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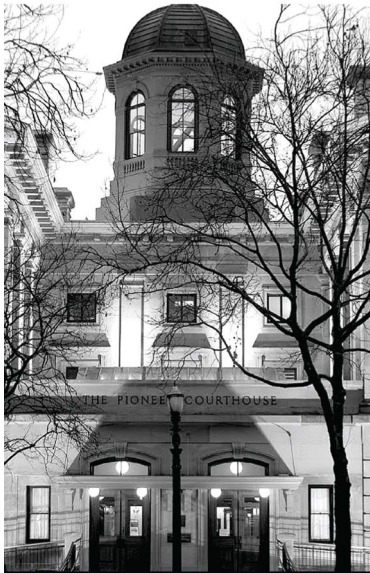
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FINAL
STATE OF HAWAII
LAND USE COMMISSION
Meeting held on June 21, 2023
Commencing at 10:00 a.m.
Held at
Hilo Hawaiian Hotel
Mala Ikena Room
71 Banyan Drive
Hilo, Hawaii 96720

I. CALL TO ORDER

II. ADOPTION OF MINUTES

June 7 2023

III. TENTATIVE MEETING SCHEDULE

**IV. A19-807 KAMEHAMEHA SCHOOLS BISHOP ESTATE
SANFORD QUARRY (Hawaii)**

Approximately 94.107 Acres of Land at Kauaea, Puna, Island of Hawaii, State of Hawaii. Tax Map Key: (3)1-3-009: Por. 005. Status and progress report and action (if necessary) in response to the recently submitted annual report.

V. EXECUTIVE SESSION

Pursuant to HRS Section 92-5(a)(2) to consult with the Commissioners' Attorney regarding LUC personnel matters where considerations of matters affecting privacy will be involved.

VI. RECESS

BEFORE :

PARTICIPANTS

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COMMISSIONERS:

- Dan Giovanni, Chair
- Nancy Cabral, Vice-Chair
- Brian Lee
- Gary Okuda
- George Atta
- Melvin Kahele
- Michael Yamane
- Kuike Kamakea-Ohelo

COMMISSIONERS EXCUSED:

- Lee Ohigashi

LUC STAFF:

- Daniel Orodener, Executive Officer
- Scott Derrickson, Chief Planner
- Martina Segura, Staff Planner
- Riley Hakoda, Staff Planner
- Ariana Kwan, Chief Clerk
- Julie China, Esq., Deputy Attorney General

OPSD:

- Allison Kato, Esq., Deputy Attorney General

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PARTICIPANTS (CONTINUED)

COUNTY OF HAWAII:

Suzanna Tiapula, Esq., Deputy Corporation Counsel
Zendo Kern, Director, Planning Department
Jeff Darrow, Deputy Director, Planning Department

PETITIONERS:

Calvert Chipchase, Esq., Petitioner's Attorney

PETITIONER'S WITNESS:

Katherine Garson

1 **CHAIR GIOVANNI:** Good morning, everyone.

2 Aloha mai kakou. This is the June 21st, 2023 Land
3 Use Commission Meeting. This is an in-person
4 meeting which is being held at the Hilo Hawaiian
5 Hotel, Mala Ikena Room, at 71 Banyan Drive, Hilo,
6 Hawaii 96720. This meeting is open to the public.

7 Court reporting transcriptions are being
8 done from a Zoom recording of this meeting. For all
9 meeting participants, I'd like to stress the
10 importance of speaking slowly, clearly, and directly
11 into your microphone and turning on the yellow when
12 it lights up on your microphone before you speak.
13 And when you speak, each time, please state your
14 name and identify yourself for the record.

15 Even though this is an in-person meeting,
16 please be aware that all meeting participants are
17 being recorded on the digital record of this Zoom
18 meeting. And your continued participation is your
19 implied consent to be part of the public record of
20 this event. If you do not wish to be part of the
21 public record, you should exit the meeting at this
22 time.

23 I'd also like to share that we will be
24 taking breaks from time to time approximately every
25 hour as we proceed through the morning, and then

1 we'll take a lunch break if we're still in session
2 around midday.

