any type of housing units been  
9 offered for sale or rental in compliance with this  
10 order?

11 **MR. MOORE:** There has not been any  
12 development on this property, so nothing has been  
13 offered for sale or rent on this property.

14 **COMMISSIONER OKUDA:** How many units would  
15 have to be offered based on your anticipated number  
16 of units to be developed in the petition area?

17 **MR. MOORE:** The current master plan for  
18 Phase 1 calls for approximately 521 units. So under  
19 that, 52 affordable units would need to be provided.  
20 The total development is 1,300 -- approximately  
21 1,300 units. So again, 130 affordable units would  
22 need to be provided for full buildout of Phases 1  
23 and 2.

24 **COMMISSIONER OKUDA:** Okay. And, you know,  
25 part of the problem I personally -- or not a

1 problem, but one of the issues I personally have is  
2 this project goes back -- or the approval, the  
3 boundary amendment order, goes back 40 years;  
4 correct?

5 **MR. MOORE:** Yes.

6 **COMMISSIONER OKUDA:** And initially, the  
7 initial findings of fact, conclusions of law, and  
8 decision entered in -- what was that, 1983 --  
9 provided that title to the property could not be  
10 transferred by the owner unless and until the  
11 affordable housing requirements were satisfied;  
12 correct? That was the original provision.

13 **MR. MOORE:** Again, that was before my  
14 time, but that was, yes, that was my understanding  
15 of the original condition, which has been -- was the  
16 commission agreed to delete that condition.

17 **COMMISSIONER OKUDA:** Yeah. It was agreed  
18 to delete it, and it seems to be based on  
19 representation A. Give us a break; we're going to  
20 put up the affordable housing. And here we are 40  
21 years later, and there's no affordable housing.

22 Let me ask the bottom line question here.  
23 What assurance do we on the commission -- or  
24 frankly, anyone in the community have that if we  
25 grant any of the relief that's granted here, even

1 ignoring the potential environmental impact  
2 statement or environmental assessment requirement, I  
3 mean, ignoring all of that, which is a real big  
4 thing to ignore, what's the assurance we're going to  
5 have the affordable housing even built?

6 **MR. MOORE:** With all due respect, I would  
7 really like to defer that question to our next  
8 witness, who is the affordable housing developer.

9 **COMMISSIONER OKUDA:** I know, but you as a  
10 professional planner with your experience in  
11 government, your experience in housing, can you tell  
12 us what is the assurance that you could give us that  
13 this affordable housing is going to be built?

14 **MR. MOORE:** The project is under  
15 construction, so they have financing, they have all  
16 of the work. They've actually started construction  
17 on the work. There's pictures of it taken this  
18 morning of the contractors onsite starting  
19 construction of that project.

20 **COMMISSIONER OKUDA:** Would the developer  
21 be willing to post a bond to assure the community  
22 that this affordable housing is actually going to be  
23 built?

24 **MR. MOORE:** The affordable housing,  
25 basically, we have to have the units built in order

1 for us to do anything. So the assurance there is we  
2 have to have these units done in order for us to  
3 sell a lot. So, you know, the impact is we need it,  
4 so the assurances are there in how the condition is  
5 written right now. We have to have the housing.

6 **COMMISSIONER OKUDA:** Yeah. Well, there's  
7 been 40 years of assurances.

8 Let me ask this question, then. And this  
9 probably will be my final question. Besides just us  
10 just being assured by you folks or the developer  
11 that this affordable housing will be built, besides  
12 just, you know, let's take our word for it and we're  
13 going to be good for our word, what can make us on  
14 the commission and the community sleep a little  
15 easier that the affordable housing in fact will be  
16 built? What more than just words can we rely on?

17 **MR. MOORE:** The reliance to me is that it  
18 is under construction. The finance is there. The  
19 activities are ongoing. The contracts are in place.  
20 The money is there. They're rocking and rolling on  
21 that right now. It's just -- it's pretty amazing. I  
22 mean, the project is up the street.

23 And again, Mr. Kato can speak more to  
24 really the financial consequences of what happens if  
25 it doesn't get built. You know, again, it's --

1 there's -- I don't even know the total cost of the  
2 project, but it is significant.

3 **COMMISSIONER OKUDA:** Okay. Thank you. I  
4 have no further questions.

5 **VICE-CHAIR CABRAL:** Okay. Thank you.  
6 Commissioners, any other questions of Mr.  
7 Moore?

8 Commissioner Ohigashi, questions? We're  
9 going to take a break right after this.

10 **COMMISSIONER OHIGASHI:** This is a request  
11 for an extension of time to allow you to complete  
12 Phase 1 so that you can go on to Phase 2.

13 **MR. MOORE:** That is correct.

14 **COMMISSIONER OHIGASHI:** So what happens if  
15 we do not give you the extension of time? Will you  
16 continue to develop Phase 1?

17 **MR. MOORE:** Absolutely. Absolutely.

18 **COMMISSIONER OHIGASHI:** So. And will you  
19 continue to develop the amount of housing,  
20 affordable housing, that is going on right now?

21 **MR. MOORE:** Yes. So the 100-unit project,  
22 the project developer, petitioner, no longer owns  
23 that property. That was deeded to HICDC, and under  
24 the deed, if HICDC doesn't proceed with the project,  
25 that land goes to the county. So that is forever

1 assured as a county development project, so that  
2 project will happen independent of whatever else  
3 happens.

4 **COMMISSIONER OHIGASHI:** Now, according to  
5 your testimony, there's about 1,300 units total for  
6 Phase 1 and Phase 2. Assuming that we grant you an  
7 extension, you would owe 30 more houses; isn't that  
8 right?

9 **MR. MOORE:** The condition requires a total  
10 of 130, yes, so depending on the final master plan.

11 **COMMISSIONER OHIGASHI:** Right. And so the  
12 30 more houses, where would it be built and what  
13 plans are there to ensure that that portion of the  
14 condition is being met?

15 **MR. MOORE:** The condition is in order for  
16 us to do more than whatever housing gets built, we  
17 have to have the housing in place. So the condition  
18 has an internal mechanism. We can't build 1,300  
19 houses and then retroactively provide 30 houses. We  
20 have to do that as we go on.

21 **COMMISSIONER OHIGASHI:** No. According to  
22 the 10 percent, you can build another 5,000, or what  
23 was it now, another 500 or 600 houses based on that  
24 100. So what I'm trying to get at is that if we do  
25 extend your time, is this all the housing we're



1 going to get, or are we going to get the 30 more?

2 In other words are you going to  
3 restructure Phase 2 so that you limit yourself  
4 within the 100 units, or are we going to get any  
5 more?

6 **MR. MOORE:** The condition will be complied  
7 with. That's the best we can do. So again, first of  
8 all, in terms of Phase 2, just as in Phase 1, the  
9 current density was based on the conceptual plan, so  
10 there's a whole bunch of planning work, so the  
11 densities may or may not be reduced.

12 And the affordable housing requirements,  
13 again we'll continue to work with the agencies, but  
14 in order to build beyond whatever affordable units  
15 we have, we have to have those units in place. So  
16 whether we do them onsite, we do them as part of  
17 Phase 2, there is a little area that's possibly --  
18 that could be provided to the current HICDC  
19 developer for some additional development.

20 So there's a number of options that we're  
21 not sure exactly how that's going to play out, but  
22 that will be done. Again, under the conditions we  
23 have to have those in place in order to proceed  
24 beyond whatever units we have approved.

25 **COMMISSIONER OHIGASHI:** Maybe Mr. Kato

1 will be able to answer this one. My final question  
2 is is your contribution limited to the payment of  
3 land and the existing infrastructure that you cited  
4 that you've done? Has there been any additional cash  
5 or payments made towards the development of these  
6 other? Because you did mention that state financing  
7 is involved.

8 So I'm just wondering if this is your  
9 project or is it going to be part of the taxpayers'  
10 project so that I'm part of paying for me, your  
11 requirement.

12 **MR. MOORE:** Well, you know, again the  
13 affordable housing is a very complex project, and  
14 Mr. Kato can speak to that. In terms of other  
15 contributions to the project, one of their real  
16 costs and delays and issues and concerns of the  
17 natural park was the impacts of an onsite wastewater  
18 treatment plant.

19 So the developer has agreed to construct  
20 the sewer line. And again, the financing for that  
21 sewer line is -- the project is not required to pay  
22 anything for that sewer line, so they're getting  
23 this as a pro bono, basically. The sewer line will  
24 be paid for 100 percent by the project developer  
25 through the community facilities district financing

1 tool.

2 **COMMISSIONER OHIGASHI:** So the benefit  
3 goes to the entire project; right?

4 **MR. MOORE:** The benefit goes to the entire  
5 project, but the benefit goes to the community with  
6 the 100-unit affordable rental project.

7 **COMMISSIONER OHIGASHI:** All right. That's  
8 all.

9 **VICE-CHAIR CABRAL:** Okay. Thank you,  
10 Commissioner Ohigashi.

11 Any other comments, commissioners?

12 Okay. Commissioner 'Ohelo?

13 **COMMISSIONER KAMAKEA-'OHELO:** Aloha, Mr.  
14 Moore. I guess just to clear up the confusion that I  
15 may have. So you've testified that the HICD project  
16 is a ten-acre scheduled out for 100 units; correct?

17 **MR. MOORE:** That's correct.

18 **COMMISSIONER KAMAKEA-'OHELO:** And then  
19 because of that development, it triggered the need  
20 for sewage, which triggered the need for an EA;  
21 correct?

22 **MR. MOORE:** No. The project is utilizing  
23 state funds, basically, so that was the trigger for  
24 the -- the primary trigger for the environmental  
25 assessment.

1 The secondary trigger was if they were  
2 looking at an onsite wastewater treatment plant,  
3 then that would have been a separate trigger. So in  
4 lieu of onsite treatment, the project looked at the  
5 sewer line extension.

6 **COMMISSIONER KAMAKEA-'OHELO:** Okay.  
7 Mahalo. So in that sense, the EA reflects the  
8 buildout of 100 units; correct?

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

10 **COMMISSIONER KAMAKEA-'OHELO:** So not  
11 inclusive of the 1,300 units that is proposed in  
12 this petition area.

13 **MR. MOORE:** In terms of the overall  
14 impact, in terms of the sewer line, that was enough.  
15 It looked at the entire project, because the sewer  
16 line would have to be sized to take care of the  
17 entire project. But the EA was looking at that 10-  
18 acre site. The HICDC project was looking at their  
19 development in terms of the environmental  
20 assessment.

21 **COMMISSIONER KAMAKEA-'OHELO:** Okay.

22 Mahalo, chair. No further questions.

23 **VICE-CHAIR CABRAL:** Thank you very much.

24 Any other questions of Mr. Moore?

25 Right. Mr. Yuen, did you want to do any

1 type of rebuttal at this time on his comments, or  
2 are we able to proceed forward?

3 **MR. YUEN:** We'll go with the next witness.

4 **VICE-CHAIR CABRAL:** Thank you very much.

5 Before we go to Mr. Kato as our next witness, I  
6 would like to go ahead and take a 10-minute break.  
7 Okay. Thank you very much. Returning at 11:10.

8 **(Recess taken 10:56 - 11:11 a.m.)**

9 **VICE-CHAIR CABRAL:** Okay. Let me call us  
10 back together, and I'll go back to petitioner. Mr.  
11 Yuen, did you want to want to have your second  
12 witness come forward here?

13 **MR. YUEN:** Our next witness is Keith Kato.

14 **VICE-CHAIR CABRAL:** Mr. Kato, may I go  
15 ahead and swear you in?

16 **MR. KATO:** Sure.

17 **VICE-CHAIR CABRAL:** Do you swear that the  
18 testimony that you're about to give is the truth?

19 **MR. KATO:** Yes.

20 **MR. YUEN:** Please state your name and  
21 address for the record.

22 **MR. KATO:** My name is Keith Kato. I'm the  
23 executive director of Hawai'i Island Community  
24 Development Corporation. My address is 100 Pauahi  
25 Street, Suite 201, Hilo 96720.

1           **MR. YUEN:** What's HICDC's purpose and your  
2 role in the organization?

3           **MR. KATO:** HICDC is a nonprofit  
4 organization that was initially set up by the County  
5 of Hawai'i to build affordable housing. So the  
6 purpose is to support affordable housing for Big  
7 Island residents who are in the low- and moderate-  
8 income categories.

9           **MR. YUEN:** Can you describe the agreement  
10 between RCFC Kaloko Heights, LLC and HICDC?

11           **MR. KATO:** Sure. Kaloko Heights -- RCFC,  
12 I should say -- approached us here to basically  
13 build affordable housing at their site. We've been  
14 doing -- we have been doing apartment projects on  
15 the island, and we've been doing self-help housing  
16 on the island for several years. So far we've built  
17 over 800 units on the island, all of them for low-  
18 income residents.

19           So RCFC approached us to go ahead and do  
20 that, and what RCFC said was they would provide us  
21 with the land, water, you know, to carry out the  
22 project, provided that we carry out the project to  
23 completion.

24           **MR. YUEN:** Would you please put up the  
25 next slide?

1 Other than the donation of land and the  
2 water credits, what other assistance has RCFC  
3 provided to HICDC to allow the project to be built?

4 **MR. KATO:** Well, the other assistance,  
5 which is very significant, is the extension of the  
6 sewer line up to the property. Our plan was we were  
7 initially thinking that we may end up having to do a  
8 sewer treatment plant onsite.

9 You know, the fact that this line is being  
10 extended up to the property and connect to the  
11 Kealakehe Treatment Plant saves us, you know,  
12 considerable amount of money in terms of  
13 construction costs as well as all the operating  
14 issues that come with owning a sewage treatment  
15 plant.

16 **MR. YUEN:** Can you please describe the  
17 Kaloko Heights affordable housing project, including  
18 the number and types of units to be offered?

19 **MR. KATO:** Yes. It's a 100-unit project,  
20 of which 99 units will be, you know, affordable, and  
21 one manager's unit. The units are two- and three-  
22 bedroom apartments. So the two- and three-bedroom  
23 apartments, you know, it's housing six residential  
24 buildings. We have a community building in addition  
25 to that, and some recreational areas. We have

1 planned a basketball court, you know, play areas,  
2 and then the way the project is designed is like  
3 smaller play areas in front of each building.

4 **MR. YUEN:** Can you just give us  
5 information on what you've done to develop this  
6 affordable housing project since HICDC donated the  
7 land to you in 2017?

8 **MR. KATO:** Yeah. We've gone through a  
9 number of steps. We started with seeking a rezoning  
10 for the site that we are building on now. You know,  
11 originally it was zoned open, because it was  
12 supposed to be park. But we just felt that the site  
13 that was -- the other site that was available was  
14 just too steep, so we asked to be able to use this  
15 site. And RCFC agreed, but we had to take it  
16 through the zoning process.

17 We've done an environmental assessment on  
18 the state and federal level. We have done the  
19 archaeological inventory update which, you know,  
20 discovered actually some additional sites. We've  
21 successfully completed a preservation plan that was  
22 accepted by SHPD in 2021. And there was a burial  
23 treatment plan that was also, you know, passed  
24 through the Burial Council and accepted by SHPD  
25 later that year.



1 We did the design of the project all the  
2 way through the construction drawings. I might want  
3 to point out that the archaeological sites actually  
4 caused us to reconfigure the site plan a bit.

5 It's kind of hard to see, but if you look  
6 at the picture there in the middle -- if you could  
7 enlarge it, that would help. So you see the middle  
8 -- starting at the bottom, I guess, the middle of  
9 the project, you see there's a kind of a white space  
10 running mauka. That's really the trail, or a buffer  
11 for the trail. It will cross -- we have one  
12 crossing which will go through the parking lot, and  
13 then the trail continues on up, you know, until it  
14 hits the Holoholo Street extension right-of-way.

15 On the right side of the trail, there's a  
16 kind of a circular feature. That's a burial, or the  
17 burial preserve. And on the left side, almost  
18 adjacent to Holoholo Street, you know, that's where  
19 we found the cave area that the archaeologists, you  
20 know, concluded was significant.

21 So because we had all of those features  
22 kind of in close proximity, we just decided to  
23 create a larger preservation area to tie them all  
24 in, to tie them all together. Let me put it that  
25 way.

1 But, you know, doing that means we had to  
2 eliminate one driveway and, you know, readjust  
3 things, so it did take a little bit of time to do  
4 that.

5 We were also able to get all of our  
6 permits, building permits, grading permits. And  
7 during that period we also applied for and received  
8 75 units of project-based Section 8 vouchers. So  
9 this is, you know, vouchers that stay with the  
10 project. And the real benefit is that the tenants  
11 would pay based on their income, you know, those 75  
12 units. So, you know, we are going to end up serving  
13 a very low-income community, I believe.

14 And finally, here we put all of the other  
15 financing together. This is a \$54 million project  
16 that's being substantially supported by the state of  
17 Hawai'i's HHFDC rental housing revolving fund.  
18 We're also getting lower income housing tax credits,  
19 federal and state, which is being converted into \$30  
20 million of private equity. And we'll also have a  
21 long-term loan on the project.

22 So it's -- you know, that's what we've  
23 been doing, I guess, you know. And this end, we  
24 were able to close our financing March 30. We  
25 issued a notice to proceed to the contractor as of

1 April 5, and the completion is October 1, 2024.

2 **MR. YUEN:** When did you do the  
3 environmental assessment for this project?

4 **MR. KATO:** Well, it started almost  
5 immediately, but I think we got the final acceptance  
6 of the FONSI in 2019.

7 **MR. YUEN:** Okay. And did the  
8 environmental assessment study both the project and  
9 the sewer line?

10 **MR. KATO:** Right.

11 **MR. YUEN:** Getting back to your timeline,  
12 so financing and the construction contract are both  
13 in place for the entire affordable housing project;  
14 is that correct?

15 **MR. KATO:** Yes.

16 **MR. YUEN:** And you're under construction.

17 **MR. KATO:** Yes.

18 **MR. YUEN:** Did the contractor post a bond  
19 for completion of the project?

20 **MR. KATO:** Yes.

21 **MR. YUEN:** Upon project completion, what  
22 income levels of tenants will this project serve in  
23 relation to median income?

24 **MR. KATO:** Okay. On the regulatory side,  
25 10 units will be set aside for 30 percent of the

1 area median income and below. Then another 65 units  
2 will be for 50 percent of the area median income and  
3 below. And the remaining 24 will be up to 60  
4 percent.

5 **MR. YUEN:** How long after project  
6 completion do you think it will take to achieve full  
7 occupancy?

8 **MR. KATO:** Given the rental assistance  
9 that we have, we believe we will be fully rented up  
10 at about three months.

11 **MR. YUEN:** Given your testimony regarding  
12 your proposed construction schedule, do you  
13 anticipate completing construction of the project  
14 and occupancy before January of 2026?

15 **MR. KATO:** '26?

16 **MR. YUEN:** Yes.

17 **MR. KATO:** Yes.

18 **MR. YUEN:** Is there anything you'd like to  
19 add about your affordable housing project?

20 **MR. KATO:** I'd just like to say that I  
21 think this will be a terrific project for Kona.  
22 It's got -- you know, the Bank of Hawai'i is a major  
23 investor in this project, and they commissioned  
24 their own market study. And they concluded that of  
25 the kind of income categories that we're aiming at,

1 there's an island-wide need for something like -- a  
2 demand for 7,700 units.

3 The island-wide supply of this kind of  
4 project is really about 2,200 units. So there's a  
5 tremendous need for more of these kinds of units.  
6 If we could build another 50 of them, I think  
7 that'll be great, but, you know, it takes a lot of  
8 resources to do that.

9 **MR. YUEN:** Thank you. I have no further  
10 questions.

11 **VICE-CHAIR CABRAL:** Okay. Thank you.  
12 County of Hawai'i, any questions?

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

14 **VICE-CHAIR CABRAL:** Office of Planning and  
15 Sustainable Development, any questions of Mr. Kato?

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

17 **VICE-CHAIR CABRAL:** Okay. Commissioners,  
18 questions of Mr. Kato?  
19 Commissioner Yamane?

20 **COMMISSIONER YAMANE:** Thank you, Madam  
21 Chair.

22 Thank you, Mr. Kato. Just a quick  
23 question. The FONSI for the EA that you're  
24 referring to, that was specifically only for the  
25 affordable housing project; correct?

1           **MR. KATO:** Right. The affordable housing  
2 project. And we also discussed the alternatives of  
3 the sewer line or a sewage treatment plant on site.

4           **COMMISSIONER YAMANE:** Okay. Thank you.  
5 No further questions.

6           Thank you, Madam Chair.

7           **VICE-CHAIR CABRAL:** Okay. Other  
8 commissioner questions?

9           Okay. Mr. Kato, I have some questions.  
10 I've met you before and I previously was involved  
11 with managing affordable housing units and projects.  
12 So can you tell me what people are eligible to apply  
13 for this aside from their economic, like,  
14 geographical? Is there a limitation or an  
15 attraction to different geographical requirements or  
16 anything for someone to be able to apply or to  
17 obtain housing in this project?

18           **MR. KATO:** No. No, there is -- it is  
19 basically, well, it is they need to qualify on the  
20 income side, and we do -- we go through a typical  
21 background check and review. But there's no  
22 geographical limits on this.

23           **VICE-CHAIR CABRAL:** So in regard to that,  
24 then, I would understand -- or am I correct in  
25 assuming that you will have some type of a waiting

1 list that tenants would be waiting for a unit to  
2 become available once they are all occupied?

3 **MR. KATO:** Right.

4 **VICE-CHAIR CABRAL:** Is it open to people  
5 that are, let's say, in the mainland? Could they be  
6 put onto that waiting list or apply and be put on  
7 that waiting list and then become qualified to move  
8 over and move into that unit?

9 **MR. KATO:** The answer is yes.

10 **VICE-CHAIR CABRAL:** Okay. Okay. So that  
11 means that if people applied, and if the waiting  
12 list is on your date of application, is that the  
13 procedure for this type of housing?

14 **MR. KATO:** You know, I believe that HICDC  
15 is still carrying forward the requirement that we do  
16 a lottery. So, you know, the way to understand it,  
17 when you submit your initial application, you're  
18 going to be given essentially a lottery position,  
19 once they do the lottery. And then from there it  
20 really becomes who comes in with all the information  
21 that they need to apply.

22 **VICE-CHAIR CABRAL:** But that would be open  
23 to people if they're low income in that economic  
24 bracket, if they applied, sent in their information  
25 from the mainland, they potentially could move over

1 here and occupy the entire project at some point.

2 Is that possible?

3 **MR. KATO:** Well, I guess theoretically,  
4 but, you know, it's never happened. You know, all  
5 of our projects, no. Now, I'm not saying it's never  
6 happened that people from the mainland have moved  
7 in, but it's never happened that even a substantial  
8 amount of the units are occupied by people from the  
9 mainland.

10 Because what we do really is do the  
11 initial advertising by posting a sign on the site.  
12 So, you know, you kind of benefit if you're in the  
13 neighborhood, you might say. And, you know, word  
14 gets around. We don't really do any kind of  
15 extensive advertising. You know, people just --  
16 just know.

17 **VICE-CHAIR CABRAL:** Okay. Well, thank you  
18 very much. I do have a concern that, well, you will  
19 have built all of this affordable housing, and it  
20 will become occupied by folks from outside of  
21 Hawai'i geographical area. At this time we badly  
22 need housing. So thank you very much for the  
23 information.

24 Okay. Commissioner Ohigashi?

25 **COMMISSIONER OHIGASHI:** Just a thought



1 popped into my head. You mentioned that there are a  
2 lot of -- you found a lot of archaeological sites or  
3 things, like a coast trail. Was that a result in  
4 your environmental assessment and archaeological  
5 study? Or was it just happened upon?

6 **MR. KATO:** Well, no, it wasn't just  
7 happened upon. What happened was actually -- and I  
8 got this secondhand, but our archaeologist says that  
9 they were contacted by SHPD, and SHPD requested that  
10 they go back out and look at the sites that were  
11 previously identified.

12 So that's, you know, when we heard that,  
13 we told our archaeologist, yeah, go ahead and do  
14 that, you know, get out there and check that out.

15 **COMMISSIONER OHIGASHI:** And besides the  
16 sites that were previously identified, were there  
17 additional sites found?

18 **MR. KATO:** Well, that's kind of what  
19 happened, yeah. There was -- they discovered an  
20 additional platform, you know, that area that I was  
21 describing. And it's not like other platforms. You  
22 know, it's really a paved area. It's an interesting  
23 thing. It's like an a'a lava flow finger that, you  
24 know, came down, and they paved it with pahoehoe  
25 slabs, so I -- you know, which I think more readily

1 usable. And the archaeologist said that's pretty  
2 unique now, so it should be preserved.

3 So what happened was actually when we  
4 found -- you know, we were told that they found  
5 another site amongst the sites that were already  
6 identified, that we asked the archaeologist to go  
7 back out there, look at the areas that they didn't  
8 look at on the site.

9 **COMMISSIONER OHIGASHI:** Besides the paved  
10 area that you're talking about, was there any other  
11 archaeological sites that had not been previously  
12 identified that were found on that site?

13 **MR. KATO:** Well, there was one. There was  
14 a burial that was discovered.

15 **COMMISSIONER OHIGASHI:** And what was the  
16 reason why these sites were not previously  
17 identified, if you know?

18 **MR. KATO:** You know, I'm not sure. You  
19 know, I don't know what the state of the vegetation  
20 was when the first archaeologist went up. You know,  
21 that could have been a factor, or maybe they just,  
22 you know, weren't as careful. I don't know.

23 **COMMISSIONER OHIGASHI:** And the study that  
24 you were working on, what year was that done?

25 **MR. KATO:** Well, the initial one was 2005,

1 which was given to us, you know -- or not given to  
2 us, but we were handed a copy when we acquired the  
3 property.

4 **COMMISSIONER OHIGASHI:** Was that only for  
5 that site, or was that for the entire project?

6 **MR. KATO:** It was for -- I believe it's  
7 for the whole property. But to be honest with you,  
8 we just looked at the portion that was ours.

9 **COMMISSIONER OHIGASHI:** Yes. I understand  
10 that. I'm just trying to figure out if there were a  
11 lot of mistakes or a lot of unidentified that should  
12 have been taken care of, and whether or not  
13 additional studies should be done at this point in  
14 time to determine whether or not --

15 **MR. KATO:** Well, I can't speak to that,  
16 but I can just tell you that we have 11 acres, and  
17 they discovered two pieces.

18 **COMMISSIONER OHIGASHI:** Thank you.

19 **VICE-CHAIR CABRAL:** Commissioners, any  
20 other questions of Mr. Kato?

21 Okay. Commissioner Okuda?

22 **COMMISSIONER OKUDA:** Thank you, Ms. Chair.  
23 This is Gary Okuda.

24 Thank you for your explanation, Mr. Kato.  
25 Answers a lot of my questions. I have a question

1 that follows up on something Commissioner Ohigashi  
2 had asked previously.

3 It looks like one way, when we calculate  
4 the amount of affordable housing units that need to  
5 be built under the current applicable Land Use  
6 Commission order, we might be short maybe 30 units.  
7 Would your organization have the capacity, if the  
8 deal or agreement would be reached satisfactory to  
9 you, to maybe develop these additional 30 units or  
10 whatever additional units are needed to fully  
11 satisfy the Land Use Commission order? Or is this,  
12 like, the last project you folks are ever going to  
13 do on this side of the island?

14 **MR. KATO:** Oh, no. To be honest with you,  
15 there are also different projects on this side of  
16 the island. This is the biggest need area.

17 **COMMISSIONER OKUDA:** So you would be open,  
18 or your organization would be open to be approached  
19 by the developer or the petitioners here if there's  
20 a need to do something further to satisfy the  
21 current applicable Land Use Commission order;  
22 correct?

23 **MR. KATO:** Yeah. I gotta say we get  
24 approached by developers all the time, you know,  
25 because they don't know how to develop, you know,

1 affordable housing, or that's not what they do. I  
2 gotta say that RCFC has been the easiest to work  
3 with, you know. And to be honest with you, a lot of  
4 the developers come to us, and they said we want  
5 affordable housing, but they're still trying to  
6 figure out how they're going to make money out of  
7 that project. You know, there was none of that.

8 **COMMISSIONER OKUDA:** Yeah. Okay. Well,  
9 you know, not that it makes too much of a  
10 difference, but a good idea never takes place unless  
11 it can make money. I mean, you know, I have a lot  
12 of good ideas. They'll never make money, and that's  
13 why you'll never see any of my good ideas. So  
14 there's nothing wrong with making money as long as  
15 the Land Use Commission orders are followed; yeah?  
16 Okay. Thank you very much.

17 **VICE-CHAIR CABRAL:** Thank commissioners.  
18 Anyone else? All right.

19 Thank you, Mr. Kato.

20 **MR. YUEN:** My next witness is Mark Meyer.

21 **VICE-CHAIR CABRAL:** Thank you, Mr. Meyer.

22 May I swear you in?

23 **MR. MEYER:** Absolutely.

24 **VICE-CHAIR CABRAL:** Do you swear or affirm  
25 that the testimony that you are about to give is the

1 truth?

2 **MR. MEYER:** I do.

3 **VICE-CHAIR CABRAL:** Okay. Please state  
4 your name.

5 Oops. Mr. Yuen, take it over now.

6 **MR. YUEN:** Please state your name and  
7 address for the record, please.

8 **MR. MEYER:** I'm Mark Meyer. My address is  
9 401 Menlo Oaks Drive, Menlo Park, California.

10 **MR. YUEN:** Mr. Meyer, what is your role  
11 and responsibilities regarding the Kaloko Heights  
12 project?

13 **MR. MEYER:** I'm the development manager  
14 for the project, so I represent the owner. I work  
15 with the local team here and some other folks we  
16 have working around the country on the overall land  
17 planning, entitlement, everything it takes to take  
18 the project from where it was when we acquired the  
19 project to full buildout going forward.

20 **MR. YUEN:** Next slide, please? Next one.  
21 Okay.

22 Please describe the petitioner's planning  
23 and development activities between 2013 and 2016.

24 **MR. MEYER:** Yes. So this period comes at  
25 a time when RCFC acquired ownership of the property

1 through an agreement with the prior owner, who had  
2 fallen on hard times as a result of the 2008  
3 financial crisis.

4 So the primary activities were really to  
5 get in and conduct due diligence to figure out where  
6 does the property sit right now, what were the  
7 existing entitlements, the existing Land Use  
8 Commission orders, county zoning, the state of the  
9 market itself, what was going to make sense to  
10 build, on what kind of schedule was it going to make  
11 sense to build things.

12 There were water rights -- or water unit  
13 issues to be resolved to make sure that all the  
14 water was in place to be able to move forward. Some  
15 of the other things.

16 I guess there was a large million-gallon  
17 reservoir that was built as part of the entitlement  
18 requirements for this project that was in slight  
19 disrepair. It wasn't quite finished, so we had to  
20 come in and finish that up and put a new SCADA on  
21 it, do some other things to get that turned over to  
22 the county so that it would be functional.  
23 Finalized the water facilities payments.

24 Then we came in and started doing the hard  
25 work to get toward being able to develop the

1 property. Updated survey of the topography of the  
2 property, some just initial engineering assessments  
3 to understand the drainage, to understand the water  
4 requirements, understand where utilities were coming  
5 from, all that kind of stuff, dug into the  
6 architectural approvals and where we were with that,  
7 what we needed to do going forward.

8 And then, importantly, seeing that there  
9 was an affordable housing requirement that came with  
10 this project in order for us to be able to move  
11 forward, started looking for a good partner to do  
12 that with. And we were fortunate to find HICDC.

13 **MR. YUEN:** Next slide, please.

14 Please describe your development  
15 activities from 2017 to the present.

16 **MR. MEYER:** Yeah. So we're kind of  
17 continuing on from where we were once we got kind of  
18 our arms around what the existing situation was on  
19 the ground. Then we started to go forward with what  
20 would allow us to go develop all the properties.

21 As Bill and Keith spoke to, getting the  
22 property subdivided and get it to HICDC for the  
23 affordable housing project was a big piece of it.  
24 We came before the Land Use Commission. I don't  
25 remember the exact date. It was 2016 or 2017,



1 sometime in that range.

2 We were working with the county and LUC  
3 and Keith's group to put together something to make  
4 sure that we would satisfy the LUC requirements and  
5 that we would be in position to build a good  
6 affordable housing project out here. As I think  
7 Keith mentioned, part of that was the spot that was  
8 set up for multi-family housing within our existing  
9 master plan was in a spot that's more challenging to  
10 develop.

11 It's going to be more expensive to develop  
12 than other sites on the project, and in order to get  
13 to where we could do something that was feasible for  
14 an affordable housing project to get the costs into  
15 line and also be able to build the kind of community  
16 that Keith was looking to build from the standpoint  
17 of how it's all connected together, we worked with  
18 them and the county to move that down to a better  
19 location where it is now, where they've gone.

20 We did pretty substantial planning of the  
21 entire community, the entire land plan, to make sure  
22 that we had within the existing zoning boundaries  
23 that we were designing a project that would work  
24 best from the standpoint of minimizing the amount of  
25 earth that had to be moved, creating roadways that

1 made sense that were -- is walkable throughout the  
2 community.

3 For example, this is one of the things we  
4 did was set it up on this hillside to also be a  
5 good, walkable community, to have good access and  
6 connectivity to all the parks and trails. So all  
7 the things that we needed to do to create a  
8 community that we think is going to sell well.

9 Nobody wants to go out and build something  
10 that there's not demand for. So we spent kind of  
11 all of the time doing that stuff.

12 As we've also discussed here, we went  
13 through the process, then, of getting a sewer line  
14 approved. It became clear that it was going to be  
15 really difficult for HICDC to do their project  
16 without a connection to the sewer, to the county  
17 sewer plant, and we determined it was going to be  
18 better for all concerned, then, to go ahead and get  
19 an offsite solution done.

20 So designed the sewer line in conjunction  
21 with the county, planned that, went and did a CFD,  
22 Community Facilities District, that would allow us  
23 to finance that through future property taxes  
24 leveled on property that would pay for that project.

25 It's about a \$10 million project for the

1 sewer line that is now underway. We've got the  
2 financing in place. We've given notice to proceed,  
3 and our contractor's out working on that right now.

4 And then we went ahead and did the --  
5 secured the development permits and approvals for  
6 the first increment of development that we're going  
7 to do out there. So we have two 49-lot increments,  
8 one in the RS-15 zoning area, one in the RS-10  
9 zoning area, that we have done the detailed planning  
10 on, and have taken that through construction --  
11 approved construction plans for a piece of each of  
12 those, 22 lots in the RS-15 and 24 in the RS-10,  
13 along with the main entrance into the community, and  
14 a grading plan that covers that whole area so that  
15 we are in position now, once we get this last piece  
16 of offsite infrastructure in place, to go ahead  
17 forward, then, with the development of the first  
18 phase of the project, of the market rate part of the  
19 project.

20 **MR. YUEN:** Did you consider whether any of  
21 your development activities would be a trigger for  
22 the requirement of a Chapter 343 environmental  
23 assessment or environmental impact statement?

24 **MR. MEYER:** Sure. Of course. Anytime we  
25 develop anything, we look at what are going to be

1 the requirements with regard to the Army Corps, was  
2 it -- or any of Chapter 343, archaeology. All these  
3 things go into our plans for how we lay out the  
4 entire sequence of developing a piece of property.

5 The activities that we're planning out  
6 here, the development plan that we have in place, in  
7 our -- not just our opinion, but in our expertise  
8 and through our consultations, do not require an EA.

9 The sewer line required some additional  
10 studies with regard to the route that it was going  
11 to take through to get to this connection point down  
12 here, but there's nothing about us connecting to  
13 that line that requires us to go through an EA.

14 **MR. YUEN:** Next slide, please.

15 Can you briefly describe the location of  
16 the sewer line?

17 **MR. MEYER:** Yes. So it basically goes --  
18 I think everybody understands where each project is,  
19 where the HICDC project is. So that's at the high  
20 part of the property, the development property that  
21 we're talking about here.

22 And so the sewer line will run down  
23 adjacent to Hina Lani Street from just that bottom  
24 corner of our property. And that runs down to the  
25 intersection at AK Highway and then turns and runs

1 along AK Highway actually in the future travel  
2 lanes. There were two lanes originally built of AK  
3 Highway. There would be two lanes.

4 There's right-of-way for an additional two  
5 lanes to be put in at some point, so we're building  
6 that portion of the sewer line in that future right-  
7 of-way. And then it connects down right here within  
8 a couple hundred feet of us somewhere at this  
9 intersection. And then there's existing line that  
10 then takes it down to the sewer treatment plant.

11 **MR. YUEN:** Next slide, please.

12 Please describe location of the first 46-  
13 lot increment.

14 **MR. MEYER:** So you can see kind of lower  
15 right of the diagram up there the affordable housing  
16 site is -- it says affordable housing site. I don't  
17 know how well you can read it, but it's kind of the  
18 grayed-out area at the bottom right of the  
19 illustrative plan there.

20 So that's Hina Lani Street is adjacent to  
21 it, going -- kind of going up the curve like this.  
22 And so as you go up Hina Lani Street and come to  
23 where it says 1A and 1B road improvements right  
24 there, there's a main entry. It's kind of the  
25 intersection where the red and the blue meet.

1 That's where the main entrance is into the project  
2 coming off of Hina Lani.

3 And then adjacent to that, above that is  
4 the -- the area that's in red is RS-15 zoning. The  
5 entire area that's encompassed by that red is the  
6 first 45 lots in the RS-15. Of that, the part to  
7 the left is Phase 1A, we're calling it. That's the  
8 first 22 lots of that RS-15 zoning that'll go in.

9 And then to the bottom of that entry road  
10 is the RS-10 zoning, and the middle part of that,  
11 the middle of those three blue-bounded polygons, is  
12 the first phase of the RS-10 that will go in.

13 So the main road that's kind of got a dark  
14 black line on it, that's the main entry road and the  
15 main entrance onto Hina Lani, and then the two  
16 adjacent pieces to kind of the end of that, so we're  
17 up and down the hill.

18 And part of the way this project was  
19 designed was to minimize the amount of dirt moving  
20 that has to happen from one section of the project  
21 to another. So we laid out the roads and the lots  
22 in such a way that when we go do these first set of  
23 lots, the grading balances between the two pieces so  
24 that we're not bringing a bunch of dirt in or taking  
25 a bunch of dirt offsite.

1 We're doing each one of these phases in  
2 such a way that we balance things pretty well, which  
3 reduces the amount of large-scale grading and large-  
4 scale clearing that we have to do for each phase as  
5 we work our way through the project.

6 **MR. YUEN:** Please describe your proposed  
7 development schedule for the first -- I'm sorry, for  
8 the remainder of Phase 1.

9 Next slide. Yeah.

10 **MR. MEYER:** So you might have -- you  
11 probably missed the first phase of that.

12 **MR. YUEN:** Yes. We --

13 **MR. MEYER:** So I'll run you through Phase  
14 1. So the initial development of 46 lots we're  
15 targeting March of 2024. We will start that phase  
16 when the sewer line is in.

17 And it's just kind of our general  
18 philosophy of development. We like to step things  
19 through systematically, so we're going to have our  
20 sewer line all the way in before we start doing any  
21 of the stuff, just to make sure we don't start  
22 things, and then the sewer line is a little bit  
23 longer, we're sort of off schedule.

24 Some people will argue to go start right  
25 away and be ready as soon as it's in there. There's

1 an argument for that. This is just our philosophy  
2 of how we generally develop projects, so trying to  
3 line up the completion of that sewer line along with  
4 that first phase of a starter.

5 So it'll take about a year to get the  
6 first phase and improvements in, rough numbers, to  
7 get that first set of lots in, which would then  
8 allow us to start construction of the first homes  
9 sometime around March of '25. And sometime around a  
10 year after that, we hope to have our first residents  
11 living out there, buy a house.

12 And then I'll run through the development  
13 for the rest of Phase 1. You know, as we mentioned  
14 earlier, it's roughly 560 units that's out there  
15 throughout Phase 1. We will work our way  
16 methodically through those in phases of something  
17 like 50 to 75 unit bases as we go all the way  
18 through the project.

19 Depending on demand, depending on, you  
20 know, the speed with which we get things done and  
21 what the demand for sales is, just general  
22 anticipation of selling something like 50 units per  
23 year out there is, we think, a conservative route  
24 that sort of gets us to the finish line sometime in  
25 about a 10- to 12-year period.



1           **MR. YUEN:** Do you agree to the proposed  
2 condition that the petitioner complete construction  
3 of the offsite infrastructure and have HICDC  
4 complete a portion of its affordable housing project  
5 both by January 2026 and your achieving substantial  
6 completion within the next 10-year period?

7           **MR. MEYER:** Yes. So I think you're  
8 referring to the stipulation that we entered into  
9 with the agencies that have been kind of reviewing  
10 our plans. And there were certainly reasonable  
11 concerns from everybody -- we've heard it here -- of  
12 the time that it's taken to get to this point in the  
13 project and, you know, why do we believe that it's  
14 going to move forward from here.

15           And so, frankly, with the rest of those  
16 things, we've certainly gone out, and starting to  
17 get the affordable housing project we think is a  
18 really big, important step in that, one step ahead.

19           And then we were discussing other things  
20 we can do to, you know, make sure people have some  
21 comfort here. And I think the things we've agreed  
22 to, making sure that we get the offsite improvements  
23 done, of which we and our predecessors have done the  
24 big bulk of, but we have this one additional  
25 requirement here to get the sewer line in place in

1 order for us to go forward.

2 We've got the financing in place. We're  
3 moving forward on it, so we're confident we can make  
4 the deadlines that have been proposed to us, to have  
5 that done within this three-year period.

6 And we're confident that Keith and his  
7 organization are in position to get these affordable  
8 housing units done within that period. We've seen  
9 how they work. We've been very fortunate to have a  
10 great partner there. So, yeah, we're very  
11 comfortable moving forward on those terms.

12 I believe the requirements of the  
13 stipulation, we get those in within three years, and  
14 then we have substantial completion within 10 years  
15 to be able to come back, provided that the Land Use  
16 Commission would give us this current extension.

17 We would have to then come back by that  
18 10-year period to then come in for the  
19 reclassification, being able to show that the  
20 affordable housing is in place, that we've moved  
21 forward with significant progress and substantial  
22 completion through the first phase of the project  
23 and are keeping to the spirit of the agreement.

24 **MR. YUEN:** Finally, with respect to  
25 affordable housing, the HICDC project will give you

1 more than enough affordable housing to meet your  
2 requirements for Phase 1, but fall short of the  
3 requirements for the entire project. Have you had  
4 any thoughts about how you would provide additional  
5 affordable housing in Phase 2?

6 **MR. MEYER:** Yeah. Great question. For  
7 this one I want to make sure it's clear to  
8 everybody. We are hoping to continue developing  
9 this project out and do something like the 1,250 or  
10 1,300 units, roughly what's in the current plan.  
11 We've gotten really good into the master plan of the  
12 first phase. We're very confident of roughly what  
13 the requirements are going to be on that.

14 There could be more or slightly more or  
15 slightly less than the 130 number through the second  
16 phase, and it's our absolute intent to make sure we  
17 do a great job of providing those additional units,  
18 whatever they're required going forward.

19 So to one of the questions I heard  
20 earlier, if we were to get this extension and it  
21 would mean that we go and develop more units down  
22 the line on the other piece, would there be more  
23 affordable housing that goes with that? Absolutely.  
24 That's a full part of the -- I mean, obviously, it's  
25 not just our word; it's a requirement of the zoning

1 and of the entitlement. So we can't go forward  
2 without doing it.

3 I'm very hopeful that Keith would be  
4 interested in continuing to work with us on this.  
5 You know, the reason the HICDC is in there and why  
6 we chose to work with them on this project is we  
7 understand that there's requirements. There's a  
8 skill to everything in development. There are some  
9 things that some are better at than others.

10 HICDC is really good at developing  
11 affordable housing. They know how to cater to the  
12 right part of the community. They know what the  
13 design requirements are. They know how to put  
14 financing together.

15 We certainly could have gone out and built  
16 for Phase 1 56 affordable homes that would have  
17 satisfied the requirement of affordable housing  
18 under the statute. I think that the county, from  
19 everything I've understood from learning from Keith  
20 in how this goes, the county's getting a much better  
21 result by us having HICDC involved, because they're  
22 able to work through all the corners of this world  
23 that some of us might not understand as well as they  
24 do to provide that affordable housing at even lower  
25 income levels.

1 And that's something Keith has a real  
2 passion about and has done a really good job of. So  
3 we're very excited about what they've done so far.  
4 We think it's a great project and a great location.  
5 We're excited that it's leading us out. And  
6 absolutely, we will continue to work to make sure we  
7 satisfy all those requirements going forward.

8 **MR. YUEN:** Thank you. No further  
9 questions.

10 **VICE-CHAIR CABRAL:** Okay. Thank you.  
11 County of Hawai'i, do you have questions?

12 **MS. CAMPBELL:** We have no questions.  
13 Thank you.

14 **VICE-CHAIR CABRAL:** Okay. Office of  
15 Planning and Sustainable Development, any questions?

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

17 **VICE-CHAIR CABRAL:** Okay. Commissioners,  
18 questions of Mr. Meyer?

19 Commissioner Ohigashi?

20 **COMMISSIONER OHIGASHI:** Maybe you can  
21 clear this up for me. I'm looking at the diagram.  
22 I'm not sure what, you know, so Phase 1A and Phase  
23 2A. That's essentially the A phase; right?

24 **MR. MEYER:** I actually could walk you  
25 through this diagram a little better, if you'd like

1 me to.

2 **COMMISSIONER OHIGASHI:** No, I'm just  
3 asking. The A phase, I mean, those two phases, 1A  
4 and 2A, will be done first.