3 My name is Dan Giovanni. I have the
4 pleasure to serve as the LUC Chair, and we currently
5 have nine seated commissioners. And along with me
6 we have Commissioner Nancy Cabral from Hilo.

7 As I understand, this is your last of
8 eight years, is that right?

9 **COMMISSIONER CABRAL:** Tomorrow. Yes.

10 **CHAIR GIOVANNI:** Tomorrow. Today and
11 tomorrow. Well, we're happy to have you here today.

12 Commissioner Lee Ohigashi is ill today.
13 He's from Maui, and he's excused. Also here in
14 attendance is Gary Okuda, Mel Kahele, Kuike Kamakea-
15 Ohelo, George Atta, and Brian Lee, representing --
16 from Oahu. And Commissioner Michael Yamane is from
17 Kauai.

18 Also in attendance is the LUC Executive
19 Director, Daniel Orodener; LUC Chief Planner, Scott
20 Derrickson; LUC Staff Planner, Riley Hakoda; LUC
21 Staff Planner, Martina Segura; LUC Chief Clerk,
22 Ariana Kwan; and at my left, LUC Attorney General,
23 Julie China.

24 Our first order of business is the
25 adoption of minutes from our meeting of June 7th,

1 2023.

2 Ms. Kwan, has there been any written
3 testimony submitted on the June 7th, 2023 minutes?

4 **MS. KWAN:** No, Mr. Chair.

5 **CHAIR GIOVANNI:** Thank you, Ms. Kwan.

6 Ms. Kwan, are there any members of the
7 public who have signed up to testify in the adoption
8 of the June 7th, 2023 meeting?

9 **MS. KWAN:** No, Mr. Chair.

10 **CHAIR GIOVANNI:** Thank you again, Ms.
11 Kwan.

12 Commissioners, are there any corrections
13 or comments on the minutes? If not, is there a
14 motion to adopt the minutes?

15 For the record, it's Commissioner Lee
16 speaking.

17 **COMMISSIONER LEE:** Sorry. There was --
18 this is Commissioner Lee. There is, I believe, a
19 typo on the draft minutes. I'm trying to find it.
20 Unfortunately, right now -- but there was one
21 sentence that talked about corporation counsel.
22 Page 3, I'm sorry, second paragraph, first sentence
23 should be, "deputy corporation counsel," c-o-u-n-s-
24 e-l, I believe.

25 **CHAIR GIOVANNI:** Should be what? Say it

1 again.

2 **COMMISSIONER LEE:** C-o-u-n-s-e-l.

3 **CHAIR GIOVANNI:** Oh, on counsel. Got it.

4 Okay.

5 Any other corrections or additions to the
6 minutes?

7 So subject to that one change, do I have a
8 motion to adopt the minutes?

9 Moved by Commissioner Atta. Do I have a
10 second?

11 **COMMISSIONER KAMAKEA-OHELO:** Second the
12 motion.

13 **CHAIR GIOVANNI:** Second by Kuike.

14 So all in favor, signify by saying, "aye."

15 **(All said, "aye.")**

16 **CHAIR GIOVANNI:** Any opposed?

17 None. So the motion is adopted. The
18 minutes are adopted. Thank you.

19 Next order of business is the next agenda
20 item, the tentative meeting schedule, which will be
21 shared with us by Mr. Orodenger.

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

23 Tomorrow we will again be here in this
24 room for the A02-737 Bencorp status report. Bencorp
25 is also known as University of Nations.

1 July is currently open. We will be in
2 touch with the commissioners, but we believe we can
3 release those dates.

4 August 23rd we'll be on Maui for the A07-
5 773(a) ELC status report.

6 **CHAIR GIOVANNI:** One second.

7 **MS. KWAN:** (Inaudible) walk over.

8 **MR. ORODENKER:** Okay. Well --

9 **CHAIR GIOVANNI:** One second. One person
10 talking at a time here.

11 **MR. ORODENKER:** August is finally open.

12 September we will be on -- at the HCPO
13 Conference at the Sheraton Waikiki from September
14 6th to September 8th.

15 On September 20th, we are tentatively
16 scheduling the Halekua Development matter. We
17 originally had Waimanalo Gulch scheduled for
18 September 21st, but our belief is that that will
19 move to October or November.