5 **MR. MEYER:** So that A phase is the 49  
6 units that are in the RS-15 that are the units that  
7 we've already gotten mapped and approved.

8 **COMMISSIONER OHIGASHI:** Okay. And then  
9 the blue is the B phase.

10 **MR. MEYER:** Correct.

11 **COMMISSIONER OHIGASHI:** That hasn't been  
12 mapped and approved.

13 **MR. MEYER:** So Phase 1B and Phase 2B, the  
14 two pieces that are most to the left, the two most  
15 furthest to the left, those have both been mapped  
16 and approved also.

17 **COMMISSIONER OHIGASHI:** Okay.

18 **MR. MEYER:** The one that says Phase 2B  
19 that's next to it down below, that really should be,  
20 say, like Phase 3B. Yeah. That's a misprint, or  
21 something like that.

22 **MR. YUEN:** I believe the witness is  
23 testifying with respect to Exhibit 45 for the  
24 record.

25 **COMMISSIONER OHIGASHI:** Okay. Thank you.

1 I was just kind of confused about that.

2 **MR. MEYER:** Yeah. Fair enough.

3 **COMMISSIONER OHIGASHI:** And that's a total  
4 of how many units that you plan to have available?  
5 Your testimony was 2025?

6 **MR. MEYER:** Yes. So by 2025, I think, we  
7 expect to have those first -- the two pieces --

8 **COMMISSIONER OHIGASHI:** Forty-nine.

9 **MR. MEYER:** No. There's 49 in each of the  
10 A and B phases there. The first 22 of the RS-15s  
11 and the first 24 of the RS-10s. So Phase 1A and  
12 Phase 1B are the two pieces that we expect to have  
13 done.

14 And one more thing, just to clarify for  
15 people, as it's just gotten to me a few times in  
16 this. The LUC requirements refer to Phase 1 and  
17 Phase 2, which are -- Phase 1 is this whole thing  
18 that we're looking at here, that entire diagram, and  
19 Phase 2 is the other side of the road, where we're  
20 talking about a 10-year extension.

21 So it can be a little bit confusing.  
22 We're using -- these Phase 1A, 1B in here, these are  
23 internal phases within Phase 1.

24 **COMMISSIONER OHIGASHI:** We've seen this  
25 kind of problem before.

1           **MR. MEYER:** Yeah. We really should be  
2 calling this --

3           **COMMISSIONER OHIGASHI:** But I'm just  
4 trying to figure this.

5           **MR. MEYER:** Yeah. Totally. Fair  
6 question.

7           **COMMISSIONER OHIGASHI:** And your  
8 understanding is that the 10-year -- I'm trying to  
9 get that processed. There's a stipulation for three-  
10 year and a ten-year; right? The three-year is that  
11 you're going to have certain benchmarks you got to -  
12 - correct. Does that mean it's 13 years, or does  
13 that mean it's ten years, but three of those ten  
14 those benchmarks met.

15           **MR. MEYER:** That's correct. They're  
16 concurrent. So within that three-year period, we  
17 have to have one thing done. Within the ten-year  
18 period that includes those three years, we have to  
19 have something else done.

20           **COMMISSIONER OHIGASHI:** And what other  
21 offsite improvements besides the sewer line has to  
22 be completed?

23           **MR. MEYER:** There are no other ones.

24           **COMMISSIONER OHIGASHI:** Okay. And what  
25 interior improvements are necessary to be done?



1           **MR. MEYER:** Well, in order to develop the  
2 entire property, we'll have to continue developing  
3 roads, sewers, utilities, all the way through the  
4 site as we go in a phased manner; correct.

5           **COMMISSIONER OHIGASHI:** And your hope is  
6 to have it built out within ten years.

7           **MR. MEYER:** That's the hope. And with  
8 anything in development, it's that's our plan,  
9 that's our hope. We don't have a crystal ball to  
10 know what might happen in the world, but that's a  
11 realistic plan based on the fact that we've gotten  
12 the thing teed up to this point, and now we're truly  
13 --

14           You know, there's a whole bunch of things  
15 you got to do to get to the point where you can  
16 really go full steam. And we've gotten to that  
17 point now.

18           **COMMISSIONER OHIGASHI:** And what do you  
19 attribute the -- I guess would be -- the most  
20 relevant portion would be the last ten years of  
21 this, your ownership of the property, to the delays  
22 in completing these?

23           **MR. MEYER:** So that's a great question.

24           **COMMISSIONER OHIGASHI:** I just want to,  
25 yeah, keep it that, so like your whole work.

1           **MR. MEYER:** Yeah. No, it's a great  
2 question. So the project kicked in at various  
3 stages of development and dormancy for a number of  
4 years. A lot of great work had been done, getting  
5 Hina Lani Road in, that being probably the most  
6 significant one, getting water storage in place,  
7 various utility improvements, those sort of things.

8           When we took the project over, it was at a  
9 point where there needed to be some detailed  
10 planning done to get it to the point where it was in  
11 the right position to move forward. We were working  
12 through that.

13           We found there were opportunities that  
14 were just going to make a lot more sense long term  
15 for both our project, for the affordable housing  
16 project, and quite frankly, for the neighborhood at  
17 large, one of them being getting a sewer line in  
18 place and working through with the county to figure  
19 out how best to go about that.

20           And this is often the case. I do large-  
21 scale development around the country, mostly around  
22 the western United States. Getting to the starting  
23 line is the hardest part of these projects. Getting  
24 all the things in place, the entitlements, the  
25 water, the utilities, the offsites, is the thing

1 that often is the most difficult piece of a large-  
2 scale development. It's the reason why sometimes  
3 projects like this end up in the hands of a third or  
4 fourth owner, like is happening in this situation.

5 What we did was to make sure we were  
6 careful and considerate and methodical in going  
7 through these steps to have everything in place.

8 For example, a prior owner came out and  
9 started putting roads and sewer lines on the  
10 property years ago that some of you may not  
11 remember. It wasn't really ready. The plan wasn't  
12 in place properly. There were pieces of  
13 infrastructure that weren't in place and stuff. And  
14 it resulted in just having plowed a whole bunch of  
15 money into the ground for no good reason for no good  
16 benefit.

17 So we took our time to make sure to get it  
18 in the right spot before we moved forward. And I  
19 think, you know, I think probably the best evidence  
20 of the fact that we're moving forward wholeheartedly  
21 now is that we've got an affordable housing site  
22 that has broken ground and is building.

23 And we have just made a -- we have a  
24 completely unencumbered property with no debt on it  
25 that we just put our own debt -- put a debt on

1 ourselves that we have to service to go put that  
2 sewer line in place. So we have started the clock  
3 ticking on, okay, it's time to go.

4 **COMMISSIONER OHIGASHI:** With Mr. Kato's  
5 testimony of finding additional archaeological sites  
6 on that parcel, the affordable housing parcel, would  
7 your company consider a condition to do an  
8 additional archaeological study to determine whether  
9 or not there were missed sites based upon the 2005  
10 study? Would you consider it?

11 **MR. MEYER:** So a great question. So we  
12 believe firmly that we have done the work required  
13 to go out and develop the property. We did the  
14 archaeological studies. We've done all of the  
15 various steps that you need to move forward. So we  
16 would not --

17 **COMMISSIONER OHIGASHI:** But that all was  
18 done in 2005, according to the testimony from Mr.  
19 Kato. You didn't own the property until 2013. So  
20 my question is really during that period of time,  
21 Mr. Kato found additional archaeological sites and  
22 had to move it around to preserve it. Will your  
23 company commit to doing an additional archaeological  
24 study to make sure that the study done in 2005  
25 sufficiently met the requirements and did not miss

1 additional sites?

2 **MR. MEYER:** I understand.

3 **COMMISSIONER OHIGASHI:** To be missing.

4 **MR. MEYER:** I would respectfully answer  
5 that we would not be interested in saying, hey,  
6 we're going to go out and resurvey this entire  
7 property. That would not ever make sense for  
8 anybody to do in a situation where you're doing --  
9 when you're working through entitlements, you're  
10 getting them to move forward.

11 Now, my understanding is, and having  
12 developed in various places that are sensitive, as  
13 we move through this project, we've got all sorts of  
14 monitoring requirements that are on us as we move  
15 through that are part of the development process  
16 that could uncover other things. That happens. And  
17 if that does, we will deal with it properly,  
18 accordingly, and by the law moving forward.

19 But we have done a lot of work on putting  
20 together all sorts of plans for how to recognize and  
21 properly treat the sites that are out there that  
22 have been identified, including several sites that  
23 we've got preservation plans in place for, including  
24 the Road to the Sea that we've got a plan for to  
25 preserve that.

1           So, no, we are not looking to go reopen  
2 that entire case. And the question that we're here,  
3 respectfully, that I would ask is for an extension  
4 of the time to come back in and do a  
5 reclassification of the Phase 2 lands, which are  
6 going to involve another -- a whole process like  
7 this of going through and doing the archaeological  
8 studies and all those things that we're going to  
9 have to do over there when we go to develop those  
10 lands.

11           **COMMISSIONER OHIGASHI:** Well, my mind is  
12 that it's been a 40-year delay. It would seem to me  
13 that if you do additional archaeological site work  
14 study, or you do your studies or have your studies  
15 reviewed, bring them up to date to make the  
16 determination, it will probably save you more time  
17 to do the work.

18           If you're going to come back ten years  
19 from now and say that, hey, we couldn't move fast  
20 enough because we've discovered several  
21 archaeological sites that wasn't in the documents  
22 and wasn't shown there, I'm sure whatever body is  
23 here will remember my comment here and say that  
24 maybe that should be used as a basis to extend  
25 another ten years or another five.

1 So I'm just bringing that up to you and  
2 making a record to make sure that any inadvertent  
3 archaeological site that caused delay may be counted  
4 against you getting additional time. It's up to  
5 you.

6 **MR. MEYER:** Thank you.

7 **COMMISSIONER OHIGASHI:** Even the three  
8 years, maybe.

9 **VICE-CHAIR CABRAL:** Okay.  
10 Commissioner 'Ohelo?

11 **COMMISSIONER KAMAKEA-'OHELO:** Mahalo,  
12 chair.

13 Hello, Mr. Meyer.

14 **MR. MEYER:** Hello.

15 **COMMISSIONER KAMAKEA-'OHELO:** Mahalo for  
16 your due diligence and your testimony. I have a  
17 question. Over here on the slide that says  
18 Petitioner's Development Activities from 2017-  
19 Present, the second bullet point says planned and  
20 permitted a new sewer line connecting the project  
21 area to the county's. May I ask who applied for  
22 that permit?

23 **MR. MEYER:** I'm going to go here to make  
24 sure I answer it right. Probably RCFC; right?

25 **MR. YUEN:** I think it would be RCFC Kaloko

1 Heights.

2 **COMMISSIONER KAMAKEA-'OHELO:** And what  
3 year was that permit applied, the application filled  
4 out and submitted?

5 **MR. YUEN:** Maybe I could recall Mr. Moore  
6 to answer that question.

7 **MR. MEYER:** Give him just a second. He  
8 can find the document.

9 **VICE-CHAIR CABRAL:** All right. Mr. Moore,  
10 we'll allow you to -- you're already sworn in -- to  
11 provide that information when you come upon it.

12 **MR. MOORE:** Construction plans were  
13 approved in 2021.

14 **COMMISSIONER KAMAKEA-'OHELO:** Okay. So  
15 the construction plans were approved in 2021. So  
16 it's safe to say that between 2019 and 2020, the  
17 application was filed for the permit; correct?

18 **MR. MEYER:** Think so?

19 **MR. MOORE:** Yeah, I think the -- well,  
20 maybe you could help me with what you're trying to  
21 get to.

22 **COMMISSIONER KAMAKEA-'OHELO:** Well, okay,  
23 so here's my question.

24 **MR. MOORE:** I just don't want to say a  
25 wrong date.



1                   **COMMISSIONER KAMAKEA-'OHELO:** No problem.

2 Here's my question.

3                   **MR. MEYER:** Yeah.

4                   **COMMISSIONER KAMAKEA-'OHELO:** The sewer  
5 line, the proposed sewer line, the proposed route is  
6 offsite of this proposed project; is that correct?

7                   **MR. MEYER:** Correct.

8                   **COMMISSIONER KAMAKEA-'OHELO:** Now, was  
9 there ever an archaeological impact statement or a  
10 cultural impact survey done on the route of the  
11 proposed sewer line?

12                   **MR. MEYER:** Yeah. That was part of the  
13 whole design process. They had to go through that  
14 in order to get the sewer line in.

15                   **COMMISSIONER KAMAKEA-'OHELO:** And when was  
16 that survey done?

17                   **MR. MEYER:** I'm not going to be able to  
18 give you exact dates right now. I can tell you it  
19 was done through the process of -- late teens  
20 through '21 was the process of getting all that work  
21 done.

22                   **COMMISSIONER KAMAKEA-'OHELO:** Because in  
23 reflection of Mr. Kato's testimony that after  
24 previous archaeological surveys had been done, new  
25 discoveries have been made, it is my experience that

1 sometimes these projects overlook some culturally  
2 sensitive areas, and what that leads to is a social  
3 impact on the community, especially Native  
4 Hawaiians.

5           And understanding that there are very  
6 significant findings, especially within the proposed  
7 11-acre development for the affordable housing, so  
8 significant that the recommendation from the  
9 archaeologist was to preserve in place, now, my  
10 concern is if there were ever any inadvertent finds  
11 that weren't previously identified, that  
12 construction would be under way that would be so  
13 substantial that potential discoveries of burials  
14 may be moved.

15           And it is my kuleana and my duty to remind  
16 us that according to the Kingdom of Hawai'i  
17 Constitution of 1843 that any disturbance of burials  
18 is against the law. So with all of that said in  
19 this moment in time, I would re-ask the question  
20 that Commissioner Ohigashi posed.

21           Would you as the petitioner be open to at  
22 least considering at this moment in time, because of  
23 the cultural sensitivity of the projected  
24 construction area, to at least consider putting out  
25 an additional archaeological impact survey for

1 especially the proposed route for the sewage line?

2 **MR. YUEN:** May I have a minute with my  
3 client before he answers that?

4 **VICE-CHAIR CABRAL:** Yes, you may.

5 **MR. YUEN:** Mahalo, chair. Thank you.

6 **VICE-CHAIR CABRAL:** We'll take a very,  
7 very short recess. Seven minutes.

8 **(Recess taken 12:10 - 12:15 p.m.)**

9 **VICE-CHAIR CABRAL:** Okay. Let's go ahead  
10 and see if we can finish up with Mr. Meyer.

11 Commissioner 'Ohelo, do you have more  
12 questions?

13 **COMMISSIONER KAMAKEA-'OHELO:** No further  
14 questions, chair. Mahalo.

15 **VICE-CHAIR CABRAL:** Okay.

16 Other commissioners, any more questions of  
17 our witness here, testifier?

18 **COMMISSIONER YAMANE:** Madam Chair?

19 Yes. Commissioner Yamane?

20 **COMMISSIONER YAMANE:** Thank you, madam  
21 chair.

22 Mr. Meyer, thank you for your testimony.

23 I just have a couple of questions. As part of your  
24 due diligence, did you read through the history of  
25 the Land Use Commission orders granting any

1 extensions?

2 **MR. MEYER:** I did. Yes.

3 **COMMISSIONER YAMANE:** Were you aware in  
4 the 1993 order of the condition that was added that  
5 the petitioner develop the property in compliance  
6 with the representations made to the commission?  
7 Failure to do so -- failure to so develop the  
8 property may result in reversion of property to its  
9 former classification or change it for more  
10 appropriate classification.

11 **MR. MEYER:** Yes.

12 **COMMISSIONER YAMANE:** Now, I'm fast  
13 forwarding to when you folks already owned it.  
14 Seems like there was another -- were you aware of  
15 another approval of extension prior to your company  
16 purchasing or acquiring the property in 2013?

17 **MR. MEYER:** I don't remember the whole  
18 history of all them, but, yes, we certainly have  
19 looked through that entire history and  
20 documentation.

21 **COMMISSIONER YAMANE:** And as part of your  
22 due diligence, were there any risk or red flags  
23 raised by the developers you represent on any of  
24 these conditions that the Land Use Commission  
25 imposed throughout the history of the granting of

1 these extension requests?

2 **MR. MEYER:** I guess I think the feeling  
3 throughout was we could see a path where we could  
4 continue to move forward under these extensions that  
5 had been given and that we could continue to move  
6 forward in a productive way toward a conclusion that  
7 was going to be positive.

8 **COMMISSIONER YAMANE:** So it seems like  
9 your first interfacing with this Land Use Commission  
10 was in 2016; is that correct?

11 **MR. MEYER:** Me, personally, that's  
12 certainly correct. Is 2016 the year that we did the  
13 affordable housing?

14 **COMMISSIONER YAMANE:** Yeah. You folks  
15 went to amendment motion that was partially --

16 **MR. MEYER:** Correct.

17 **COMMISSIONER YAMANE:** -- and partially  
18 denied, and then partially approved.

19 **MR. MEYER:** Yes. Yes.

20 **COMMISSIONER YAMANE:** So that was it, so.  
21 And I guess my question is now you already know  
22 about the 2023 time, I guess, and you're kind of up  
23 against. Was there any timing on construction at  
24 2016 that considered that in 2023 that you would  
25 have to come up here again for another extension?

1           **MR. MEYER:** So I can answer it in a broad  
2 sense. We have certainly been sensitive to the fact  
3 that it was important to continue making progress  
4 here. We've seen a succession of extensions and  
5 renewals over a period of time that the pattern of  
6 that looks like as long as there was positive  
7 progress being made, there was a general cooperation  
8 between the history of developers and the Land Use  
9 Commission to keep moving down the path of the plan  
10 that was originally approved.

11           We've worked very hard to make sure we  
12 were making good progress, and probably even more  
13 progress than had been made in the several years  
14 before we came in. And, you know, like anything  
15 with development and most business, sometimes it  
16 takes longer to get there than you hope, but we're  
17 excited about where we've gotten to this point, with  
18 the sewer line under construction and affordable  
19 housing under construction at this point.

20           **COMMISSIONER YAMANE:** Okay. Thank you.  
21 And on your proposed schedule for completion of  
22 Phase 1, I think it listed in here it's we have  
23 construction starting in March 2024, and then you  
24 have your timeline June 2024 with substantial  
25 completion of residential unit construction in March

1 2026.

2 **MR. MEYER:** That's for the first increment  
3 of 46 units.

4 **COMMISSIONER YAMANE:** Of the -- okay. And  
5 then was that -- like, I guess for me, it looks like  
6 you guys did that because you guys knew that you'd  
7 have to come in with something to the Land Use  
8 asking for that extension. Is that -- I mean, how  
9 realistic is that timeline?

10 **MR. MEYER:** It was really tied to when we  
11 were able to get the sewer line in. I mean, we  
12 hoped it would happen a year or two earlier. It  
13 just took a really long time to get through the  
14 process with the county of getting the sewer line  
15 routed, getting the CID done, just all the things  
16 that it took to get there. We would much rather  
17 have been a couple of years earlier.

18 **COMMISSIONER YAMANE:** Last question, Madam  
19 Chair. Thank you.

20 Is it your opinion -- if this Land Use  
21 Commission does not approve this time extension, is  
22 it your understanding that you're still good to just  
23 complete what you're proposing to do in this  
24 schedule?

25 **MR. MEYER:** I think we're in position to

1 keep going forward on the Phase 1 piece of it. I  
2 think that within the spirit of how we have worked  
3 with the Land Use Commission over time, I think it  
4 would be consistent to continue down that path and  
5 that a ten-year extension right now would make sense  
6 in the spirit of how this deal has progressed,  
7 because it would give an appropriate amount of time  
8 to be able to really satisfy the requirements of the  
9 Land Use Commission being able to evaluate has there  
10 really been substantial completion of this first  
11 phase lands -- and again, I don't want to confuse  
12 you with phase -- of the entire north side lands, of  
13 these 540 unit development, the affordable housing  
14 being completed, you know, the infrastructure being  
15 in place, all the things needed to get through that  
16 first 500-plus units of housing.

17 A ten-year timeframe, given the reality of  
18 how long it takes to develop here and reasonable  
19 assumptions for how long it takes to sell things  
20 out, would be an appropriate timeframe at which to  
21 evaluate that again.

22 **COMMISSIONER YAMANE:** Would the ten-year  
23 extension stop you from doing that in that Phase 1  
24 proposal?

25 **MR. MEYER:** It doesn't stop me from moving



1 forward on the Phase 1 proposal. What not having  
2 clarity does is it makes it more difficult to make  
3 the big decisions of large infrastructure of Phase  
4 2, because you want to be able to continue to move  
5 forward through the project.

6 But there's benefit to having clarity of  
7 what that is going to look like. And so to have an  
8 appropriate amount of time to get to where there can  
9 be a satisfaction of that requirement for moving  
10 forward into Phase 2 makes the entire proposition  
11 make more sense.

12 **COMMISSIONER YAMANE:** Okay. Thank you.  
13 No further questions.

14 Thank you, Madam Chair.

15 **MR. MEYER:** But if I could address the  
16 questions earlier about the archaeology, I want to  
17 make sure that I respectfully reply to some of your  
18 concerns. Is that --?

19 **VICE-CHAIR CABRAL:** Yes. That would be  
20 appreciated. Thank you.

21 **MR. MEYER:** Okay. Yeah. Didn't want to  
22 get out of that question, because I think it's an  
23 important one. I appreciate it.

24 So there's kind of two different questions  
25 at hand. One of them is are we going to go redo our

1 entire archaeology upfront on the first phase. And  
2 the other one is are we going to be respectful of  
3 the archaeology and the history out here and make  
4 sure that we abide by the rules and regulations and  
5 laws that are in place to do so.

6 I think to the first question, the answer  
7 is we're not in a position right now to go redo that  
8 entire process. I probably have never done a large-  
9 scale study of a property in my entire life that  
10 somebody couldn't go, how do you know you got  
11 everything right? And the answer is probably never  
12 that we can get everything exactly right the first  
13 time.

14 But what we are committed to is that there  
15 will be no you find a burial out there and you say,  
16 hey, let's go move it to somewhere else. We are a  
17 very large firm with a lot at stake in both our  
18 reputation and our financial side of our company.  
19 There is not a scenario where we're going to go out  
20 and risk that by doing some illegal activity with  
21 regard to burial grounds or anything else that the  
22 law requires us to follow.

23 We take that responsibility very  
24 seriously, both from a legal standpoint and from a  
25 reputational standpoint. It would be a big problem

1 for us if we did something like that. That's not  
2 how we do business. It's not something we'd ever be  
3 interested in doing. We have tremendous respect for  
4 the part of the world that we're working in here,  
5 for the history of it. It's one of the things that  
6 makes it special.

7 So for whatever good that is, you have my  
8 full assurances that that is not how we do business,  
9 and it's not how we do business.

10 In addition to that, there are rules  
11 within our preservation plan and the various plans  
12 that we have with the archaeology that requires to  
13 have constant monitoring as we go through our  
14 process. And it requires us to continually update  
15 as we get into these areas.