20 On October 4th, we will be meeting on Maui
21 for the A07-773 ELC status report as well as A07-773
22 (b) WDVD status report -- WDV status report. That's
23 scheduled for both the 4th and the 5th.

24 And that brings us to November, the
25 (inaudible) may be pending. The ULI fall meeting in

1 Los Angeles from Monday, May 30th to Thursday, the
2 2nd.

3 **CHAIR GIOVANNI:** May? November.

4 **MR. ORODENKER:** November.

5 **CHAIR GIOVANNI:** What are the days for --

6 **MR. ORODENKER:** The 30th to the 2nd.

7 **CHAIR GIOVANNI:** To December 2nd?

8 **MR. ORODENKER:** November.

9 **CHAIR GIOVANNI:** November 30th to December
10 2nd?

11 **MR. ORODENKER:** No. October 30th to
12 November 2nd.

13 **CHAIR GIOVANNI:** Okay. So the ULI fall
14 meeting is October --

15 **MR. ORODENKER:** 30th to November 2nd.

16 **CHAIR GIOVANNI:** That's in Los Angeles?

17 **MR. ORODENKER:** Yes, it is.

18 **CHAIR GIOVANNI:** Okay.

19 **MR. ORODENKER:** And we expect -- we're
20 tentatively expecting the Waimanalo Gulch matter to
21 be heard in December either on the 6th or the 7th or
22 the 20th and the 21st.

23 **CHAIR GIOVANNI:** Okay. Commissioners, do
24 you have any further questions on the calendar?

25 Hearing none, we'll proceed to our fourth

1 order of business. It's a status and progress
2 report on A19-807, the Kamehameha Schools Sanford
3 Quarry, Hawaii. This regards the status and
4 progress report on petitioner's environmental impact
5 statement.

6 At this point, I'd like the parties to
7 introduce themselves for the record. Representing
8 the petitioner?

9 **MR. CHIPCHASE:** Good morning, Chair and
10 Commissioners. Cal Chipchase for the petitioner.

11 **CHAIR GIOVANNI:** Thank you, Mr. Chase --
12 Chipchase.

13 From OPSD?

14 **MS. KATO:** Allison Kato, Deputy Attorney
15 General, for the Office of Planning and Sustainable
16 Development. Thank you.

17 **CHAIR GIOVANNI:** Thank you.

18 And from the County of Hawaii? You got to
19 push the button where the light is.

20 **MS. TIAPULA:** Good morning. Deputy
21 Corporation Counsel, Suzanna Tiapula, representing
22 the Planning Department.

23 **MR. KERN:** Good morning, Chair and
24 Members. Zendo Kern, Planning Director.

25 **MR. DARROW:** Good morning, Chair and

1 Commissioners. Jeff Darrow with the County of
2 Hawaii Planning Department.

3 **CHAIR GIOVANNI:** Thank you. Thank you,
4 all, for being here today.

5 Okay. First, I'd like -- next, I'd like
6 to go over the procedure for this portion of the
7 hearing today. First, I will update the record.
8 Next, I will ask the parties to identify themselves,
9 which I've already done, so I'm taking that in a
10 little bit different order. Then I will recognize
11 written public testimony that may have been
12 submitted in this matter, identifying the person and
13 organization who has submitted the testimony.

14 Next, I will call for members of the
15 public who wish to testify on the KSBE's progress
16 report. Each member of the public will have two
17 minutes to provide their testimony and will stand by
18 for questions by the parties or the commissioners.
19 When all questions have been completed, the chair
20 will excuse the witness and call the next.

21 After completion of the public testimony
22 portion of the proceedings, the chair would like the
23 petitioner to provide a status report. The chair
24 will then call on the County's Planning Commission
25 and the Office of Planning and Sustainable

1 Development for comments regarding the status
2 report. Petitioner will then be allowed to respond
3 to the comments that have been made by the County
4 and OPSD. Commissioners will ask questions of
5 parties at the conclusion of each of their
6 presentations.

7 At the conclusion of the parties'
8 testimony and the commissioners' questions, the
9 public will be given and granted a second
10 opportunity to provide public testimony in the same
11 manner that is set forth previously. Once that
12 public testimony concludes, the commission will
13 enter into deliberations regarding the status report
14 and determine if any action will be taken.

15 The chair will also note for the parties,
16 as I said earlier, that we will be taking short
17 breaks from time to time approximately five to ten
18 minutes every hour. Are there any questions by any
19 of the parties regarding our procedure today?
20 Hearing none, we'll proceed.

21 **COMMISSIONER OKUDA:** Chair?

22 **CHAIR GIOVANNI:** Commissioner Okuda?

23 **COMMISSIONER OKUDA:** Mr. Chair, may I make
24 a short disclosure?

25 **CHAIR GIOVANNI:** Just getting to that, so

1 please --

2 **COMMISSIONER OKUDA:** Oh, sorry.

3 **CHAIR GIOVANNI:** -- proceed.

4 **COMMISSIONER OKUDA:** Thank you. I'd like
5 to disclose that I represent the ILWU Local 142 in
6 an action involving Hawaii Island Tours and
7 Respondent, Edward Matsukawa. The respondent is
8 represented by Cades Schutte Partners, Paul Saito,
9 and Mauna Kea Trask of Kauai. I do not believe my
10 representation of the ILWU Local 142 will affect any
11 decision making or evaluation I have in this case,
12 but I would like to make that disclosure.

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

15 Any objections from the parties?

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

17 **CHAIR GIOVANNI:** State?

18 **MS. KATO:** No, Chair. Thank you.

19 **CHAIR GIOVANNI:** County?

20 **MS. TIAPULA:** No, Chair.

21 **CHAIR GIOVANNI:** Fellow commissioners, any
22 objection?

23 You may proceed. You do not need to --

24 Any other disclosures at this time?

25 **COMMISSIONER CABRAL:** Yeah.

1 **CHAIR GIOVANNI:** Commissioner Cabral?

2 **COMMISSIONER CABRAL:** Yeah, thank you.

3 I'd like to disclose that I know both Mr. Zendo
4 Kern, Director, (inaudible), Director, and Jeff
5 Darrow, Deputy Director just in a professional
6 manner as I've worked with them over the many years
7 of being here in Hawaii County and appreciate their
8 good service. Thank you.

9 **CHAIR GIOVANNI:** Thank you, Commissioner
10 Cabral.

11 Parties, any objection to Commissioner
12 Cabral continuing?

13 **MR. CHIPCHASE:** For the petitioner, no,
14 Chair.

15 **CHAIR GIOVANNI:** Thank you.
16 State?

17 **MS. KATO:** No objection.

18 **CHAIR GIOVANNI:** County?

19 **MS. TIAPULA:** No objection, Chair.

20 **CHAIR GIOVANNI:** Thank you.

21 Fellow commissioners? Hearing none.

22 Thank you, Commissioner Cabral.

23 Are there any further disclosures at this
24 time from the commissioners? Hearing none, we'll
25 proceed to public testimony.

1 For the members of the public, again,
2 please be reminded that the commission will not be
3 considering the merits of this petition; rather, the
4 commission is interested in learning about the
5 current state of the activities related to the
6 docket, including compliance with conditions, and
7 will consider whether action is necessary. I will
8 recognize written public testimony submitted in this
9 matter identifying the person and organizations
10 submitting the testimony.

11 Ms. Kwan, has there been any written
12 testimony submitted on this matter?

13 **MS. KWAN:** No, Mr. Chair.

14 **CHAIR GIOVANNI:** We're going to get you
15 your own microphone, I understand, pretty soon.
16 Next meeting. Thank you.

17 Next, I will call for members of the
18 public who wish to testify on this agenda item.

19 Ms. Kwan, is there anyone who has signed
20 up?

21 **MS. KWAN:** No, Mr. Chair.

22 **CHAIR GIOVANNI:** Thank you.