16 We'll have archaeology out there with us  
17 monitoring the entire process, and if things come  
18 up, we will have to deal with them. And we expect  
19 that. And honestly, it wouldn't be surprising if we  
20 find some things along the way; right? There's  
21 dense vegetation. It might come up along, and if it  
22 does, we are fully committed to addressing it the  
23 right way within the law.

24 So one other piece that I wanted to  
25 address, and it was addressed in the EA that was

1 done for the affordable housing site, the sewer line  
2 that's going on was determined to not be -- just  
3 read it. "The proposed sewer line is located in  
4 already disturbed county road right-of-way.  
5 Therefore, no impacts to historical archaeological  
6 sites are expected."

7 So that route was chosen wisely for that  
8 reason. But again, I mean, I've seen it since I've  
9 been here when the Ane K Highway was under  
10 construction, and a site came up, and the project  
11 had to stop for a while, and they had to work around  
12 that, redesign, and figure it out. And if something  
13 like that happens, that's what we'll have to do.

14 So your concerns, I understand them. I  
15 assure you we are not a group of lawbreakers. It's  
16 not something we're interested in doing.

17 **VICE-CHAIR CABRAL:** Go ahead.

18 **COMMISSIONER KAMAKEA-'OHELO:** Mahalo,  
19 chair. If I could just comment?

20 Mahalo for your answer and your response.  
21 I just want to tell you that you are heard, and I  
22 really appreciate it.

23 **MR. MEYER:** Thank you.

24 **COMMISSIONER KAMAKEA-'OHELO:** With that  
25 being said, no further questions, chair.

1           **VICE-CHAIR CABRAL:** Okay. Commissioner  
2 Okuda?

3           **COMMISSIONER OKUDA:** This is Gary Okuda.  
4 Thank you, Madam Chair.

5           Thank you for your testimony. Let me just  
6 make one comment on what Commissioner Kamakea-'Ohelo  
7 had mentioned about, you know, along his lines of  
8 questions. The reason why we are asking many of  
9 these questions is that the duty to protect Native  
10 Hawaiian cultural sites, practices, resources is  
11 part of Article XII of the Hawai'i State  
12 Constitution. It comes out of the 1978  
13 constitution. I kind of remember a little bit about  
14 it because I worked at the convention before I went  
15 off to law school.

16           And frankly, at that convention there were  
17 several hundred delegates. I do recall Mr. Yuen  
18 being a young radical participating down at the  
19 convention also. But he and his group actually were  
20 the people that pushed forward a lot of provisions  
21 in the constitution, including Article XII.

22           And, you know, there were very, very few  
23 Native Hawaiians in that convention. And so these  
24 provisions in the Hawai'i State Constitution which  
25 mandate us to take these protective actions were

1 basically a statement of common goals and objectives  
2 by everybody who calls Hawai'i home who aren't  
3 necessarily Native Hawaiians.

4 So it's really, you know, something that's  
5 more than just, you know, a view of any limited  
6 group or ethnicity in Hawai'i. It's something I  
7 think we all believe is it makes us different and  
8 special.

9 But it's also a requirement under the Ka  
10 Pa'akai versus Land Use Commission case where the  
11 Supreme Court has told us, hey, Land Use Commission,  
12 under the penalty of being reversed, you've got to  
13 affirmatively ask these questions. You cannot even  
14 delegate it to a developer.

15 So that's the background. So we don't  
16 intend any offense to you or anyone else when we ask  
17 these questions. We're just duty bound to ask them.  
18 Let me also say this before I ask my other question.  
19 And let me frame my question so you understand where  
20 I'm coming from.

21 You know, with the risk of offending some  
22 of my neighbor island friends and colleagues, you  
23 know, I believe that the Superferry was a good  
24 project. But the reason why we don't have a ferry  
25 system is because a number of people, including in

1 government, decided to short circuit and ignore the  
2 requirements of the environmental impact statement  
3 rules, Chapter 343, and in the end, the failure to  
4 do the things that were required under Chapter 343  
5 led to Hawai'i Supreme Court shutting the project  
6 down.

7           So, you know, we also can from a public  
8 policy standpoint argue whether this is good for  
9 policy or bad for policy that developers -- and we  
10 shouldn't even use the word "developers", because  
11 sometimes that has a negative connotation. People  
12 who really want to provide housing for the community  
13 are put through a lot of hoops where you start  
14 wondering is it really worthwhile. So I recognize  
15 that, too. But at the same time, you know, a lot of  
16 good projects are lost just because of noncompliance  
17 with the law.

18           So let me ask you this. And you can  
19 consult with your lawyer, and Mr. Yuen can answer  
20 this question, too, if he thinks it's more  
21 appropriate. Is there a practical, a real practical  
22 problem if we don't grant the request you're asking  
23 for right now and you do an environmental review  
24 assessment, if necessary, on the entire project,  
25 because it seems like the sewer line, which, by the

1 way, it's always better to connect to a sewage  
2 treatment station than dump stuff in a cesspool;  
3 okay? That's more than just commonsense, and it's  
4 crazy that you get punished by having to jump  
5 through more hoops because you're doing the right  
6 thing environmentally.

7 But what would be the practical harm in  
8 just maybe doing this assessment, which would also  
9 take into account, you know, the concerns that were  
10 raised in public testimony about whether there could  
11 be potential impacts to the surrounding areas, and  
12 just do that?

13 And would there be any real practical  
14 delay in what you're doing right now, because you  
15 might be able to do that within the same period of  
16 time, and nothing really slows down, and in the end,  
17 you know, it will be an ironclad or close to an  
18 ironclad legal situation?

19 I mean, is there a practical problem in  
20 just trying to comply with Chapter 343?

21 **MR. MEYER:** I can speak to that.

22 **COMMISSIONER OKUDA:** Yeah.

23 **MR. MEYER:** I believe we do comply with  
24 Chapter 343. It lays out areas where you have to go  
25 through certain assessments and areas where you



1 don't. And I believe we are in compliance with it.

2 And there certainly is a huge practical  
3 problem with at any point the process that you go  
4 through to get to where you're entitled to go build  
5 something is a long and laborious process. It's the  
6 rule of law. We go through all this stuff so that  
7 we can get to a point where we can go build  
8 something.

9 **COMMISSIONER OKUDA:** Yeah.

10 **MR. MEYER:** To then say, well, let's go  
11 back and start it over again, just from a practical  
12 standpoint makes no sense.

13 **COMMISSIONER OKUDA:** Yeah. Well, let me -  
14 - just so that you don't think I'm just pulling this  
15 out of thin air.

16 And if you, Madam Chair, if you can just  
17 indulge me for a couple of minutes, I just want to  
18 read a bunch of sentences, a few sentences out of  
19 this other case, Sierra Club versus Office of  
20 Planning State of Hawai'i, which is found at 109  
21 Haw. 411 at pages 415, 416. The Pacific Third  
22 citation is 126 P.3d 1098 at 1102 to page 1103.  
23 That's a 2006 Hawai'i Supreme Court case.

24 And this is what the Hawai'i Supreme Court  
25 said, you know, in connection to what triggers a 343

1 review. It says, "Additionally, the project  
2 proposes the use of state lands inasmuch as the  
3 construction of the sewage and water transmission  
4 lines will require tunneling beneath state  
5 highways."

6 Then there's a citation by the Hawai'i  
7 Supreme Court to Citizens for Protection of North  
8 Kohala Coastline versus County of Hawai'i, and they  
9 put in the citation 91 Haw. 94 at page 103, 979 P.2d  
10 1120 at page 1129, a 1999 case.

11 And this is the quote that the Hawai'i  
12 Supreme Court gives from that case, and I quote,  
13 "Construction of two underpasses under a state  
14 highway constitutes use of state lands for purposes  
15 of HRS 343-5(a)(1)." And then there's a citation to  
16 another case, which follows that statement, Kahana  
17 Sunset Owners Association versus County of Maui, and  
18 there's a Hawai'i Reports and Pacific Second  
19 citation given.

20 And then the Hawai'i Supreme Court puts in  
21 parentheses what that case means, and I quote,  
22 "Holding that the proposed drainage system which  
23 would run under state land was 'part of the larger  
24 project', and thus the EA 'must address the  
25 environmental effects of the entire proposed

1 development'."

2 And what the Hawai'i Supreme Court  
3 finished up in this case, Sierra Club versus Office  
4 of Planning State of Hawai'i, this is the final  
5 sentence in what I'm reading. "Accordingly, the  
6 project is an action that proposes the use of state  
7 lands, and an EA that addresses the environmental  
8 effects of the entire project is required."

9 So this is the language of the Hawai'i  
10 Supreme Court kind of staring us in the face with  
11 these eyeballs looking at us, telling us this is the  
12 law. And I'll leave it to Mr. Yuen if --

13 And you can tell me, Mr. Yuen, whether  
14 what I read is an accurate statement of the law or  
15 it's not an accurate statement of the law, because I  
16 don't want to read something that's not an accurate  
17 statement of the law if it's not. Do you have any  
18 comment on what I read?

19 **MR. YUEN:** I agree that that's an accurate  
20 statement of the law, but I also believe that the EA  
21 that was prepared by HICDC covering the affordable  
22 housing project that also covered the sewer line  
23 adequately addressed the environmental assessments  
24 of the sewer line.

25 **COMMISSIONER OKUDA:** Yeah. But that's not

1 what the Supreme Court said in Sierra Club versus  
2 Office of Planning. It says the assessment has to  
3 cover the entire project. Anyway, okay, yeah,  
4 that's fine. I have no further questions. Thank  
5 you.

6 **VICE-CHAIR CABRAL:** Commissioners, any  
7 more questions of Mr. Meyer at this time?

8 I have a couple of what I hope are quick  
9 ones. Up on the top righthand corner of Exhibit 45,  
10 it shows natural gas storage. So you're going to be  
11 having a storage tank there to service your entire  
12 Phase 1 or something? Or what is the intention of  
13 having natural gas storage on your top corner?

14 **MR. MEYER:** Yes. So often, as you  
15 probably know, people have individual storage tanks  
16 at each house throughout a subdivision.

17 **VICE-CHAIR CABRAL:** Yes.

18 **MR. MEYER:** We feel like it's a better  
19 solution here, and there's good solutions for it, to  
20 do a centralized tank and then to vent pipes around  
21 to the various homes in the community. Just reduces  
22 the amount of traffic and maintenance through the  
23 community involving filling up the tanks,  
24 maintaining them, all that.

25 **VICE-CHAIR CABRAL:** I manage a lot of

1 subdivisions. We should talk. But aside from that

2 --

3 **MR. MEYER:** Love to hear your thoughts.

4 **VICE-CHAIR CABRAL:** Thank you. Anyway, my  
5 other question is I see that you've got different  
6 entrances that say gated entry, but yet there was a  
7 reference earlier, and it's Part 2 overlay, and I  
8 really wish we had one really big screen up there  
9 that I could really put this through my mind.  
10 Instead, when I look up there, you're describing it,  
11 and we have some of those photos, and that I  
12 appreciate we have here.

13 But you constantly referenced several  
14 times on one of the photos in the red line where a  
15 roadway is being put in to what I think to be Phase  
16 1, which is your first section. We're talking about  
17 all of this being built, not increment 1 and your  
18 increment 1B; okay?

19 So yet that was being said that that would  
20 be a public roadway. Am I incorrect that that would  
21 also be a roadway into the same area that you have  
22 Phase 1A, Phase 2A, you know, your 10,000 square  
23 foot, your 15,000 in that photo? Okay.

24 **MR. MEYER:** There's a distinction between  
25 these two. I think we might be talking about two

1 different pieces of the discussion. Maybe if we  
2 could just pull the slide up here, I can go point.  
3 Would that be --?

4 **VICE-CHAIR CABRAL:** Yeah. That would be  
5 fine. I'd appreciate that. I like pictures.

6 **MR. MEYER:** Please do that.

7 **MR. YUEN:** Yes. That's Exhibit 45.

8 **VICE-CHAIR CABRAL:** You just had it.

9 Okay. I can tell off of that.

10 **MR. MEYER:** So two roadways we're talking  
11 about here. One of them was talked about earlier  
12 that's going to be a public through road for the  
13 county and is going to be re-routed plans that work  
14 better for traffic. And it's a crossroad connector  
15 that comes from Hina Lani here and goes to this  
16 other side, the side that's (inaudible).

17 **VICE-CHAIR CABRAL:** Okay.

18 **MR. MEYER:** That's a public road.

19 **VICE-CHAIR CABRAL:** Right above the  
20 affordable housing site.

21 **MR. MEYER:** Above the affordable housing  
22 site there. It comes down (inaudible).

23 **VICE-CHAIR CABRAL:** Okay.

24 **MR. MEYER:** The other piece that's going  
25 in tomorrow (inaudible) is right here. This is our

1 gated entry. It's a private road. (Inaudible.)  
2 This is Phase 1A. This is Phase B. (Inaudible.)  
3 That's 49 RS-10 lots.

4 (Inaudible.)

5 **VICE-CHAIR CABRAL:** Okay. And then so  
6 that section, when you say the red line, that's  
7 actually down there below or connecting to --

8 **MR. MEYER:** I think I was talking about  
9 the red line to say everything outlined in red right  
10 here.

11 **VICE-CHAIR CABRAL:** Oh, yeah. No, no, no.  
12 I'm talking about a different map, because it has to  
13 do with that Holoholo Street extension final report.  
14 So okay.

15 **MR. MEYER:** Go to another exhibit?

16 **VICE-CHAIR CABRAL:** No, no. It's okay.  
17 So that portion of the road that's being put in is  
18 not part of your inner subdivision, then.

19 **MR. MEYER:** This is part of the  
20 subdivision.

21 **VICE-CHAIR CABRAL:** Yeah.

22 **MR. MEYER:** (Inaudible.)

23 **VICE-CHAIR CABRAL:** Right. But that's not  
24 a public roadway. That's going to be -- okay.

25 Okay. Now, one more question. Just to

1 where you're looking to the left of your affordable  
2 housing 11 acres, you have a green area that will be  
3 below, separate from your subdivision. That is a --  
4 is that going to become a county park or something,  
5 or is that part of the affordable section? But they  
6 don't look like they included that in their design.

7           **MR. MEYER:** That's not actually part of  
8 the affordable housing site. What happened was  
9 after we had sold the affordable housing site,  
10 (inaudible) sold (inaudible). Then Holoholo Street  
11 got rerouted a little bit by this county process.  
12 So then we had to move the boundary of the  
13 affordable housing site around a little bit to  
14 maintain the same acreage.

15           As for planning and everything else, we  
16 probably came up with the same acreage as that. So  
17 we end up with this little kind of remainder here.  
18 We're not exactly sure what that will look like  
19 right now. It's highly possible that (inaudible)  
20 possible to know it's big enough or substantial  
21 enough to (inaudible).

22           **VICE-CHAIR CABRAL:** Okay. Okay. Thank  
23 you very much. One more final question. You've  
24 been involved, you said, since 2016. And  
25 apparently, the transfer of this deeded property for



1 the affordable housing, when the transfer took place  
2 from your clients, your work employer --

3 **MR. MEYER:** Yes.

4 **VICE-CHAIR CABRAL:** -- to the -- for the  
5 affordable housing, are you aware of some  
6 controversy involved with some of that, that this  
7 may have been part of something else going on in the  
8 bigger picture of Hawai'i County with the problems  
9 with those transfers or with those housing credits?

10 **MR. MEYER:** I think I know what you're  
11 talking about. We had purchased, like, three  
12 credits or something like that early on from  
13 somebody. I've read about it recently. Bill's kind  
14 of brought me up to speed that there were some legal  
15 problems going on with somebody who was selling  
16 credits who's now been -- he's in some legal hot  
17 water about those.

18 We're not actually relying on those  
19 credits for this development.

20 **VICE-CHAIR CABRAL:** Okay. So that goes --  
21 whatever those credits may or not be, whether  
22 they're valid or not valid or --

23 **MR. MEYER:** Doesn't affect. Yeah.

24 **VICE-CHAIR CABRAL:** Doesn't affect this  
25 project.

1           **MR. MEYER:** We've moved forward with, you  
2 know. I think originally those were bought  
3 originally when the group was looking at, hey, maybe  
4 we can get out and get started right away. If we  
5 have some credits right away, we could do some  
6 units.

7           We really determined as we looked at it  
8 that what we really needed was to find a partner to  
9 develop all the units so that we weren't trying to  
10 piecemeal our way through this thing.

11           **VICE-CHAIR CABRAL:** Okay. Thank you very  
12 much.

13           At this point -- oops, one more question.  
14 Okay. Commissioner Ohigashi?

15           **COMMISSIONER OHIGASHI:** So you're -- he's  
16 your last witness, so maybe you can help me and  
17 summarize for me what must you do -- if we grant the  
18 ten-year extension, what must be done, completed, if  
19 you are permitted then to apply for -- exactly,  
20 yeah.

21           **MR. MEYER:** So the stipulation that we've  
22 agreed to right now is we have a three-year window  
23 to get enough affordable housing units in place for  
24 our first phase and to complete our sewer line  
25 offsite.

1           **COMMISSIONER OHIGASHI:** Okay. And what  
2 else has to be done within the ten-year period?

3           **MR. MEYER:** And then we have to reach  
4 substantial completion of the rest of the Phase 1  
5 project.

6           **COMMISSIONER OHIGASHI:** Substantial  
7 completion.

8           **MR. MEYER:** Yeah.

9           **COMMISSIONER OHIGASHI:** And how is that  
10 defined in this?

11           **MR. YUEN:** That's in the eye of the  
12 beholder, which is you.

13           **MR. MEYER:** I mean, it really is in the  
14 eye of the beholder. It really is up to the Land  
15 Use Commission at that point. I think the way I see  
16 it, if we came here and we hadn't done the majority  
17 of the lots and at least had -- you know, I don't  
18 know if every home will be built and sold, but I  
19 would think you guys would expect there to be real  
20 progress toward, you know, maybe 75. I don't know  
21 what the number is.

22           **COMMISSIONER OHIGASHI:** Okay.

23           **MR. MEYER:** It's going to be up to you  
24 guys to put --

25           **COMMISSIONER OHIGASHI:** And let's say you

1 meet the standard and you apply. And you can apply  
2 for --

3 **MR. MEYER:** Redistricting?

4 **COMMISSIONER OHIGASHI:** -- redistricting  
5 of Phase 2 of --

6 **MR. MEYER:** Yeah.

7 **COMMISSIONER OHIGASHI:** -- whatever, how  
8 many acres they decide. It could be some 190-  
9 something acres; right?

10 **MR. MEYER:** Correct.

11 **COMMISSIONER OHIGASHI:** What process would  
12 be included then?

13 **MR. MEYER:** I think we would be going  
14 through a similar process to what we've gone through  
15 to get this piece done. I think my anticipation  
16 would be, if I just look at what I think is going to  
17 happen on this deal over the years, I think we're  
18 going to make really good progress over the next few  
19 years. We'll start selling homes. We'll get an  
20 idea of what the market looks like and how the whole  
21 project is going.

22 And we still start within a few years,  
23 then, of the detailed process of detailed mapping,  
24 archaeology, everything that has to go on on the  
25 second phase of the project so that by the time we

1 get through the first phase, we're ready to move  
2 straight into the second phase. That's how I would  
3 expect the process.

4 **COMMISSIONER OHIGASHI:** The second phase  
5 was given conditional approval, and you're saying  
6 that it's a ministerial part, that you would just be  
7 permitted to start building because you made the  
8 ten-year requirement? Is that what you're telling  
9 me?

10 **MR. MEYER:** As I understand it, if you  
11 give the extension, then you have to evaluate at  
12 that point, when we come back in for redistricting,  
13 have we satisfied the requirements of the extension.  
14 Have we satisfied the requirements of the order;  
15 right?

16 And so at that point, then, we would be  
17 coming to you and saying we believe we've satisfied  
18 it. We would expect that if that's the case, if  
19 everyone agrees, then the project would be -- that  
20 property would be redistricted, and we would be  
21 ready to move forward.

22 **COMMISSIONER OHIGASHI:** By previous act;  
23 right?

24 **MR. MEYER:** You'd be right there.

25 **COMMISSIONER OHIGASHI:** By previous act,

1 yeah. And at that time there'll be no requirement  
2 for updated environmental impact statements.  
3 There'll be no requirement for updated cultural  
4 assessments for that part. I think all those other  
5 things will not be required at that point because  
6 you already have conditional approval so long as you  
7 meet these documents; is that right?

8 **MR. MEYER:** I think it would be, because I  
9 think in order for us to move forward with  
10 development, there's all sorts of laws that we have  
11 to satisfy as we go to develop the property; right?  
12 Like, we can't go develop the property without an  
13 archaeological --

14 **COMMISSIONER OHIGASHI:** Well, you would be  
15 able to redistrict without.

16 **MR. MEYER:** We could redistrict. We can't  
17 go develop it without doing all those things.

18 **COMMISSIONER OHIGASHI:** We have no -- we  
19 have no say; is that right?

20 **MR. YUEN:** Correct. The commission back  
21 in 1983 said the second phase is reclassified  
22 conditioned upon substantial completion of the first  
23 phase.

24 **MR. MEYER:** I don't believe any of those  
25 other items that we'd have to go through is

1 circumvented; right? There's still a whole zoning  
2 process. There's still a whole process of getting  
3 approvals for everything we do out there that we  
4 have to go through on every phase that we do.

5 **COMMISSIONER OHIGASHI:** I just want to  
6 clear that up, make sure.

7 **VICE-CHAIR CABRAL:** Okay. Commissioners?

8 **MR. MEYER:** Thank you, commissioner.

9 **VICE-CHAIR CABRAL:** Are there any more  
10 questions, commissioners? Speak now or forever hold  
11 your peace. Okay.

12 Mr. Yuen, as I understand, you have no  
13 more folks that you're going to have testify.

14 **MR. YUEN:** Correct.

15 **VICE-CHAIR CABRAL:** Okay. Well, we are  
16 preparing for a 45-minute break so that we can take  
17 lunch. Our lunch came to us, but we expect you  
18 folks will have to drive somewhere or go on a diet,  
19 so. And I'd also -- we will try and open these  
20 doors, because we're going to happily be serenaded  
21 during lunchtime, and we'll try and warm up the room  
22 during this 45 minutes. So I'd like everyone to  
23 return at 1:35. Okay. Thank you very much.

24 **(Lunch recess taken 12:50 - 13:38 p.m.)**

25 **VICE-CHAIR CABRAL:** I call the meeting to

1 order. Thank you all for your promptness. Okay. As  
2 I understand it, Petitioner Yuen has completed  
3 presenting his folks that he wanted to have testify.  
4 Is that correct?

5 **MR. YUEN:** That's correct.

6 **VICE-CHAIR CABRAL:** All right. Thank you  
7 very much.

8 Now I'd like to go ahead and proceed now  
9 with the County of Hawai'i.

10 **COMMISSIONER OKUDA:** Chair?

11 **VICE-CHAIR CABRAL:** Commissioner --

12 **COMMISSIONER OKUDA:** Okuda.