23 I see we have some visitors, but just to
24 be sure, there's nobody that wants to testify?
25 Thank you.

1 Okay. We'll now proceed to the status
2 report to be presented by counsel for Kamehameha
3 Schools. So Mr. Chipchase, will you please give us
4 an indication of the open duration of your
5 presentation?

6 **MR. CHIPCHASE:** Five minutes, Chair.

7 **CHAIR GIOVANNI:** Five minutes. Here we
8 go. Thank you. Please proceed.

9 **MR. CHIPCHASE:** Thank you, Chair. Cal
10 Chipchase for the petitioner.

11 Just to briefly orient the commissioners
12 to this particular matter, the quarry operations,
13 the Sanford's quarry operations has been in place
14 for several decades under a conservation district
15 use permit.

16 Under the current conservation district
17 rules, they cannot renew that permit. The subzone
18 would need to change, and the Office of Conservation
19 and Coastal Lands has previously taken the position
20 that it would not be appropriate to change the
21 subzone, they would not support that. And so in
22 order to continue the quarry operations, we have
23 asked, or will ask, when we get to that point, for a
24 district boundary amendment to agriculture to be
25 followed by a special permit.

1 So you will see a lot of us as this matter
2 rolls on. The first step in that process is an
3 environmental impact statement. And so we filed the
4 petition for district boundary amendment,
5 recognizing that the next step would be -- the
6 initial step, really, would be the environmental
7 impact statement.

8 We ask the commission to be the accepting
9 authority for that statement and the commission
10 agreed. From there, an environmental impact
11 statement preparation notice was published, was
12 actually published a little bit earlier than that,
13 and comments have been received, including comments
14 from state agencies. All of this happened toward
15 the middle of 2019.

16 Since then, as we all know, we entered
17 into a pandemic, and that certainly slowed down the
18 progress in preparing the environment impact
19 statement. Nonetheless, it has proceeded, and a
20 couple of drafts have circulated between the
21 licensee, Sanford's Consulting, and Kamehameha
22 Schools. And we've been able to comment on those
23 drafts as we get closer to a point where we're ready
24 to circulate publicly the draft environmental impact
25 statement.

1 At this point, for a variety of reasons,
2 the licensee, Sanford's is going to change
3 environmental consultants to another firm that
4 hasn't been selected yet, and so I can't publicly
5 disclose what would be the likely new consultant.
6 But I want the commission to understand and be
7 assured that Kamehameha Schools and its licensee are
8 committed to continuing with this district boundary
9 amendment and continuing the quarry operations at
10 the site.

11 The site is 94 acres. That would be the
12 scope of the district boundary amendment, and we
13 look forward to proceeding with the EIS phase, the
14 environmental review phase, and then coming back
15 before you for acceptance of that document and from
16 there, moving on to the district boundary amendment
17 and, ultimately, the special permit.

18 That's the status of the review. We
19 continue to move things forward. I'm hoping, now
20 that we're through the pandemic, once the new
21 consultant is in place, we'll move forward with good
22 speed. I would estimate, though, it's probably
23 another year before we're ready to publicly release
24 the draft environmental impact statement, ensuring
25 that all the appropriate studies and all the

1 appropriate reviews have been conducted or updated
2 as necessary.

3 That concludes my presentation. I hope I
4 made my five minutes, Chair. And I'm happy to
5 answer any question.

6 **CHAIR GIOVANNI:** You did make your five
7 minutes. Congratulations.

8 **MR. CHIPCHASE:** Thank you.

9 **CHAIR GIOVANNI:** Yeah. So one year from
10 now is when we'll see the -- you expect we may see
11 the draft EIS?

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

13 **CHAIR GIOVANNI:** Going forward, just
14 general timing, and I won't hold you to it, but what
15 is your expectation for the next two major steps,
16 which would be the DBA and the special use permit?

17 **MR. CHIPCHASE:** So my guess would be from
18 the publication of the DEIS we're nine months-ish
19 until you see us on a final. And then I would say
20 you're probably another nine months or so until you
21 see us on a DBA. So if we look to -- if we put all
22 those numbers together, I would say two and a half
23 years or so to complete those phases of the process.

24 **CHAIR GIOVANNI:** So it would be the start
25 of the DBA?

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

2 **CHAIR GIOVANNI:** So then from there, the
3 DBA process, and then we would go to a special use
4 permit once -- if the DBA has changed to
5 agriculture?

6 **MR. CHIPCHASE:** That's correct, Chair.

7 **CHAIR GIOVANNI:** Plus another --

8 **MR. CHIPCHASE:** Six months, easy.

9 **CHAIR GIOVANNI:** Easy, yeah. So we're
10 talking about a process that is three to four years
11 in total. You may be looking at a whole new set of
12 commissioners by that point in time as well.

13 **MR. CHIPCHASE:** I would think some changes
14 on the commission, Chair. I don't think
15 Commissioner Cabral will still be here, for example.

16 **CHAIR GIOVANNI:** Okay. Thank you.

17 So commissioners, besides the questions
18 that I just asked for clarification, do any of you
19 have any questions for the petitioner?

20 Commissioner Okuda?

21 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

22 Good to see you again, Mr. Chipchase. Let
23 me preface the basis for this question, even though
24 I know you know the basis, but just in case there's
25 audience in Zoom or otherwise, and I quote from the

1 Ka Paakai versus Land Use Commission case, 94 Hawaii
2 31, at page 46, the P.3d citation is 7 P.3d 1068, at
3 1083, a 2001 Hawaii Supreme Court case.

4 And the quotation is, quote, "as such,
5 state agencies such as the LUC may not act without
6 independently considering the effect of their
7 actions on Hawaiian tradition and practices," close
8 quote. So that's the framing of my next question.

9 I saw in the petition and the record that
10 you filed a cultural impact analysis. Is there any
11 intention of updating or supplementing that
12 analysis?

13 **MR. CHIPCHASE:** So if I may preface my
14 response with a small comment. If I ever bet
15 against you asking me a question, I would lose every
16 time.

17 The Ka Paakai analysis, of course, is
18 important in any commission action, and indeed other
19 state actions. And so when the final environmental
20 impact statement is accepted, hopefully, by this
21 commission down the line, it will include the most
22 updated cultural impact assessment.

23 **COMMISSIONER OKUDA:** Well, is there
24 anything in the impact analysis right now or
25 anywhere in the record that indicates whether mining

1 or partial or even full demolition of a cinder cone
2 or a puu would affect the types of rights or
3 traditions or practices which are required in Ka
4 Paakai to be analyzed and protected.

5 **MR. CHIPCHASE:** Commissioner, I didn't go
6 back and look at the assessment. My recollection
7 from reviewing the DEIS drafts is that it is not
8 anticipated that there are any ongoing cultural
9 practices within the petition area that would be
10 adversely affected.

11 **COMMISSIONER OKUDA:** Yeah. I think that's
12 what the conclusion is. I think my more specific
13 question is: Is it true or not true that the
14 continued or prospective cinder mining operation is
15 intended to mine or carve into the existing cinder
16 cone or puu?

17 **MR. CHIPCHASE:** It will carve into the
18 existing land formations within the petition area.
19 The purpose is to expand the mining operations to
20 cover this 94 acres.

21 **COMMISSIONER OKUDA:** Okay. Does the
22 cultural impact analysis right now or is there
23 anything else in the record which indicates whether
24 or not that -- well, of how you described it. You
25 said formation but cinder cone or puu has or has not

1 any cultural significance? I might have missed it,
2 but I didn't see anything in the record which
3 indicates whether or not that cinder cone, puu, or
4 formation, or however it's being described, has or
5 has not any type of significant -- significance
6 which is required to be evaluated and protected by
7 the Ka Paakai case.

8 **MR. CHIPCHASE:** So with respect, I don't
9 think that's what Ka Paakai requires. Ka Paakai
10 looks at ongoing cultural practices in the area that
11 may be adversely affected, and the purpose, of
12 course, is PASH in that PASH allows traditional and
13 customary access until the land reaches a point of
14 being fully developed. So it's less than fully
15 developed land.