13 **VICE-CHAIR CABRAL:** Okuda. Yes.

14 **COMMISSIONER OKUDA:** May I ask Mr. Yuen  
15 just one more question?

16 **VICE-CHAIR CABRAL:** We would wonder if you  
17 didn't have one more question. Yeah.

18 **COMMISSIONER OKUDA:** Mr. Yuen, can you  
19 tell us whether or not you believe a Ka Pa'akai  
20 analysis needs to be done at this point in time?  
21 And if not, why not?

22 **MR. YUEN:** I believe what we're here for  
23 is the motion, a request for an extension of time.  
24 And this petition pre-dated the Decision & Order in  
25 this petition, pre-dated the Ka Pa'akai decision.



1 So I don't believe that -- I don't believe it's  
2 appropriate that the request for an extension of  
3 time requires essentially everything to be restudied  
4 all over again.

5 **COMMISSIONER OKUDA:** Yeah. But that's a -  
6 - I'm sorry, please, Kalani, keep quiet.

7 But isn't it true that Ka Pa'akai says  
8 that the Land Use Commission has an affirmative duty  
9 to make the Ka Pa'akai inquiry before the Land Use  
10 Commission takes any type of action which might  
11 implicate resources protected by the Hawaiian State  
12 Constitution?

13 In other words it doesn't say, well, Ka  
14 Pa'akai only has prospective application on land use  
15 matters which only come up after Ka Pa'akai.

16 **MR. YUEN:** Well, on the other hand, it  
17 didn't require that the Land Use Commission go back  
18 and re-examine every decision it made before Ka  
19 Pa'akai.

20 **COMMISSIONER OKUDA:** Oh, okay. Do you  
21 have any other reason why, besides what you stated,  
22 why Ka Pa'akai analysis is not required?

23 **MR. YUEN:** I don't believe the action  
24 being requested at this time requires a re-analysis  
25 of the project.

1           **COMMISSIONER OKUDA:** Yeah. Okay. Thanks  
2 very much.

3           **VICE-CHAIR CABRAL:** Okay. Thank you very  
4 much.

5           Let's go ahead and proceed. So I'd like  
6 at this point the County of Hawai'i to make their  
7 presentation.

8           **MS. CAMPBELL:** I was about to say good  
9 morning. I guess it's now good afternoon, everyone.  
10 Jean Campbell, deputy corporation counsel for the  
11 County of Hawai'i representing the Planning  
12 Department.

13           We don't really have a presentation per  
14 se, but we did want to let you know that the county  
15 supports this project. And as you saw in the  
16 stipulation, we're obviously in support of the  
17 extension request.

18           As you well know, our county, especially,  
19 and the state as a whole have a dire shortage of  
20 housing, and the county believes that this project  
21 provides housing across a spectrum. It provides  
22 affordable housing. It also provides market  
23 housing, all of which we need.

24           So we really -- I don't have a whole lot  
25 more. I'll hand it over to the director, if you have

1 additional comments?

2 **DIRECTOR KERN:** Sure. Good afternoon,  
3 Madam Chair, land use commissioners. Good to see  
4 you all. Thank you for the opportunity to speak  
5 briefly on this.

6 We agree with corporation counsel. We  
7 support the project and support the petition. On  
8 Hawai'i County we definitely have a need for  
9 housing, all types of housing, market housing,  
10 affordable housing, low-income housing, the range  
11 and the spectrum.

12 And oftentimes folks are coming in,  
13 looking to do something, and there's a couple of  
14 issues that generally always come up --  
15 infrastructure, infrastructure, infrastructure. And  
16 in this case we have a project that has water, has  
17 the roadways, and has sewer.

18 These folks took around five years to go  
19 through the CFD, the Community Facilities District  
20 process. It's the first CFD on the island, and it's  
21 a key to, I think, allowing for future housing  
22 developments in other areas, not this CFD for this  
23 project, but other CFDs. This is our first time  
24 doing that. That did take some time, and I'm really  
25 happy that we got it approved.

1 So seeing that, to come together with the  
2 infrastructure, roads, water, sewer, and a developer  
3 that's willing to do it, that doesn't come together  
4 very often. We don't see a lot of new projects here  
5 in Kona. We've seen some approved, but we don't see  
6 them going all the way through.

7 The master plan. I want to speak to that  
8 really quickly. I know that there was a comment  
9 about that. The master plan was updated, and it was  
10 sent to the Land Use Commission in 2018 in the  
11 annual progress report. So at that time, that was  
12 brought forth.

13 The conversation around the archaeology  
14 and, you know, the grading, the archaeology, which  
15 is a serious matter, there is the existing EIS.  
16 There's a burial treatment. There's a data recovery  
17 plan.

18 Now, when they come in to do the next  
19 phases of the projects, they have to do a grading  
20 permit for each of those phases. The grading permit  
21 goes to the Department of Public Works, and that  
22 gets sent to the State Historical Preservation  
23 Division, or SHPD.

24 SHPD does a review at that time, and they  
25 say we agree with the existing AIS and the

1 treatments that are in place, or we don't, and we  
2 want something changed or updated. To me, SHPD, the  
3 State Historic Preservation Division, is the  
4 ultimate authority on archaeology. So there's  
5 another -- they're taking another look at it.

6 In 2017, '18, there was a grading permit  
7 submitted that was looked at by SHPD and signed off  
8 on it. Subsequent grading permits will have to do  
9 the same, so I feel like there's another mechanism  
10 there for another look at it.

11 We also looked at the EA, and we can't  
12 find a trigger for the EA from the county side of  
13 it, and to require an EA without a trigger, this  
14 doesn't make sense to me. I understand the need to  
15 want to be very comprehensive and want to be true to  
16 what we're supposed to do as a director, as  
17 commissioners, as folks that are involved in  
18 upholding the constitution and the government.

19 And so that's my short take on it, where  
20 we are from the county's perspective. We are here  
21 for a time extension, and we support the time  
22 extension, and again, we support the project. So  
23 I'm happy to answer any questions. Thank you.

24 **VICE-CHAIR CABRAL:** Okay. Petitioner, do  
25 you have any questions of him?

1 **MR. YUEN:** None.

2 **VICE-CHAIR CABRAL:** This time I go to the  
3 commissioners first.

4 Commissioners, any questions of the County  
5 of Hawai'i's presentation?

6 **COMMISSIONER OHIGASHI:** Madam Chair?

7 **VICE-CHAIR CABRAL:** Yes. Commissioner  
8 Ohigashi?

9 **COMMISSIONER OHIGASHI:** The County of  
10 Hawai'i is satisfied with the amount of affordable  
11 housing that they are presently going to get?

12 **DIRECTOR KERN:** Agreements were made.  
13 Decisions and orders were approved. Rezoning  
14 ordinances were approved. And that was agreed upon  
15 with the percentage of affordable housing, and based  
16 on those agreements, we're satisfied with that.

17 **COMMISSIONER OHIGASHI:** So another  
18 question is that the county from their perspective,  
19 my understanding of incremental boundary amendments  
20 was that we would give an incremental boundary  
21 amendment conditioned upon, in this case, having it  
22 developed within a ten-year period of time.

23 And the reason for that would be that all  
24 the studies done, everything would be done. It  
25 would be fresh and would be applicable. Here we

1 have a case where if adopted, it would be 50 years  
2 from the time of approval. Is it the county's  
3 position that incremental boundary amendments should  
4 be allowed 50 years later on?

5 **DIRECTOR KERN:** That depends. And I would  
6 say if SHPD had looked at, say, the AIS, and it was  
7 older, and they said that they wanted an update on  
8 it, then I would say that that would be a viable  
9 update. In other cases --

10 **COMMISSIONER OHIGASHI:** I'm asking about  
11 the incremental.

12 **DIRECTOR KERN:** It depends. I can't have  
13 a universal yes or no. That really depends on the  
14 project.

15 **COMMISSIONER OHIGASHI:** But in this case  
16 you believe that the 50 years is a reasonable  
17 requirement.

18 **DIRECTOR KERN:** In this case, on what I've  
19 seen with the annual progress reports, the  
20 substantial work that's been done, the intersection  
21 improvements that have been done, I would say that  
22 we agree with it at this point in time. And that's  
23 why we have agreed with the petition.

24 **COMMISSIONER OHIGASHI:** Would you agree  
25 that any kind of environmental assessment or any

1 kind of archaeological study done even 20 years ago  
2 were maybe too stale?

3 **DIRECTOR KERN:** It's possible. We have  
4 seen applications come in with older AIS,  
5 archaeological inventory surveys, where SHPD has  
6 requested an update.

7 **COMMISSIONER OHIGASHI:** And how would you  
8 determine whether or not they're stale or not? What  
9 mechanism within your county's purview?

10 **DIRECTOR KERN:** When it comes to  
11 archaeology, we seek SHPD's approval on that. We  
12 don't make that decision on whether or not it's  
13 stale. It's the State Historic Preservation  
14 Division.

15 **COMMISSIONER OHIGASHI:** What about  
16 drainage studies that allegedly go into down there  
17 and go into that fishpond, all those kinds of  
18 things?

19 **DIRECTOR KERN:** Yeah.

20 **COMMISSIONER OHIGASHI:** Were those not  
21 stale, given the fact that there's a new use down --

22 **DIRECTOR KERN:** So the drainage studies.  
23 Again, it's hard to make universal statements, but  
24 in the case of a drainage study, they have to comply  
25 with Chapter 27. You know, all water generated



1 onsite has to remain onsite. And that's an ongoing,  
2 continuous condition in law.

3 **COMMISSIONER OHIGASHI:** Was that done  
4 here?

5 **DIRECTOR KERN:** They will need to do that.

6 **COMMISSIONER OHIGASHI:** And is that --  
7 what mechanism within the county is there to make  
8 sure that the drainage --

9 **DIRECTOR KERN:** The grading plan, drainage  
10 plan, subdivision plans goes through -- so when they  
11 submit their subdivision plans, we do a tentative  
12 approval that requires them to go through the  
13 grading and drainage studies.

14 **COMMISSIONER OHIGASHI:** And that would be  
15 on the existing law.

16 **DIRECTOR KERN:** Under existing conditions.  
17 Under existing law and under existing conditions.

18 **COMMISSIONER OHIGASHI:** That may have been  
19 modified from 50 years ago; is that right?

20 **DIRECTOR KERN:** Yes. So, like, you know,  
21 if there's a plan submitted for a subdivision a  
22 while back and adjustments are made to that, that  
23 needs to be looked at currently.

24 **COMMISSIONER OHIGASHI:** Following that  
25 same logic, wouldn't it be prudent to determine a

1 boundary amendment of the Phase 2 of any of this  
2 kind of project under existing standards rather than  
3 rely on past standards?

4 **DIRECTOR KERN:** Yes. So my understanding  
5 for a Phase 2 on it is that just changes the  
6 district boundary amendment. They will have to  
7 come, if they're going to do a completely new  
8 archaeological inventory survey on that one, they'll  
9 have to do a rezoning on that one and go through  
10 that entire process.

11 **COMMISSIONER OHIGASHI:** Well, boundary  
12 amendments are meaningless because it would be all  
13 these other -- other issues will be resolved by the  
14 county.

15 **DIRECTOR KERN:** I'm not sure if I  
16 understand that statement. I don't think the  
17 boundary amendment --

18 **COMMISSIONER OHIGASHI:** We don't need to  
19 do a new boundary amendment because we have all this  
20 other stuff --

21 **DIRECTOR KERN:** No. What I'm saying it's  
22 for Phase 2.

23 **COMMISSIONER OHIGASHI:** So I'm asking you  
24 is that --

25 **DIRECTOR KERN:** For Phase 2, the second

1 phase of it, they will need to. So to the district  
2 boundary amendment for Phase 2 will basically set  
3 the stage to say, hey, this is urban, we can move  
4 forward with this type of use. That will set the  
5 stage for all the rest of the study that will need  
6 to be done for the current rezoning that they would  
7 have to go through.

8 For Phase 2 they need to do all of it,  
9 whatever current trend is, whatever current  
10 requirements are there.

11 **COMMISSIONER OHIGASHI:** And assuming that  
12 we don't agree to this time extension, and they  
13 would have to come to redo, none of that would  
14 happen; is that right? None of what you mentioned  
15 would happen. In other words there won't be a  
16 district boundary for Phase 2.

17 **DIRECTOR KERN:** If the district boundary  
18 amendment extension isn't approved and the time  
19 isn't made to make that, then, yes, that would be  
20 the case, and they wouldn't have that district  
21 boundary amendment.

22 **COMMISSIONER OHIGASHI:** So are you saying,  
23 then, that we should be giving the extension of time  
24 because a new review by the Land Use Commission for  
25 that additional acreage would be done by the county

1 in terms of providing drainage plans, archaeological  
2 sites annually?

3           **DIRECTOR KERN:** That is my feeling. Yes.  
4 And my feeling is a lot of these areas in our urban  
5 core, I would like to see the State Land Use  
6 Commission change those to urban, so we can set the  
7 stage, and we can have folks have a certain level of  
8 certainty to be able to come in after that and do  
9 their rezoning, do their archaeological, do their  
10 traffic, whatever they need to do through the  
11 rezoning process. That is my feeling.

12           **COMMISSIONER OHIGASHI:** And what about the  
13 case that my learned colleague brought up? That  
14 analysis has never been done. It has never been  
15 done for that particular parcel. And we have an  
16 opportunity to make sure that that gets done. So do  
17 you want to do that or not?

18           **DIRECTOR KERN:** Yes. We would require  
19 that type of analysis for Phase 2. We do require  
20 the Ka Pa'akai analysis for our projects. Whether  
21 it's a special permit, a use permit, or a rezoning  
22 application, that stays at the county level. We go  
23 through all those processes to ensure that we're  
24 upholding all of the rules and laws that exist.

25           **COMMISSIONER OHIGASHI:** So we may as well

1 give up the Land Use Commission, then, and let the  
2 County of Hawai'i handle everything. That was a  
3 comment.

4 **VICE-CHAIR CABRAL:** Okay. Thank you very  
5 much.

6 I failed to swear you in, apparently.

7 **DIRECTOR KERN:** I do swear to tell the  
8 truth, and I have told the truth.

9 **VICE-CHAIR CABRAL:** Okay. Thank you very  
10 much. Okay. And identified as Planning Director  
11 Zendo Kern. Okay.

12 **DIRECTOR KERN:** All the way back.

13 **VICE-CHAIR CABRAL:** Okay. And your  
14 address, whichever address, home or, I guess,  
15 office.

16 **DIRECTOR KERN:** I work at Aupuni Street,  
17 Suite 2.

18 **VICE-CHAIR CABRAL:** Okay. Hilo.

19 **DIRECTOR KERN:** Hilo, Hawai'i 96720.

20 **VICE-CHAIR CABRAL:** There we go.

21 **DIRECTOR KERN:** That's the county building  
22 in Hilo, Planning Department. You can find me  
23 there.

24 **VICE-CHAIR CABRAL:** Okay. Thanks. Thank  
25 you very much.

1 Commissioners, any more questions of  
2 Director Kern?

3 Okay. Mr. Okuda, Director Okuda, please?

4 **COMMISSIONER OKUDA:** No. Commissioner,  
5 not director.

6 **VICE-CHAIR CABRAL:** Oh, yeah, that's  
7 right. Commissioner. Commissioner.

8 **COMMISSIONER OKUDA:** I'd like to say my  
9 father's family is originally from Hilo, and during  
10 the summer I used to pick orchids up in Akala. So  
11 I'm not just from O'ahu, yeah?

12 But getting back to my same question I  
13 asked Mr. Yuen about Ka Pa'akai, the LUC is being  
14 asked to take an action in this case, and this is  
15 what the Supreme Court said in Ka Pa'akai, and I  
16 quote, "As such, state agencies such as the LUC may  
17 not act without independently considering the effect  
18 of their actions on Hawaiian traditions and  
19 practices." And that's found at Ka Pa'akai. The  
20 Pacific Third citation is 7 P.3d at 1068.

21 So we're being asked to take an action  
22 right now, and a Ka Pa'akai analysis hasn't been  
23 done. I mean, is there any authority that says we  
24 can take this action without doing a Ka Pa'akai  
25 analysis? And when I say what's the authority, you

1 know, what citation to the case or the statute or  
2 learned treatise or what have you?

3 **MS. CAMPBELL:** Good afternoon. Jean  
4 Campbell, deputy corporation counsel, again. I  
5 think the Supreme Court has not answered that  
6 question yet. Is it the move straight forward? And  
7 so it does leave it open to interpretation. And I  
8 would agree that Mr. Yuen's interpretation is a  
9 valid one.

10 But I think the simple answer is the court  
11 has not addressed that question yet about whether Ka  
12 Pa'akai is intended to be retroactive essentially in  
13 a case like this, or exactly what does it mean for  
14 the LUC to take an action.

15 **COMMISSIONER OKUDA:** Yeah, but --

16 **MS. CAMPBELL:** I think we don't have that  
17 answer.

18 **COMMISSIONER OKUDA:** But what I -- do you  
19 agree that what I read is the plain English  
20 statement of the law as stated by the Supreme Court,  
21 that the LUC may not act without independently  
22 considering the effect of their actions on Hawaiian  
23 traditions and practices?

24 **MS. CAMPBELL:** I don't have the case in  
25 front of me, but I trust that you are reading it

1 straight out of the case, so, yes, I would agree  
2 that that is a statement.

3 **COMMISSIONER OKUDA:** And if we don't have  
4 a Ka Pa'akai analysis here, doesn't that place this  
5 decision at risk, if we were to grant the relief  
6 being requested by the petitioner?

7 **MS. CAMPBELL:** I think the spirit of the  
8 case is completely addressed by what Director Kern  
9 said, knowing that that extension is simply going to  
10 allow the certainty for the project to move ahead,  
11 and all of the other processes are going to kick in,  
12 at which case every single time the County of  
13 Hawai'i looks at this, the Ka Pa'akai analysis will  
14 take place. So I don't think it's absolutely an  
15 either/or that it will never happen.

16 **COMMISSIONER OKUDA:** Yeah, but isn't it  
17 true that that's in fact the point that Ka Pa'akai  
18 made, that the Land Use Commission -- and they were  
19 talking about the Land Use Commission -- the Land  
20 Use Commission could not delegate its duty to  
21 anybody else, including a developer.

22 So in other words, it's the Land Use  
23 Commission that has to do the Ka Pa'akai analysis.  
24 It cannot be delegated or passed off to anyone else.  
25 Wasn't that what the Supreme Court said in Ka



1 Pa'akai?

2 **MS. CAMPBELL:** I definitely understand  
3 that that is your reading of the case, yes. And  
4 like I said, I would agree with Mr. Yuen that it was  
5 not intended to be retroactive.

6 **COMMISSIONER OKUDA:** Oh, okay. Thank you.

7 **VICE-CHAIR CABRAL:** Okay. Thank you.

8 Commissioners, anyone else have any  
9 questions for the County of Hawai'i? Okay. So  
10 we're going to go ahead and move on for the  
11 presentation by the Office of Planning and  
12 Sustainable Development, State of Hawai'i. Thank  
13 you.

14 **MS. KATO:** Thank you. Good afternoon,  
15 commissioners. I hope everyone had a good lunch  
16 break. Alison Kato, deputy attorney general for the  
17 Office of Planning and Sustainable Development.

18 OPSD supports the extension as it's  
19 described in the stipulation that we entered with  
20 the parties. We previously recommended a change in  
21 the amount of time of the extension from ten years  
22 to three years, but in the stipulation we changed  
23 that recommendation based on discussions with the  
24 parties.

25 So OPSD would not object to an extension

1 of ten years with the requirement to complete  
2 construction within three years of two different  
3 things -- the major infrastructure, which is the  
4 sewer line, and the required affordable housing for  
5 Phase 1.

6 We believe that the project would provide  
7 housing in an area where housing is needed and  
8 appropriate. And like the commissioners, OPSD is  
9 concerned with the lack of any housing construction  
10 after numerous extensions over the last 40 years,  
11 but we believe that the requirements included in the  
12 stipulation are sufficient to address this concern.

13 Based on petitioner's representations, an  
14 extension of three years should be sufficient for  
15 petitioner to either present clear progress on  
16 housing construction to the LUC or to allow the LUC  
17 to weigh in earlier if the project is further  
18 delayed.

19 Regarding the affordable housing  
20 requirement, the number of units currently proposed  
21 and being constructed appears to be sufficient for  
22 purposes of Phase 1, the number of market units in  
23 Phase 1.

24 OPSD's concern that we raised was that the  
25 overall plan with Phase 2 did not appear to propose

1 additional affordable housing units to meet the  
2 requirement, but petitioner represented that this  
3 requirement will be addressed for Phase 2. And I  
4 think the appropriate timing to address that would  
5 be when they submit the application for Phase 2.

6           Regarding the EA, AIS issue, you know, we  
7 appreciate the questions from the commissioners,  
8 because we think that brought out a lot of  
9 information from the petitioner's witness on this  
10 matter, and I believe that the information provided  
11 by Mr. Moore confirmed what we believe, based on our  
12 review of the project, because we initially had  
13 those questions as well, and we had to look into  
14 that.

15           Petitioners state that the EA for the  
16 affordable housing project addressed the sewer line  
17 connection for the whole project capacity, and the  
18 project does not otherwise trigger Chapter 343  
19 requirements. OPSD finds that this explanation  
20 clarifies and addressed the EA question.

21           Those are all the comments I have at this  
22 time, but I'm available for questions. Thank you.

23           **VICE-CHAIR CABRAL:** Thank you.

24           Commissioners, any questions for Ms. Kato  
25 and the Office of Planning and Sustainable

1 Development?

2 Okay. Commissioner Ohigashi?

3 **COMMISSIONER OHIGASHI:** The stipulation,  
4 the three years that have to be done, what is it,  
5 the housing and the sewer, sewage line; right?

6 **MS. KATO:** The affordable housing and the  
7 major infrastructure.

8 **COMMISSIONER OHIGASHI:** What if it's not?

9 **MS. KATO:** Then they --

10 **COMMISSIONER OHIGASHI:** Then what?

11 **MS. KATO:** -- come back and address that.

12 **COMMISSIONER OHIGASHI:** But they have a  
13 ten-year; correct?

14 **MS. KATO:** Not to do the affordable  
15 housing. If the affordable housing isn't completed  
16 in three years, then --

17 **COMMISSIONER OHIGASHI:** There's intention  
18 to condition the ten-year, obviously. In other  
19 words, give them a three-year -- three-year, do  
20 this, and you get the ten. That's it.

21 **MS. KATO:** In my mind, it is.

22 **COMMISSIONER OHIGASHI:** But it doesn't say  
23 it in the text; does it? It just says you got to  
24 come back about that. It's assuming they intend to  
25 do everything.

1           **MS. KATO:** Well, to me it's you get ten  
2 years extension provided these things occur.

3           **COMMISSIONER OHIGASHI:** Why not make it  
4 clear, then? Is that all you wanted to make clear?  
5 I guess I'm just asking you because I was just, you  
6 know, wondering what it meant. Maybe I'm wrong.  
7 Just tell me I'm wrong.

8           **MS. CAMPBELL:** I'm not sure if petitioner  
9 and the county had an opinion, but my understanding  
10 of this was that the extension would be given  
11 providing that this occurs.

12           **COMMISSIONER OHIGASHI:** If that occurs,  
13 they come back here. If that occurs, then they get  
14 the other seven. I just want it --

15           **MS. CAMPBELL:** It's in this application.

16           **COMMISSIONER OHIGASHI:** I just want to  
17 know what the position is there.

18           **MS. CAMPBELL:** My understanding is the  
19 extension is ten years provided that these things  
20 occur in three years. Otherwise, you don't get that  
21 extension.

22           **COMMISSIONER OHIGASHI:** So if it's not  
23 done in three years, then there's no extension;  
24 right?

25           **MS. CAMPBELL:** Exactly.

1           **COMMISSIONER OHIGASHI:** It doesn't say  
2 that, though; does it? I think Mr. Yuen says no,  
3 no. Is that correct?

4           **MR. YUEN:** If I may, commissioner, it says  
5 that we have three years to complete the offsite  
6 infrastructure and for Hawai'i Island Community  
7 Development Corporation to complete a portion of the  
8 affordable housing units.

9           We're required to submit annual progress  
10 reports to the commission, so before 2026, January  
11 of 2026, we'll have to submit an affordable -- I  
12 mean, an annual progress report. If we completed  
13 it, we'll say in the annual progress report that  
14 we've completed the sewer line and however many  
15 units HICDC has completed up to that point. And the  
16 ten-year extension would be automatic at that point.  
17 We wouldn't -- the commission would not have to  
18 review the whole situation, if we met the first  
19 milestone.

20           **COMMISSIONER OHIGASHI:** Well --

21           **MS. KATO:** I think one way to put it is if  
22 they don't meet this three-year deadline, they're in  
23 violation at that point. I think you can do an  
24 order to show cause. And I think you can --

25           **COMMISSIONER OHIGASHI:** And what is

1 substantial completion that you have described  
2 yourself?

3 **MS. KATO:** Oh, you mean what's a --

4 **COMMISSIONER OHIGASHI:** What's a  
5 substantial amount of --

6 **MS. KATO:** Well, that's a term that --

7 **COMMISSIONER OHIGASHI:** What is the -- or  
8 what does that mean, how they -- you know, is it you  
9 complete how many housing?

10 **MS. KATO:** Are you talking about the  
11 substantial completion for Phase 1?

12 **COMMISSIONER OHIGASHI:** No, no. I'm  
13 talking about the amount of housing they got to  
14 complete, substantially completed, or something like  
15 that. What was it?

16 **MS. KATO:** Ten percent.

17 **COMMISSIONER OHIGASHI:** Huh? Yeah, I --

18 **MS. KATO:** They need to complete the 10  
19 percent.

20 **COMMISSIONER OHIGASHI:** It doesn't say  
21 that; does it? What does it say? What was --?

22 **MS. KATO:** Equal to at least 10 percent of  
23 the residential units to be built out in Phase 1.

24 **COMMISSIONER OHIGASHI:** Okay. So Phase 1,  
25 the total -- so the 100, they have to complete the

1 100 units.

2 **MS. KATO:** Not necessarily.

3 **COMMISSIONER OHIGASHI:** No?

4 **MS. KATO:** Because the amount that's  
5 actually required for Phase 1 is not 100.

6 **COMMISSIONER OHIGASHI:** Oh.

7 **MS. KATO:** It's 10 percent of the market  
8 units.

9 **COMMISSIONER OHIGASHI:** So 60.

10 **MS. KATO:** Or not 10 percent of the market  
11 units; 10 percent of the affordable units.

12 **COMMISSIONER OHIGASHI:** So 56 they have to  
13 complete. Is that what it is?

14 **MS. KATO:** I'm not great at math, but --

15 **COMMISSIONER OHIGASHI:** Well, isn't it  
16 they have 560 or something like that?

17 **MR. YUEN:** Five hundred twenty units,  
18 which are 52 units.

19 **COMMISSIONER OHIGASHI:** So 52 units they  
20 have to complete; is that correct, what you're  
21 saying?

22 **MS. KATO:** I think the intent of the  
23 original D&O was to consider all of the units in the  
24 project, so I'm not sure that you can take out the  
25 affordable housing from that total count.



1           **COMMISSIONER OHIGASHI:** If it's all of the  
2 units in the housing, then it would be 30 more  
3 they'd have to have; isn't that right?

4           **MS. KATO:** No. No, not 30 more. For  
5 Phase 1 --

6           **MR. YUEN:** Approximately 62 units of  
7 affordable housing would have to be done, then, if  
8 you're going to account the affordables plus the  
9 market units. But the intent is that affordable  
10 project is to cover some of the affordable  
11 requirement for Phase 2 as well as Phase 1.

12           **COMMISSIONER OHIGASHI:** So 62 have to be  
13 built. Is that what you're saying? You'd better  
14 know, because you have to accept the stipulation.

15           **MS. KATO:** I have to look at --

16           **COMMISSIONER OHIGASHI:** You have to have  
17 the numbers to get that out.

18           **MS. KATO:** Because that's how the D&O is  
19 written. And if you want me to give you the exact  
20 number, I'd have to check that and calculate --

21           **COMMISSIONER OHIGASHI:** Well, no. You  
22 guys signed it. I'm expecting you folks to know it.  
23 And if there's a number in your head, you should  
24 tell me. If there's no number, just say I don't  
25 know, I don't have a number.

1           **MR. YUEN:** The reason it's written that  
2 way is the proposal is to do 520 market price units.  
3 It may be that we wind up doing 510 instead of 520,  
4 which would reduce the affordable housing  
5 requirement.

6           **COMMISSIONER OHIGASHI:** But in ten years  
7 we're going to have make a determination; right?  
8 And in that determination, what is the number we  
9 have to determine?

10          **MS. KATO:** Okay. If there are 620 total  
11 residential units in Phase 1, including affordable  
12 housing, then it should be 62.

13          **COMMISSIONER OHIGASHI:** So why is that not  
14 in the agreement, then?

15          **MS. KATO:** Because they didn't -- I didn't  
16 want to set it to a specific number in case the  
17 plans change, because I --

18          **COMMISSIONER OHIGASHI:** The reason why I'm  
19 asking is because you gave me that version that it's  
20 going to be a hundred units, actually 99, if you  
21 count the manager's. But, you know, that's not the  
22 impression that you gave us in the commission.  
23 That's why I'm asking these questions. I want to  
24 clear that up. I don't want to go off with a wrong  
25 impression.

1           **MS. KATO:** I mean, petitioner has  
2 represented that they will be -- they expect the  
3 construction of 99 affordable units.

4           **COMMISSIONER OHIGASHI:** So the sum, that  
5 time, at least 62, is that right?

6           **MS. KATO:** At least 62.

7           **COMMISSIONER OHIGASHI:** That they meet the  
8 requirements.

9           **MS. KATO:** If the commission decides to  
10 put in this requirement, then, yes.

11           **COMMISSIONER OHIGASHI:** Yes.

12           **MS. KATO:** Assuming that the total number  
13 of residential units is 620.

14           **COMMISSIONER OHIGASHI:** And that's your  
15 understanding. So if the order includes or the D&O  
16 that puts it in specifically outlines that this is  
17 how much we expect to be done by that time, that  
18 would be proper because there's basis, there's  
19 evidence that that's on; is that right?

20           **MS. KATO:** I'm sorry. What's the  
21 question?

22           **COMMISSIONER OHIGASHI:** If we put in the  
23 order -- let's say we approved this and put it in  
24 order, this means 62 units have to be built,  
25 occupied in three years. Based on your comments and

1 your explanation about what the agreement says,  
2 there's sufficient basis in evidence to back that  
3 condition.

4 **MS. KATO:** Based on 620 residential units,  
5 yes.

6 **COMMISSIONER OHIGASHI:** No. Based upon  
7 what your testimony that you gave now, your  
8 representations, what you did now, what Mr. Yuen has  
9 indicated, that we put that condition in, that they  
10 have to meet that 62-unit threshold.

11 If they have plans to build 199 --  
12 hopefully, they do, they build it -- but that has  
13 sufficient evidence to support the condition. Did  
14 you understand the question?

15 **MS. KATO:** Assuming that their plans do  
16 not change.

17 **COMMISSIONER OHIGASHI:** Assuming that -- I  
18 don't care what assuming their plans. In three  
19 years they're not going to build 520 or 510.  
20 They're only going -- according to their  
21 projections, they plan to build 49, I think.

22 **MR. MEYER:** Yeah.

23 **COMMISSIONER OHIGASHI:** So if this 49,  
24 does that mean that we're only going to have five,  
25 4.9?

1           **MS. KATO:**   OPSD does not have control over  
2 what is built.

3           **COMMISSIONER OHIGASHI:**   But you have  
4 control what's in the stipulation. You signed it.

5           **MR. YUEN:**   We'd agree to 62 units, if you  
6 wanted to insert that in.

7           **MS. KATO:**   If you want to change the  
8 number, you can change it.

9           **COMMISSIONER OHIGASHI:**   If you agree, then  
10 that's fine. You're the -- is that what you agree  
11 to, 62 units?

12           **MR. MEYER:**   I think we agreed to the  
13 statutory 10 percent, but we understand what you're  
14 saying. So if a hard number makes more sense, I  
15 think that's fair. We understand where you're  
16 coming from. We don't want to make it harder for  
17 you guys to do that.

18           **COMMISSIONER OHIGASHI:**   Yeah. I --

19           **MS. KATO:**   I mean, OPSD is not making this  
20 decision. The commissioners are making this  
21 decision.

22           **COMMISSIONER OHIGASHI:**   OPSD signed the  
23 stipulation is what I mean.

24           **MS. KATO:**   We signed the stipulation with  
25 the language that is from the LUC's D&O. We used

1 the same language that's in the LUC's D&O, so we  
2 just tied it to that 10 percent that's in there. In  
3 case the plans do change, then that number would  
4 change. But you do not have to follow that.

5 **COMMISSIONER OHIGASHI:** If the plans do  
6 change, they're going to have to appear, but the  
7 question is in three years, where they're going to  
8 make only 49 units, according to their own  
9 testimony, how many years to satisfy the stipulation  
10 so we don't find out with a big question on our --

11 **MS. KATO:** I mean, back to --

12 **COMMISSIONER OHIGASHI:** If I'm here three  
13 years from now, I hope -- I probably not and I hope  
14 not -- but I want to get the record before this  
15 statement to say if they're only 52 or not, how come  
16 they promised 99, 100; it's not done yet. We kick  
17 them out. We say, hey, you guys didn't follow it.  
18 So let's get a number so that we know that -- and  
19 you said 52 would tie it in. Is that what you  
20 agreed to?

21 **MR. MEYER:** The appropriate number under -  
22 - if we build 520 market rate units, the appropriate  
23 number to make it 10 percent of the community would  
24 be 58 affordable units. That would be the math that  
25 would make it appropriate. That matches with that.

1           **COMMISSIONER OHIGASHI:** Is that your --

2           **MR. MEYER:** If you guys want to add five  
3 units to make up for if there's more density or  
4 something, we're fine with that. We're fine with  
5 putting -- 62 is a fine number.

6           **COMMISSIONER OHIGASHI:** But the idea, the  
7 reason is not, no, I mean, I just want to know. I  
8 just want to know what the guys agreed to.

9           **MR. MEYER:** You make a great point. I  
10 think we're happy with 62, if you guys are.

11           **MS. KATO:** We're fine with that, if that's  
12 what the LUC wants to do.

13           **COMMISSIONER OHIGASHI:** How about County?

14           **MR. KERN:** We have no objection.

15           **COMMISSIONER OHIGASHI:** Okay. So now we  
16 know that it's 62.

17           The other question that I have for OPSD is  
18 that you heard what I asked the County of Hawai'i  
19 regarding the intent of the use of -- what is it  
20 called -- the Phase 2 and the reason we have to --  
21 why we have conditional zoning in the future is  
22 because we give them 10 years, and everything is  
23 fresh, and everything is fine.

24           Here we have a situation that is 40 or 50  
25 years. What is our limit? What do we -- as a

1 policy, what does Office of Planning think about  
2 whether or not we should grant this kind of --

3 **MS. KATO:** Well, given that this is a  
4 policy rather than a legal question, I think my  
5 client should answer. Katia Balassiano?

6 **MS. BALASSIANO:** Hi.

7 **VICE-CHAIR CABRAL:** Hi.

8 **MS. BALASSIANO:** Katia Balassiano,  
9 administrator for the Office of Planning and  
10 Sustainable Development.

11 **VICE-CHAIR CABRAL:** Let me go ahead and  
12 swear you in. Do you swear and affirm that the  
13 testimony that you're about to give is the truth?

14 **MS. BALASSIANO:** Yes. It's the truth. I  
15 affirm that is the truth.

16 **VICE-CHAIR CABRAL:** And your address?

17 **MS. BALASSIANO:** My address is 235 South  
18 Beretania Street, Sixth Floor, Honolulu 96813.

19 **VICE-CHAIR CABRAL:** Thank you very much.  
20 Go ahead.

21 **MS. BALASSIANO:** The Office of Planning  
22 and Sustainable Development is committed to the  
23 production of additional housing, affordable  
24 housing, all kinds of housing, recognizing that we  
25 are in a housing crisis. So, like the County, we



1 believe that it would be appropriate to move forward  
2 with this proposal.

3           They have come so far, and we understand  
4 that it's taken too long; however, it appears as if  
5 all of the pieces are now in place. The project has  
6 not changed significantly. It's still the  
7 production of residential units. The infrastructure  
8 is in place. There's an affordable housing  
9 component. So we are in support of this.

10           We understand that when they come back  
11 with their application for Phase 2, it'll be very  
12 similar in form to what you had originally received,  
13 so this time extension just gives them an extra  
14 amount of time to submit that application to you.

15           We don't believe that there's any need to  
16 shortcut any of the components that they would  
17 normally give to you, so I believe that with Phase  
18 2, they'll be putting together, you know, the  
19 necessary, you know, archaeological research,  
20 cultural research, review of topography, review of  
21 drainage.

22           They'll be putting all of that together as  
23 a package for the LUC to review at that point in  
24 time before you decide whether they may actually  
25 move ahead with Phase 2 or not. That is my

1 impression.

2 **COMMISSIONER OHIGASHI:** I'm not sure if  
3 that's your -- that may be your impression, but I'm  
4 not sure if that's a line, from what I can tell,  
5 that we've given already approval of it, and all  
6 they have to meet is these certain criteria, and  
7 then we have automatically -- it's automatically  
8 granted to them, and then they go down to County to  
9 get whatever permits they need.

10 **MS. BALASSIANO:** I don't --

11 **COMMISSIONER OHIGASHI:** So that's what my  
12 impression is, and that's what I got from  
13 petitioner's attorney, who is a little bit older  
14 than me is my understanding.

15 But that's my understanding, so once this  
16 happens, and these benchmarks are met, we have no  
17 say. That's what I understand.

18 **MS. KATO:** So if I could respond to that,  
19 I don't necessarily agree with that. I mean, I  
20 think it's in the LUC's rules, too, that you should  
21 consider a number of things such as, you know, new  
22 additional impacts or changes in law.

23 Sorry, I'm trying to find it. It's HAR  
24 15-15-78 that discusses incremental districting.

25 **COMMISSIONER OHIGASHI:** Would you agree to

1 write a memorandum on that issue?

2 **MS. KATO:** I could. I'm not sure how long  
3 that would -- going to take some time.

4 **COMMISSIONER OHIGASHI:** You know, I'm not  
5 here to -- you know, I really have no interest in  
6 it, but it would be good guidance for the future, as  
7 well as good guidance for the commission today, to  
8 know what we're doing.

9 If we're saying that the ministerial  
10 position, these benchmarks are met, we have no  
11 further say in this matter, then we can vote  
12 accordingly. And we know that.

13 If you're saying, no, no, no, no, you're  
14 going to have consider all of these other issues at  
15 that time, then --

16 **MS. KATO:** I mean eventually --

17 **COMMISSIONER OHIGASHI:** Then we should be  
18 able to vote on that and with that knowledge. So  
19 I'm asking is OPSD going to provide us some legal  
20 memorandum to support their position that this,  
21 we're going to have to do all of that?

22 **MS. KATO:** I mean, this response is just  
23 off the top of my head, just scanning it. I have  
24 not looked at this extensively at all.

25 **COMMISSIONER OHIGASHI:** But this is a

1 statement that your client made, and this is what  
2 you indicated you supported. I just want to know if  
3 it's -- even if it's on the top of your head. And  
4 shouldn't you research it, have it researched, and  
5 have it done so that we know how we're going to --  
6 where we're going to vote on this?

7 **MS. BALASSIANO:** Our recommendation to you  
8 is that, in addition to that stipulation, that the  
9 applicant comply with all regulations and rules at  
10 the time that they come in for the redistricting of  
11 Phase 2. So that is what we had put into our  
12 testimony.

13 **COMMISSIONER OHIGASHI:** What does that  
14 mean?

15 **MS. BALASSIANO:** So just that the County  
16 had --

17 **COMMISSIONER OHIGASHI:** Does it mean that  
18 --

19 **MS. BALASSIANO:** Just as the County had  
20 indicated, when the applicant comes in for  
21 additional subdivisions, they're going to have to  
22 comply with all of the grading, subdivision  
23 regulations --

24 **COMMISSIONER OHIGASHI:** No, no. You're  
25 saying that -- what does that mean? If they come in

1 ten years from now, do they have to comply with LUC  
2 requirements at that time? Yes?

3 **MS. BALASSIANO:** Yes.

4 **COMMISSIONER OHIGASHI:** Okay. That's a  
5 completely different answer than Mr. Yuen has given.  
6 Mr. Yuen has indicated that it is -- you don't have  
7 to do.

8 **MS. BALASSIANO:** They have always complied  
9 with the regulations of the LUC.

10 **COMMISSIONER OHIGASHI:** But the  
11 regulations of the LUC require them to file -- for  
12 us to do a Ka Pa'akai analysis, and we're going to  
13 do that on -- on --

14 **MS. BALASSIANO:** Phase 2.

15 **COMMISSIONER OHIGASHI:** -- on Phase 2. Is  
16 that what you were saying that we're going to do?

17 **MS. BALASSIANO:** Yes.

18 **COMMISSIONER OHIGASHI:** Do you have law  
19 that backs that up?

20 **MS. BALASSIANO:** The way that I read it,  
21 that is the law.

22 **COMMISSIONER OHIGASHI:** That's not what --  
23 I don't believe that the petitioner believes that.

24 Do you believe that, Mr. Petitioner?

25 **MR. YUEN:** No. I think the commission in

1 1983 determined that it was appropriate for the  
2 entire petition area to be reclassified, but Phase 2  
3 could be reclassified incrementally upon  
4 satisfactory completion of Phase 1.

5 **COMMISSIONER OHIGASHI:** And that's not --  
6 so they're saying they don't need a Ka Pa'akai  
7 analysis.

8 **MR. YUEN:** So the purpose of moving it to  
9 the County is so that the County then is responsible  
10 for overseeing compliance with archaeological,  
11 environmental, all the various other approvals that  
12 are required to make the project a reality. But the  
13 statutory scheme from dating back to the 1960s, it's  
14 been the Land Use Commission makes the initial yes  
15 or no decision, and everything moved to the County.

16 **COMMISSIONER OHIGASHI:** Obviously, we have  
17 two points of view. Okay.

18 **VICE-CHAIR CABRAL:** Thank you for your  
19 stimulating questions, Commissioner Ohigashi.

20 Okay. I think I look to Commissioner  
21 Okuda. Are you looking to make a comment?

22 **COMMISSIONER OKUDA:** Thank you. This is  
23 Gary Okuda. So either of you can answer this  
24 question. I just want to know what the position of  
25 the Office of Planning is, since you folks really

1 are the state's planning watchdog in all of this;  
2 okay?

3           You heard when I read from the Ka Pa'akai  
4 case what the Supreme Court said that as such, state  
5 agencies such as the LUC may not act without  
6 independently considering the effect of their  
7 actions on Hawaiian traditions and practices.

8           So first question is as that term "act",  
9 a-c-t, is used in that sentence, are we taking an  
10 action or acting, as that word is used in the Ka  
11 Pa'akai case today? Is what we're being asked to do,  
12 "to act"?

13           **MS. KATO:** I'm not sure that I know the  
14 answer to that.

15           **COMMISSIONER OKUDA:** I know. But what is  
16 the Office of Planning's position on that? I mean,  
17 when we as a government agency, think and act, which  
18 affects, let's say, land use or a land use matter,  
19 as what we're being requested to do here today, is  
20 that an act or action as that term or word is used  
21 in the Ka Pa'akai case by the Hawai'i Supreme Court?

22           **MS. KATO:** When you're saying that we need  
23 to do a Ka Pa'akai analysis, what are you saying  
24 that --

25           **COMMISSIONER OKUDA:** No, no. I'm just

1 asking for whether or not the word "act", which is  
2 used in that sentence in the Ka Pa'akai case, does  
3 that word "act", a-c- t, describe what we are being  
4 asked to do today -- in other words, to act or act  
5 on something?

6 **MS. KATO:** I don't know the answer to  
7 this. I have not researched this issue before.

8 **COMMISSIONER OKUDA:** Based on your  
9 experience as a lawyer, what does the word "act"  
10 mean?

11 **MS. KATO:** Do you mean what does the word  
12 mean generally?

13 **COMMISSIONER OKUDA:** Doesn't it mean --  
14 aren't we being asked to act, to do something?  
15 Isn't that what the plain -- a rule of statutory  
16 construction is you just use the plain meaning of  
17 the word; right? I mean -- or are you saying what  
18 we're being asked to do today is not really an  
19 action?

20 **MS. KATO:** I mean, I think that has to be  
21 really taken into context with the review of the  
22 case under consideration.

23 **COMMISSIONER OKUDA:** Okay. Are you aware  
24 of any legal authority that indicates what we are  
25 being asked to do today is not an act as that word



1 is used in the sentence I read from the Ka Pa'akai  
2 case?

3 **MS. KATO:** I'm not.

4 **COMMISSIONER OKUDA:** Okay. Is it the  
5 Office of Planning's position that connection to a  
6 sewer line, government sewer line or construction of  
7 a government sewer line in the manner that has been  
8 described taking place with respect to this project,  
9 will never trigger or -- strike that.

10 Is it the Office of Planning's position  
11 that the connection to the sewer line in the manner  
12 that has been described in this case is not a  
13 trigger to Chapter 343?

14 **MS. BALASSIANO:** They satisfied 343.

15 **COMMISSIONER OKUDA:** That's not my  
16 question. My question is whether or not a  
17 connection -- let me finish. My question is whether  
18 or not it's the Office of Planning's position that  
19 the connection to a sewer line in the manner that  
20 has been described in this case does not trigger  
21 343?

22 And I'm asking that so that if some other  
23 landowner or applicant comes before us, you know,  
24 and they're faced with a different argument, we have  
25 to be consistent about what position we take. So is

1 that the Office of Planning's position, that a  
2 connection to a sewer line in the manner that has  
3 been described in this case is not a 343 trigger?

4 **MS. BALASSIANO:** That would depend on  
5 where the sewer line is being constructed and under  
6 what circumstances.

7 **COMMISSIONER OKUDA:** I'm saying the exact  
8 circumstances that have been described in this  
9 petition and this present matter. Is it the Office  
10 of Planning's position that that type of facts did  
11 not trigger 343? It's either yes, no, or I don't  
12 know.

13 **MS. KATO:** We are not experts on, you  
14 know, whether what triggers a Chapter 343, but, you  
15 know, as Katia said, I think it does depend on  
16 circumstances. In this case petitioner has  
17 represented that the capacity with the sewer  
18 connection was considered in the EA for the  
19 affordable housing.

20 **COMMISSIONER OKUDA:** Okay. Well, that was  
21 my question. It's just simply if you're saying  
22 you're not experts in what triggers 343, then if  
23 that's your response, then, you know, I'll take that  
24 as your response. Is that your response, that  
25 you're not experts as far as what triggers

1 application of 343?

2 **MS. KATO:** I think in some circumstances,  
3 it would trigger. But again, I do think it depends  
4 on the circumstances.

5 **COMMISSIONER OKUDA:** So if there's --  
6 okay. Okay, well, yeah, I hear what you said.  
7 There's no sense beating the proverbial dead horse.

8 Thank you, Ms. Chair. I have no further  
9 questions.

10 **COMMISSIONER KAHELE:** I have a question.

11 **VICE-CHAIR CABRAL:** Okay, Commissioner  
12 Kahele.

13 **COMMISSIONER KAHELE:** So your response  
14 letter regarding the request for an extension made  
15 by the petitioner March 10, 2023, you are  
16 recommending not to have a ten-year extension?

17 **MS. KATO:** That was our original position.  
18 Yes.

19 **COMMISSIONER KAHELE:** And your position  
20 today is?

21 **MS. KATO:** Ten years with requirements  
22 within three years.

23 **COMMISSIONER KAHELE:** When was that  
24 included in your letter, that you would be  
25 recommending an additional ten-year extension?

1 **MS. KATO:** Well, as discussed in our  
2 letter, we did have concerns with the length of time  
3 that this project has been ongoing and that we're  
4 concerned that another ten years are going to go by  
5 and there will not be housing construction. But --

6 **COMMISSIONER KAHELE:** Yeah, but wasn't  
7 that included in the petitioner's letter, that they  
8 were going to start construction once the wastewater  
9 line was in place in 2024? So this ten-year  
10 extension is not needed, actually.

11 **MS. KATO:** The ten-year extension is the  
12 ten years to substantially complete Phase 1.

13 **COMMISSIONER KAHELE:** Right.

14 **MS. KATO:** So that would likely -- okay.  
15 So that's different from the wastewater and the  
16 affordable housing. Substantial completion of Phase  
17 1.

18 **COMMISSIONER KAHELE:** Oh, yes, it's here.  
19 I'm just looking at your response today was that the  
20 ten-year extension was not necessary.

21 **MS. KATO:** For -- I think the original D&O  
22 I originally interpreted differently. But I think  
23 it's unclear, the way that it's worded.

24 **COMMISSIONER KAHELE:** Okay. I was just --

25 **MS. KATO:** With respect to what that

1 substantial completion. And I still think it's  
2 unclear what exactly is substantial completion,  
3 because the LUC's current requirements these days  
4 are not written that way.

5 Like, now we have conditions that are more  
6 clear, where it's, like, you must complete this  
7 backbone infrastructure within ten years, and it has  
8 a description of what that includes.

9 Here it just says onsite or offsite --  
10 onsite and offsite improvements, substantial  
11 completion of that.

12 **COMMISSIONER KAHELE:** Well, I'm sorry,  
13 but, you know, I'm looking at your recommendation,  
14 and now I'm convinced that, you know, maybe we  
15 shouldn't give them the ten-year extension complete,  
16 considering OPSD wrote that response letter saying  
17 that it wasn't needed.

18 **MS. KATO:** I guess that is --

19 **COMMISSIONER KAHELE:** Anyway, I just  
20 wanted to mention that. Thank you.

21 **VICE-CHAIR CABRAL:** Okay, commissioners,  
22 any more comments or questions here to Office of  
23 Planning and Sustainable Development?

24 Okay. I think we've worked our way to  
25 another break time. Okay. Thank you very much.

1 We're going to take ten minutes, so we'll go ahead  
2 at quarter to three; okay? Come back. Thank you.

3 **(Recess taken at 2:33 - 2:44 p.m.)**

4 **VICE-CHAIR CABRAL:** Okay. We're calling  
5 the meeting back to order at 2:44, a minute early.  
6 Okay. At this point do we have any further  
7 discussion, commissioners? Okay, commissioners.

8 The chair at this point would like to  
9 entertain a motion regarding how the commission  
10 should proceed in this matter.

11 Commissioner Okuda?

12 **COMMISSIONER OKUDA:** Madam Chair, I wish  
13 to respectfully make a motion to deny the petition  
14 request, and I'll state my reasons afterwards, if  
15 there is a second to my motion.

16 **VICE-CHAIR CABRAL:** Commissioners, is  
17 there a second for at least discussion purposes for  
18 Commissioner Okuda's motion to deny?

19 **COMMISSIONER KAHELE:** Mel Kahele.

20 **VICE-CHAIR CABRAL:** Mel Kahele.  
21 Commissioner Kahele seconded that motion. Thank  
22 you.

23 **MR. YUEN:** Is there an opportunity to give  
24 rebuttal after the other side finished?

25 **VICE-CHAIR CABRAL:** I had asked on that.

1 They had no witnesses, but --

2 **MR. YUEN:** Okay. Or at least an  
3 opportunity to make a final argument?

4 **COMMISSIONER OKUDA:** Yeah. I would --  
5 yeah, I think Mr. Yuen is correct.

6 **VICE-CHAIR CABRAL:** Okay.

7 **COMMISSIONER OKUDA:** I'll withdraw my  
8 motion.

9 **VICE-CHAIR CABRAL:** Okay. The motion's  
10 withdrawn. Is there a second? Will the seconder of  
11 that motion withdraw?

12 **COMMISSIONER KAHELE:** Okay.

13 **VICE-CHAIR CABRAL:** Okay. Petitioner  
14 Yuen, go ahead and make your comments.

15 **MR. YUEN:** Thank you, Madam Chair. I  
16 think if you had asked me 40 years ago if I were  
17 going to be sitting in this chair on the other side  
18 of the room 40 years in the future coming back for  
19 an extension of time to make substantial completion  
20 on the project, I would have been the last one to  
21 tell you, yeah, you're crazy. But anyway, here we  
22 are.

23 And I think it's important to keep in mind  
24 exactly what the commission did 40 years ago and  
25 what is incumbent on the commission today. Forty

1 years ago the commission ruled -- or decided that a  
2 boundary change for the entire project was  
3 appropriate, with the Phase 2 being approved on an  
4 incremental basis upon substantial completion of  
5 Phase 1.

6           What the petitioner is asking for in this  
7 case is the opportunity to make substantial  
8 completion of Phase 1. And for a number of factors,  
9 petitioner and its successors have spent significant  
10 amounts of money constructing most of the  
11 infrastructure, including the road that runs from  
12 the Mauna Loa Highway down to Queen Kaahumanu, water  
13 infrastructure, and has embarked on construction of  
14 the last phase of infrastructure, which is the sewer  
15 project.

16           The petitioner has donated land to the  
17 Hawai'i Island Community Development Corporation  
18 that has broken ground on a 100-unit affordable  
19 housing project, and in addition to donating the  
20 land, has provided the water and the sewer hookups  
21 for that project so that all the HICDC is doing is  
22 constructing, making the site improvements, and  
23 constructing the housing units.

24           Following the completion of the sewer  
25 line, the petitioner intends to start developing the



1 housing, the market rate housing project, and  
2 intends to complete construction of that project  
3 within ten years.

4           The petitioner has completed  
5 archaeological surveys of Phase 1 of the petition  
6 area. And the petitioner, in applying for grading  
7 permits for the remainder of the project other than  
8 the first two increments, is going to have to  
9 satisfy the State Historic Preservation Division  
10 that the archaeological inventory surveys, the  
11 burial treatment plans, and the recovery plans are  
12 adequate, or SHPD will require restudies or  
13 additional studies.

14           The County of Hawai'i has determined that  
15 construction of the sewer line and the affordable  
16 housing project triggered the requirement that an  
17 environmental assessment be done, and an  
18 environmental assessment of both the affordable  
19 housing project and the wastewater treatment line  
20 were completed in 2019.

21           The master plan was submitted to the  
22 commission as part of the 2018 annual report, and I  
23 think the only question in the commissioners' minds  
24 is whether the commission has to make a Ka Pa'akai  
25 determination on reclassification.

1 It's our position that the commission in  
2 1983, when it made the decision, was not bound by  
3 the Ka Pa'akai decision because the Ka Pa'akai  
4 decision followed after the 1983 determination.

5 If the commission would like a Ka Pa'akai  
6 analysis, we would be prepared to say that  
7 petitioner would do one before coming to the  
8 commission in 2033 for approval of Phase 2.

9 Other than that, we think that the  
10 statutory scheme is once the commission makes a  
11 boundary change determination, things like the  
12 archaeological survey, the drainage, and all of the  
13 other studies that would be entailed in the  
14 development of the remainder of Phase 1 as well as  
15 Phase 2 would then pass to the county, which has  
16 both the expertise and the number of permits that  
17 are required to bring any development of this time  
18 to a satisfactory completion.

19 **MR. MEYER:** Is it okay if I add a few --

20 **VICE-CHAIR CABRAL:** Okay. The petitioner,  
21 Mr. Meyer, would like to also speak. Is that  
22 acceptable?

23 **MR. MEYER:** I was asked not to, but --

24 **VICE-CHAIR CABRAL:** I'm sorry. What?

25 **MR. MEYER:** I was asked not to by the

1 executive officer.

2 **VICE-CHAIR CABRAL:** Okay. I guess your  
3 attorney did your rebuttal for you. All right.

4 County of Hawai'i, any comments at this  
5 time?

6 **MR. KERN:** I have a rebuttal per se. We  
7 need housing. We do need the project. I would hope  
8 that we could find a way to move something forward,  
9 because "no" doesn't solve for it. And that's my --  
10 I'm going to try to work with. I'm a balanced guy.  
11 Like, how do we find a middle ground? And we need  
12 the housing. We need the project.

13 The amount of infrastructure already  
14 that's been put in here has been substantial. And  
15 we have the affordable housing currently. We have a  
16 sewer line going in. How do we get to a "yes"?  
17 Thank you.

18 **VICE-CHAIR CABRAL:** Office of Planning and  
19 Sustainable Development?

20 **MS. KATO:** I think OPSD feels the same.  
21 We would like for this project to move ahead. We  
22 support the production of housing. There's been a  
23 lot of work put into it. They're ready to go.

24 **VICE-CHAIR CABRAL:** Okay. Other  
25 commissioners have comment at this time? Are we

1 headed to deliberation? Okay.

2 Oh, I'm sorry. I am sorry. We have a  
3 slot here for additional public testimony, which  
4 could include those who have previously spoken. You  
5 have a right to speak again for three minutes.

6 And would you like to speak again? Okay.  
7 This is Kimberly Crawford, and I will remind you you  
8 still are under oath. Go ahead. Proceed.

9 **MS. CRAWFORD:** Aloha, chair,  
10 commissioners. You know, I do agree that we need  
11 housing for people and our community. We live in a  
12 multi-generational home. My parents, my grandma,  
13 and my kids, we all live together.

14 But just as much as we need housing, we  
15 need food for our people, so we need Ag land in Kona  
16 just as much as we need urban designation. And  
17 again, when we preserve land in Ag, the amount of  
18 water, the amount of recharge, the amount of benefit  
19 to the coastal ecosystem is really amplified. And  
20 so we're not only going to be feeding our people  
21 from the actual Ag land, but we'll be able to feed  
22 our people from our local i'a, our fishpond, and  
23 from our coastal resources.

24 So I just wanted to kind of add that in  
25 today, that although we do need housing for our

1 people, a hundred affordable housing units is barely  
2 putting a dent in this, and housing and market rate  
3 isn't affordable to even the people who are living  
4 here with good-paying jobs. Like, let's be real.

5           And so are we really doing a service to  
6 our community by pushing forward this Phase 2? Or  
7 could we do better planning in 2023 than we did in  
8 1983 and work together and consult our community and  
9 consult our traditional practitioners and consult  
10 the people that are actually the beneficiaries of  
11 this aina, of this water, of this land, of this  
12 place rather than just doing what we got to do  
13 because it's already been pushed through so far?

14           So I just wanted to add that in today.  
15 Mahalo for you guys' time. Thank you.

16           **VICE-CHAIR CABRAL:** Thank you, Ms.  
17 Crawford.

18           All right. And Ruth Aloua? Go ahead.  
19 And you have been sworn in already. Thank you.

20           **MS. ALOUA:** Okay. Thanks so much.

21           You know, we had a gathering at the  
22 fishpond a couple months ago with some Waimanalo  
23 practitioners, and in a sharing circle, you know,  
24 someone said something that stuck out to me. And I  
25 said, you know, us guys, we're so hard on ourselves.

1 We nickel and dime us for everything we do, and  
2 we're trying to help our community, and we know that  
3 we're not doing our best, but it's all that we can  
4 give.

5 But then, you know, you have people that  
6 come here. They'll do the devil's deeds and never  
7 question it. They'll never look back. So, you know,  
8 when I think about this project, what we're asking  
9 for is we're asking for more. You know, as a people  
10 that are already doing everything we can in the  
11 communities to make this a better place for the Kona  
12 community, we have to look at it.

13 Is it the best thing for Kona community  
14 right now? Do we need market homes that are going  
15 to be in a gated community? Who in this room can  
16 buy a house for a million dollars? That's the  
17 market. That's what we're looking at.

18 We're saying here from our own county  
19 representatives, we have affordable housing. We  
20 have our kids living in cars in the K-Mart parking  
21 lot. We have families living in cars going to work,  
22 hoping they come home, and all their mea is still  
23 inside their cars parked on the side of the road.

24 This project, it has to be looked at. It  
25 has to be reconsidered. We cannot continue to just

1 expand, expand and grow without proper  
2 infrastructure. At the Kona airport it's, what, two  
3 million visitors a year are coming through.  
4 Approximately 150,000, 160,000 fly in per month to  
5 Kona. That's on top of the current population  
6 that's already here, not even considering the  
7 flights that are coming in from Hilo.

8 We cannot take any more development  
9 without proper infrastructure improvements. Our  
10 kids cannot even go doctor because no more doctor.  
11 There's no opening for appointments. You miss a  
12 specialist, you wait an entire year. We have kupuna  
13 that are waiting in the hospital because there's no  
14 place else for them to go.

15 We don't have the infrastructure for our  
16 families that are here, and yet we're going to say  
17 we need this development. We need to be clear.  
18 This is a luxury resort development that is not for  
19 typical homeowners or current residents of Kona or  
20 of Hawai'i. We need to be really clear, and I think  
21 that that's really important for the record for  
22 future generations.

23 And we also need to be thinking about all  
24 of the families that actually -- because this  
25 affordable housing development, was it followed

1 through on? 1983, 1993, 2003, 2013, 2023. How many  
2 of our families could have had these homes? We're  
3 not even -- we haven't even talked about the people  
4 that are being targeted, you know, and they also  
5 deserve a place in these discussions.

6 **VICE-CHAIR CABRAL:** I ask you to  
7 summarize, please.

8 **MS. ALOUA:** I just want to say thank you  
9 for you folks' time. I know it's volunteer, and  
10 I've appreciated the conversations and, you know.  
11 And I just hope for more from our county  
12 representatives to really think of the diversity of  
13 individuals that live here.

14 **VICE-CHAIR CABRAL:** Okay. Hold on in case  
15 there's any questions.

16 Commissioner Ohigashi has a question.

17 **COMMISSIONER OHIGASHI:** So, Ruth, it  
18 sounds like some of your statements seem to say  
19 that, yes, we do need more housing. We need it for  
20 our people. Is that right?

21 **MS. ALOUA:** Yes.

22 **COMMISSIONER OHIGASHI:** Yeah. And then do  
23 you represent a group besides the fishpond? Is  
24 there a native people that you're going to talk to?

25 **MS. ALOUA:** I don't formally represent any



1 group. No.

2 **COMMISSIONER OHIGASHI:** In any event, if  
3 there was more time, just to explain, my  
4 understanding of the procedure today is that they're  
5 asking -- they have the right to build that area.  
6 Phase 1 we call it. And they're doing that.  
7 They're building it. They're making houses and  
8 things like that.

9 This is a question about Phase 2, which is  
10 another part. It's a second part. So that's the  
11 question today. And your comments is not  
12 necessarily going to affect Phase 1, since that's  
13 nothing we can do about, but it maybe affect Phase  
14 2; okay?

15 Do you think that a community outreach to  
16 make some kind of understanding between you and the  
17 developer, or people in your community and the  
18 developer, to sit down and figure out whether or not  
19 they have a good heart and they're willing to see  
20 what kind of development goes on Phase 2? Would  
21 that assist you in that?

22 Because if the petitioner or the developer  
23 is willing to sit down with you, we can continue  
24 this discussion and see if the community can come up  
25 with something that works, that the county

1 officials, County of Hawai'i officials seem to want,  
2 that takes into account on Phase 2 what happens to  
3 the fishpond, how it can be protected, what housing  
4 can be made available to local residents, what  
5 assurances can be happening?

6 And if not, we can come back and pick up  
7 the final issue. Is that something you think that  
8 would be helpful to you?

9 **MS. ALOUA:** I cannot speak for Kona, but I  
10 do think that it would be worthy of investigation to  
11 consult with the Kona community to see what are the  
12 housing options that are within the range of  
13 affordability for the current residents. That's  
14 probably what I meant.

15 But I would say that I don't think that  
16 the Ka Pa'akai analysis should be shelved. Those  
17 things are also equally important.

18 **COMMISSIONER OHIGASHI:** Is that something  
19 you think that you and your colleague can  
20 collaborate and try and see whether or not that kind  
21 of dialogue can take place?

22 Because I'm kind of struck by the County  
23 of Hawai'i's position, that they want to see a way  
24 forward. And a lot of our discussion has to do with  
25 procedures and trust and all kinds of things. And

1 we are not a party of the community that can really  
2 solve. We have only one decision to make, yes or  
3 no.

4 But do you think that that can happen? Or  
5 that cannot happen?

6 **MS. ALOUA:** You know, I'm not in charge.

7 **COMMISSIONER OHIGASHI:** I understand.

8 **MS. ALOUA:** I think it really depends on  
9 the developer. And I don't think that it's fair to  
10 pass the burden onto the community members. These  
11 are initiatives that could be initiated by the  
12 developer.

13 **COMMISSIONER OHIGASHI:** I'm not saying  
14 that you are going to have to do it. I'm just  
15 saying that is that something, you think, that if we  
16 give time, that you and your friends taking the time  
17 to testify today can help facilitate, at least?

18 **MS. ALOUA:** I think it would be worthy of  
19 investigation, to delay the decision making, to see  
20 what alternatives are available for the current  
21 needs of Kona's existing community and the housing  
22 options. I think that's a good start.

23 I've learned it's always good to do your  
24 homework before you go and talk to the kupuna and  
25 the families. So you want to do your groundwork.

1 They probably have the data and stats available.

2 That's step one.

3 Step two is talk to the community, you  
4 know, bring them into the process, show them the  
5 numbers. So I definitely think it's worthy of  
6 investigation. But with saying that, I do believe  
7 that the Ka Pa'akai analysis is still important in  
8 addition to the environmental impact statement, and  
9 a greater environmental study.

10 You know, as much as we need housing, we  
11 need to make sure that the environment can withstand  
12 it, that we -- you know, the water that we're going  
13 to take, is it going to harm the ecosystem?

14 **COMMISSIONER OHIGASHI:** And I understand  
15 your position, and I'm not trying to -- I'm just  
16 trying to figure out if there is a reasonable way of  
17 working out those issues so that we don't  
18 necessarily have to say yes or no today. We can  
19 say, hey, developer, you should go out and try using  
20 the county's great abilities to try and figure, to  
21 get the people involved, and to solve this problem  
22 for us. And they come up with their own, and who  
23 knows what they come up with to satisfy our  
24 concerns?

25 **MS. ALOUA:** I would love that. I would

1 love to see alternatives.

2 **COMMISSIONER OHIGASHI:** Just a thought.

3 **MS. ALOUA:** All I'm saying is that the  
4 current community, yeah, let's see them. Let's  
5 bring them to the table, because we only had one,  
6 and that one isn't working.

7 **COMMISSIONER OHIGASHI:** Okay. Thank you.

8 **VICE-CHAIR CABRAL:** Okay. Anyone else?  
9 Thank you very much, then.

10 Anyone else in the public wishing to --?  
11 Okay. Coming up to provide public testimony is Tom  
12 Yeh. Do I need to swear him in? He's an attorney.  
13 Okay. I'm going to do it just to be safe. I keep  
14 making mistakes.

15 **MR. YEH:** You can swear in an attorney. I  
16 don't know.

17 **VICE-CHAIR CABRAL:** Okay. Do you swear  
18 and affirm that the testimony you will give is the  
19 truth?

20 **MR. YEH:** I certainly do. Thank you.

21 **VICE-CHAIR CABRAL:** Thank you.

22 **MR. YEH:** And Madam Chair, members of the  
23 commission, you know, I've -- I'm not sitting at the  
24 table as Mr. Yuen has. I've worked with the  
25 petitioner RCFC for about, gee, eight years now,

1 when they first inherited the property after having  
2 taken it back from the prior petitioner, who was not  
3 able to carry his project through.

4           And I've lived with and visited with them  
5 through all the steps and the efforts that they've  
6 made to comply with the requirements, that they  
7 substantially complied with completing offsite  
8 improvements first, with the water well, the water  
9 reservoir that was completed, the water lines and  
10 laterals that were dedicated, the sewer line now.

11           And understand that when we talk about  
12 Phase 1, Phase 1 has only been approved by this  
13 commission. The redistricting is there in reliance  
14 on that. In reliance on the Decision & Order, a  
15 100-unit affordable housing unit is now going up and  
16 is going to be completed next year. A hundred units  
17 for Phase 1, which is only 520 units?

18           All the reliance, all the money that's  
19 been spent for the sewer line, the affordable  
20 housing, the land donation has been geared not only  
21 to Phase 1, but to Phase 2. That sewer line has  
22 capacity not only for the affordable housing  
23 project, for Phase 1, but communities downstream.  
24 It's not just this project that that sewer line is  
25 serving.

1 When I listen to the issue of Ka Pa'akai,  
2 we know that as the petitioner develops Phase 1  
3 lands moving forward from the first two phases that  
4 were described, they have to comply with Ka Pa'akai.  
5 They have to comply with SHPD.

6 So what are we really talking about?  
7 We're talking about an extension of time for Phase 2  
8 to allow them ten more years. They weren't  
9 responsible for the last 40 years. They've now  
10 taken this project and brought it to the point where  
11 they can develop Phase 1 to get to Phase 2. They  
12 spent a lot of money in reliance on that.

13 When we talk about Ka Pa'akai moving  
14 forward for Phase 2, increment 2, south of Hina  
15 Lani, what are they going to have to do? They had  
16 to come to this commission and say we want  
17 incremental districting, because we've done the  
18 substantial compliance with Phase 1, and in order to  
19 do that, what do we need to show you?

20 You can say make sure you comply with the  
21 conditions of Ka Pa'akai for Phase 2. Comply with  
22 all those rules and regulations that they're going  
23 to have to comply with either from a state or county  
24 level. You have that authority.

25 So when I hear, at least initially, this

1 petition of this motion to deny, given the context  
2 of the history and the circumstances that we bring  
3 ourselves here today, it really troubles me that all  
4 this money has been spent to get to this point where  
5 the county and the state are saying let's do this.  
6 All this infrastructure is in to take care of Phase  
7 2, not just Phase 1, but Phase 2 and communities  
8 elsewhere. Water reservoirs, two million gallons.  
9 Is that just this project? No.

10           So just consider that that's the  
11 background and the circumstances under which you're  
12 being asked to give a decision to say ten more  
13 years. Is that reasonable? We know how long it's  
14 taken just to get to this point from 2013. We all  
15 know development takes time.

16           The affordable housing project itself, 100  
17 units. How long has that taken to get sewer,  
18 development permits, funding? Now we're talking  
19 about this Phase 1 and what needs to be done there.  
20 And when we get to that Phase 2, we're going to have  
21 more housing. We're going to have more affordable  
22 housing.

23           So please, just consider and look at the  
24 circumstances. If you want to condition incremental  
25 districting of this ten-year period on compliance



1 with Ka Pa'akai moving forward, that's fine, because  
2 they have to do it anyway for any new development.  
3 I'd just ask you to consider that.

4 Thank you. That's it. That's all I have.  
5 And I'm open for questioning.

6 **VICE-CHAIR CABRAL:** Okay. I did fail to  
7 ask you that you should state your name, Tom Yeh.

8 **MR. YEH:** Yeah. It's Tom Yeh, attorney.

9 **VICE-CHAIR CABRAL:** 505 Kilauea Avenue.  
10 He was previously my tenant at 2 Kamehameha -- no, 6  
11 Kamehameha, better location.

12 **MR. YEH:** A farmer. My wife is a farmer.  
13 She's a rancher. We respect the aina. We do a lot  
14 for the land. We also understand that there needs to  
15 be a balance. It's not just Ag, it's not just  
16 housing, it's what takes the community forward.  
17 Thank you.

18 **VICE-CHAIR CABRAL:** Thank you.  
19 Any comments or questions of the  
20 testifier?

21 Okay. Commissioner Okuda?

22 **COMMISSIONER OKUDA:** Yeah. This is Gary  
23 Okuda. Thank you, Mr. Yeh, for your testimony. And  
24 I do agree with, you know, what you say, except  
25 maybe the ultimate conclusion. Let me ask you this.

1           **MR. YEH:** Sure.

2           **COMMISSIONER OKUDA:** If you're saying a Ka  
3 Pa'akai analysis is going to have to be done at some  
4 point in time, why not just do it now and get the  
5 ball rolling now? I mean, what is the harm, really,  
6 of just doing the Ka Pa'akai analysis now?

7           **MR. YEH:** Are we talking Phase 1 or Phase  
8 2?

9           **COMMISSIONER OKUDA:** No. Because if I'm  
10 correct -- and a lot of times I'm not correct, but  
11 if the plain language of the Ka Pa'akai case really  
12 says what I said, which is before the Land Use  
13 Commission can act, it has to consider these Ka  
14 Pa'akai issues; okay?

15           **MR. YEH:** True.

16           **COMMISSIONER OKUDA:** And just erring on  
17 the side of caution here, okay -- and let me just  
18 actually jump ahead.

19           **MR. YEH:** Sure.

20           **COMMISSIONER OKUDA:** Even if a Ka Pa'akai  
21 analysis has to be done because there is some  
22 substantial commencement of use of the land -- we're  
23 not talking substantial completion, but substantial  
24 commencement as that term is used in the Bridge Aina  
25 Lea case -- there's frankly nothing the Land Use

1 Commission could do even if the commission wanted to  
2 stop this development.

3 And I don't think you've heard anywhere  
4 here anyone say that the commission is opposed to  
5 housing or we think this developer is bad or  
6 anything like that.

7 So what the reality is, and that's why I  
8 have to question, what is the practical effect by  
9 just making sure these last couple boxes are checked  
10 off so that there is not something that happens like  
11 the Superferry case later on, where somebody pops  
12 out of the woodwork and just grenades this thing?

13 **MR. YEH:** The Ka Pa'akai decision said you  
14 make that decision, you act in the context of that  
15 background information, right, with respect to this  
16 property. And we know, at least from what I've  
17 seen, we went through this whole public trail when  
18 we went to DLNR and got approval for the trail  
19 process.

20 The developer at that time had already  
21 worked with the community in respecting some of  
22 those issues. So the context is that work has  
23 already been done. And I'm talking about Phase 1.  
24 I'm not saying it has been done for Phase 2; right?

25 **COMMISSIONER OKUDA:** Yeah.

1           **MR. YEH:** And it's pretty clear to me that  
2 when they come in for incremental districting for  
3 Phase 2, they're going to want to have made that  
4 analysis. That's what I'm talking about. So I  
5 think there's got to be a distinction. Phase 1  
6 redistricting already done. All those approvals are  
7 there. Those rights are vested.

8           **COMMISSIONER OKUDA:** Yeah. Mr. Yeh, just  
9 because I know the afternoon's getting long, my only  
10 question is this. If -- and I take your word for  
11 it, you know, based on your personal knowledge all  
12 this work has done, so just compile it in a cultural  
13 impact analysis. I mean, if the work has been done,  
14 I'm not just saying repackage it, but put it in a  
15 form so that we don't have an issue regarding Ka  
16 Pa'akai going forward.

17           The other thing is if there's any question  
18 here whether or not the use of that sewer line for  
19 the broader development triggers 343, why not just  
20 simultaneously with this development going forward  
21 get that done? There's nothing on the table here,  
22 and I'm not even -- I don't believe the Land Use  
23 Commission has the authority under Bridge Aina Lea  
24 to seek injunctive action to stop the development.

25           All I'm saying is this development can

1 continue on as long as the county is satisfied.  
2 Everything can continue on. Just get these other  
3 things done so that, you know, we don't have these  
4 Supreme Court cases staring us in the face. Is  
5 there a practical problem with doing it, based on  
6 years of experience in the land use area? Do you  
7 see a practical problem?

8 **MR. YEH:** Well, that's a really good  
9 question, because this whole analysis -- and that's  
10 why I was asking, are we talking about Phase 1 or  
11 are we talking about Phase 2?

12 **COMMISSIONER OKUDA:** I'm just saying just  
13 do the analysis in whatever way the applicant  
14 believes that it satisfies Ka Pa'akai.

15 **MR. YEH:** To the extent that the applicant  
16 is required to follow Ka Pa'akai in either Phase 1  
17 or Phase 2, and I'm saying to the extent that the  
18 law requires it, it will follow it and has followed  
19 it.

20 **COMMISSIONER OKUDA:** Okay. I understand.  
21 Thank you. No, I understand. Thank you.

22 **MR. YEH:** Yeah. Thank you.

23 **VICE-CHAIR CABRAL:** Any questions of Mr.  
24 Yeh from any other commissioners?

25 Thank you very much.

1           **MR. YEH:** Thank you, chair.

2           **VICE-CHAIR CABRAL:** Okay. Any other one  
3 from the public testimony who would like to speak up  
4 at this time? Okay. No. And no one else has come  
5 forward on Zoom or anything. Okay. Thank you very  
6 much.

7           Commissioners, we are back to you. Any  
8 other final comments or questions at this time  
9 before we go into --

10          Yes. Okay. Commissioner Ohigashi?

11          **COMMISSIONER OHIGASHI:** You've heard my  
12 concern. Is it your pleasure to go forward or to try  
13 to reach an accommodation with everybody?

14          **MR. YUEN:** Well, I've indicated that the  
15 petitioner is willing to do a Ka Pa'akai analysis,  
16 and that would require some form of consultation  
17 with the community.

18          **COMMISSIONER OHIGASHI:** And wouldn't that  
19 include assistance from the county to formulate that  
20 kind of consultation and try and reach an agreement  
21 regarding this motion? Because I know you can't  
22 withdraw the motion, technically, but you can  
23 resolve it by having an agreement that everybody  
24 supports.

25          **MR. YUEN:** Well, I think the county and

1 the state already support the motion with the  
2 condition that the offsite infrastructure, and I  
3 think we're up to 62 affordable housing units, be  
4 completed within three years. The county and the  
5 state have indicated their support for that.

6 **COMMISSIONER OHIGASHI:** So the answer is  
7 we're not -- we're going to proceed today.

8 **MR. YUEN:** Well, we'd like to proceed.  
9 It's up to the commission.

10 **COMMISSIONER OHIGASHI:** I'm giving you an  
11 opportunity to determine whether or not you want to  
12 deal with the community on those issues that they  
13 raised.

14 **MR. YUEN:** Well, I've said that --

15 **COMMISSIONER OHIGASHI:** They practically  
16 raised here about the environmental studies,  
17 thinking of whether or not a Ka Pa'akai analysis  
18 should apply. And I'm giving you the opportunity to  
19 do so, but if you don't want to, we're going to have  
20 make a decision here on this.

21 **MR. YUEN:** Well, the petitioner is willing  
22 to do a Ka Pa'akai analysis as part of its work that  
23 would be completed within the -- we could add that  
24 as another condition for within the three-year  
25 period, because that analysis is not something

1 that's done overnight. But I think the --

2 **COMMISSIONER OKUDA:** Point, Madam Chair.

3 **VICE-CHAIR CABRAL:** Yes. Commissioner

4 Okuda?

5 **COMMISSIONER OKUDA:** Could I ask the  
6 executive officer a question? Do we have the  
7 authority to continue this matter for a time, or  
8 must we move on this matter today?

9 **MR. ORODENKER:** As this is a motion,  
10 Commissioner Okuda, we can defer decision making on  
11 this matter for as long as --

12 **COMMISSIONER OKUDA:** I'd like to make a  
13 motion.

14 **VICE-CHAIR CABRAL:** Okay. Commissioner  
15 Okuda?

16 **COMMISSIONER OKUDA:** I'd like to make a  
17 motion that this matter be deferred until a date  
18 that Mr. Yuen selects that he wants it back on the  
19 calendar. Okay. If Mr. Yuen decides that -- and I  
20 ask everybody, including myself, to rethink all of  
21 this. And I am rethinking it. I've listened to what  
22 everyone said. And that's why I'm not making the  
23 motion now to deny the request.

24 So this will -- there's a lot of things to  
25 digest here. I appreciate the testimony, Mr. Yuen,



1 of your witnesses, because they clarified a lot of  
2 things about the affordable housing. I think their  
3 presence lent a lot regarding evaluation of  
4 credibility. But my motion would be that this  
5 matter be continued to a date to be selected by Mr.  
6 Yuen.

7 And if you decide, Mr. Yuen, you and your  
8 clients decide this is really a waste of time to  
9 consider some of the concerns we were raising, then  
10 that's fine. We're here to make the decision.

11 This would also give us time so that we  
12 can digest everything that's said here today and,  
13 you know, not just make an automatic -- I'm not  
14 saying knee-jerk reaction, but, you know, we can  
15 make a decision after considering a lot of these  
16 things a little bit more. So that's my motion.

17 **VICE-CHAIR CABRAL:** We have a motion made  
18 by Commissioner Okuda, seconded by Commissioner  
19 Ohigashi. Any discussion by the commissioners?

20 **COMMISSIONER OKUDA:** Yes. And if I could  
21 further add to, Madam Chair, my reasons. At least  
22 in this point in time, I find Mr. Yuen's witnesses  
23 credible. I think they're -- at this point in time,  
24 unless there's new evidence presented, I would find  
25 that they're acting in good faith.

1 I do disagree that there's no need for an  
2 environmental impact analysis on there. I believe  
3 Chapter 343 has been triggered, and I believe that  
4 on its face, the Ka Pa'akai case analysis has not  
5 been complied with. You know, but I can stand with  
6 further information to be convinced otherwise.

7 But I believe that -- I don't believe that  
8 denying the request creates any real practical  
9 issues immediately, but if Mr. Yuen and the owners  
10 believe otherwise, well, I'd be willing to defer to  
11 their belief, and that's why I think time would be  
12 helpful.

13 And we've seen other cases, for example,  
14 the project below the Kaanapali airport, where  
15 everybody was opposed to the project, and after some  
16 time passed and consultation was with the community,  
17 all 50 people who were in the room opposing the  
18 project appeared in support of the project.

19 So I'm not saying it's going to happen  
20 here or it's even necessary here, but I just think a  
21 little bit of time to consider whether or not a few  
22 other things should be taking place would be  
23 beneficial to the long-term stability so that once  
24 any further approvals are given, it's ironclad and  
25 it can't be overturned in court.

1 I do have a concern, as I raised earlier,  
2 that when you look at those Hawai'i Supreme Court  
3 cases, it raises a real risk of reversal. Thank  
4 you.

5 **VICE-CHAIR CABRAL:** Okay. Other  
6 commissioners, comments on this motion before us?

7 Commissioner 'Ohelo?

8 **COMMISSIONER KAMAKEA-'OHELO:** Mahalo. I  
9 just took a moment, kind of took a moment, yeah, to  
10 really consider what the decision that the LUC made  
11 in 1983. Yeah. I mean, 40 years is a very long  
12 time. Quite frankly, you know, the petition in  
13 front of us today is for a time extension for Phase  
14 2.

15 And to the best of my understanding, the  
16 Ka Pa'akai analysis takes into account what happens  
17 directly makai and mauka of you as well as  
18 indirectly, five miles down the coastline. And I  
19 don't believe deferring the issue and pushing it  
20 down the line will allow us today or me as a  
21 commissioner to fulfill my kuleana to uphold the  
22 constitution and the decision by the Supreme Court  
23 to ensure that every act in this capacity as a  
24 commission takes into account the Ka Pa'akai  
25 analysis.

1 So with that being said, I will be voting  
2 no on the motion.

3 **VICE-CHAIR CABRAL:** Thank you,  
4 Commissioner 'Ohelo.

5 Other commissioner comments? Commissioner  
6 Ohigashi is going to have to leave in a few minutes  
7 to catch his flight, so anyone else want to make a  
8 comment at this moment? We still will have a quorum  
9 to make a vote, though.

10 Okay. Commissioner Yamane?

11 **COMMISSIONER YAMANE:** I've kind of gone  
12 back and forth listening to everybody. I appreciate  
13 the petitioner's statement. I do believe that  
14 you're going to get things done, but me, like  
15 Commissioner 'Ohelo, looking back at the 1983 and  
16 going through the history, it's just unfortunate.

17 You know, you've read the risk of what the  
18 commission could do and has authority to do. I  
19 actually am in a position to vote on the petition.  
20 To defer, I think, I agree, I don't think would  
21 accomplish anything. And I don't know if Mr. Yuen  
22 practically would, I mean, offer any other  
23 alternative. I haven't heard any yea or any, so  
24 right now I'm not in a position to support the  
25 motion to defer. Thank you.

1           **VICE-CHAIR CABRAL:** Okay. Commissioner  
2   Atta?

3           **COMMISSIONER ATTA:** I'd like to vote for,  
4   you know, Ohigashi's motion, because I think a few  
5   months can make a difference. And as I am looking  
6   at the issue, there's still the Ka Pa'akai issue  
7   that's up to -- that we have to make a decision of  
8   some kind.

9           The first one was about the Ka Pa'akai  
10   analysis would have to -- we'd have to deal with  
11   that before we have to deal with this project.

12           The second was that there's a Phase 1 and  
13   a Phase 2 of the project that was also -- that the  
14   Ka Pa'akai -- as Phase 1 is far gone down the line,  
15   so that that's just more ministerial. But Phase 2  
16   would require that thing. So we have to decide how  
17   we're going to deal with that, the thing.

18           So I'd like to have, you know, some time  
19   and some months to think about this, because I think  
20   we have to discuss those things before we can as a  
21   commission make a decision one way or the other. I  
22   think I would say, you know, I don't know how long  
23   you may take for a thing, but I think we can.

24           So I'm not sure exactly what motion we're,  
25   you know, about right now.

1           **VICE-CHAIR CABRAL:** The motion on the  
2 floor would be to defer it at this time until Mr.  
3 Yuen is ready to put it back onto the calendar.  
4 That's my understanding of the motion on the floor.

5           Okay. Commissioner Kahele?

6           **COMMISSIONER KAHELE:** Thank you, chair.  
7 You know, I got to agree with Mr. 'Ohelo. My vote  
8 is no.

9           **VICE-CHAIR CABRAL:** Okay. Let's go ahead,  
10 and we'll call for the vote at this time. Yes. Mr.  
11 Orodenker gets the mic. Thank you.

12           **MR. ORODENKER:** Thank you, Madam Chair.  
13 The motion is to continue this matter until a date  
14 selected by Mr. Yuen for the petitioner.

15           Commissioner Okuda?

16           **COMMISSIONER OKUDA:** Yes.

17           **MR. ORODENKER:** Commissioner Ohigashi is  
18 absent.

19           Commissioner Kamakea-'Ohelo?

20           **COMMISSIONER KAMAKEA-'OHELO:** 'A'ole.

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

22           **COMMISSIONER KAHELE:** No.

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

24           **COMMISSIONER ATTA:** Aye.

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

1           **COMMISSIONER YAMANE:** No.

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

3           **VICE-CHAIR CABRAL:** No.

4           **MR. ORODENKER:** Madam Chair, the motion  
5 does not carry, with four no's and two yeses.

6           **VICE-CHAIR CABRAL:** Okay. Yes. That's  
7 what I was going to ask. Anyone else like to make a  
8 motion at this time?

9           **COMMISSIONER OKUDA:** Madam Chair?

10          **VICE-CHAIR CABRAL:** Yes.

11          **COMMISSIONER OKUDA:** Based on that, I move  
12 that the petition, the request be denied.

13          **VICE-CHAIR CABRAL:** We have a motion to  
14 deny the request, seconded by Commissioner 'Ohelo.  
15 Any discussion on that motion and second to deny the  
16 motion? Discussion?

17          **COMMISSIONER OKUDA:** Madam Chair, I've  
18 already said the reasons why I don't believe we can  
19 move forward today. First of all, we're not in  
20 compliance with Ka Pa'akai plain language, which  
21 I've read into the record. And secondly, I believe  
22 343 HRS Chapter has been triggered, and there needs  
23 to be compliance with that.

24                 So for those reasons and other reasons in  
25 the record, I ask that my motion be granted.

1 **VICE-CHAIR CABRAL:** Okay. Other comments?

2 Seconder, Commissioner 'Ohelo?

3 **COMMISSIONER KAMAKEA-'OHELO:** Yes.

4 Mahalo nui... ah... He kuleana nui keia.

5 A ha'awi aku i na hana wae o keia aupuni nei. He

6 hana mea e... e kia... Na kia' aina, na lula

7 kia'aina O keia aupuni, o keia 'aina A me kela no

8 ho'i malalo Na kuleana o ko kakou, Wae kupuna o

9 kakou, o kakou i wae Me te... me keia 'aina.

10 **(Hawai'ian language provided by the Land**  
11 **Use Commission for inclusion in the transcript.)**

12 I just wanted to say mahalo. I appreciate  
13 the petitioner's due diligence and the very thorough  
14 testimonies from all of the witnesses. It's very  
15 unfortunate that we are dealing with circumstances  
16 today, making decisions -- potentially making  
17 decisions to extend a 40-year project into a 50-  
18 year. I invite the petitioners to come back.

19 And with that, my kuleana, my  
20 responsibilities to uphold the constitution of the  
21 state of Hawai'i and the decision by the Supreme  
22 Court, that all of my actions and decisions are  
23 based within the lens of the Ka Pa'akai analysis.  
24 So with that, I appreciate the moment, the time to  
25 share, Madam Chair.



1           **VICE-CHAIR CABRAL:** Thank you,  
2 Commissioner 'Ohelo.

3           Other commissioners, comments on the  
4 motion before us? Seeing none, I'd like to comment.  
5 I tried to stay in the middle of this as chair.

6           That's my understanding also, that denying  
7 it at this time does not mean that Phase 2 goes away  
8 or disappears. It just means that it would be  
9 probably in limbo until such time as Phase 1  
10 continues to be developed, and then the petitioner  
11 would be able to come back to the commission with  
12 another request to get Phase 2 activated.

13           And I would imagine that, hearing our  
14 concerns in that, and I think they're in the  
15 concerns of the community, might help work through  
16 what our concerns are collectively to make sure that  
17 since Phase 1 is moving forward, which is, I think,  
18 in many ways good, that we can all learn to be more  
19 clear and exact on what the requirements are as we  
20 move forward and look to Phase 2 and to the future.

21           That would be my comments on it, so okay.  
22 Any other comments from commissioners? Okay. We'll  
23 look for the vote, then.

24           **MR. ORODENKER:** Thank you, Madam Chair.  
25 The motion is to deny the motion for time extension.

1 Commissioner Okuda?

2 **COMMISSIONER OKUDA:** Yes.

3 **MR. ORODENKER:** Commissioner Kamakea-

4 'Oheho?

5 **COMMISSIONER KAMAKEA-'OHELO:** Aye.

6 **MR. ORODENKER:** Commissioner Kahele?

7 **COMMISSIONER KAHELE:** Aye.

8 **MR. ORODENKER:** Commissioner Atta?

9 **COMMISSIONER ATTA:** Aye.

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

11 **COMMISSIONER YAMANE:** Aye.

12 **MR. ORODENKER:** Commissioners Giovanni and

13 Ohigashi are excused.

14 Chair Cabral?

15 **VICE-CHAIR CABRAL:** Aye.

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

17 The motion carries unanimously with six votes.

18 **VICE-CHAIR CABRAL:** Thank you. I'd like  
19 to thank the commission and acknowledge that if  
20 there's any other action or discussion to take place  
21 here today at this time? Okay. Hearing none, I will  
22 consider that our meeting is now adjourned.

23 Our next meeting will be at April 26th at  
24 the Honolulu airport. And as that is a remote  
25 location, we'd like to work through the lunch

1 period, and I ask that the staff arrange for lunch  
2 to be provided by the commission to facilitate that  
3 meeting.

4 There's no other action. The meeting is  
5 concluded. Thank you very much.

6 **(Meeting concluded at 3:36 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 27th day of April, 2023.

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20 Davilyn Payne  
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