16 When dealing with a district boundary
17 amendment, you run the risk the land will be
18 developed; therefore, extinguishing their cultural
19 practice, the PASH practice. And so it's important
20 to analyze that potential impact under Ka Paakai at
21 this earliest stage. We're not moving to an urban
22 designation. The property won't be developed.
23 Nonetheless, if there were ongoing cultural
24 practices they could be adversely affected. And so
25 that's the land for which a cultural impact

1 assessment is (audio disruption).

2 Your question, if I just can wrap that up,
3 about whether this particular cinder cone has any
4 independent cultural significance apart from any
5 ongoing cultural practices, is a question I don't
6 currently have an answer to. But I understand your
7 concern, and I would assume that we could evaluate
8 that as a part of the cultural impact assessment, or
9 otherwise, the DEIS if that is appropriate.

10 The -- while I wouldn't venture to comment
11 on how cultural impact assessments are conducted in
12 detail, I know that a big component of that is
13 meeting with members, cultural practitioners in the
14 area and asking them whether they have any ongoing
15 practices or are aware of any ongoing practices in
16 the vicinity of the petition area. As part of that
17 inquiry, it seems reasonable to ask whether this
18 area has any independent cultural significance.

19 **COMMISSIONER OKUDA:** Yeah. I -- I'm not
20 trying to get you to agree with my ultimate legal
21 analysis or not. My question was just whether or not
22 the record contained any facts, evidence, or
23 information relevant to the question I asked about
24 whether this is an important puu or whether we can
25 look the other way. That's all I'm asking.

1 **MR. CHIPCHASE:** Understood. And I just
2 want to provide context for the --

3 **COMMISSIONER OKUDA:** Yeah. Okay. Okay.
4 Sure.

5 And then my other question is -- arises,
6 either rightly or wrongly, from what I read in the
7 media about the criticism of the Public Utilities
8 Commission in the Hoopili case of not, you know,
9 looking at the Land Use Commission requirement about
10 utility lines.

11 So my question is this: Your status title
12 report that was presented as part of your moving
13 papers included encumbrances against title
14 identified as items number 7 and 11, and these
15 apparently were covenants or conditions which the
16 landowner granted or agreed with the Department of
17 Land and Natural Resources. I didn't see -- and I
18 maybe overlooked it and that's why I'm asking this
19 question.

20 I didn't notice anything in the record
21 which spelled out exactly what these covenants or
22 conditions were that were recorded against title.
23 Would you know offhand, and if you don't, no big
24 deal, whether or not there's anything in the record
25 which specifically spells out in detail what these

1 covenants or conditions are? It might be, you know,
2 irrelevant to what we're doing, but it does appear
3 on title, and it's covenants and conditions that
4 were given to the Department of Land and Natural
5 Resources.

6 **MR. CHIPCHASE:** No, Commissioner, offhand,
7 I'm not sure which covenants and conditions those
8 may be.

9 **COMMISSIONER OKUDA:** Oh, okay. It was
10 just that if I'm still around when this thing comes
11 up, you know, I would not want to do anything or
12 make a decision which would be contrary to what the
13 Department of Land and Natural Resources might have
14 required imposed regarding the property. Okay.
15 Thank you very much, Mr. Chipchase.

16 **MR. CHIPCHASE:** I totally understand.

17 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
18 No further questions.

19 **CHAIR GIOVANNI:** Thank you, Commissioner.
20 Commissioner Atta?

21 **COMMISSIONER ATTA:** Yeah. I noticed that
22 the thing was -- the existing -- you're -- you're
23 supposed to return it back to its original
24 condition. I was just wondering what the situation
25 was there?

1 **MR. CHIPCHASE:** Original condition,
2 there's certainly mitigation obligations or
3 restoration obligations. It would be difficult to
4 put it back exactly like it was once you take rock
5 out, of course, but in terms of restoration, that is
6 a portion of the conditions associated with the
7 permit.

8 I don't have any answer for the current
9 condition of it for you. The counsel for the
10 licensee for Sandford's is here, and if that's
11 something that you'd like her to address, I'm sure
12 she can come up and do so.

13 **COMMISSIONER ATTA:** Could you?

14 **CHAIR GIOVANNI:** I'll have to swear the
15 witness in.

16 Please state your name, affiliation,
17 please?

18 **MS. GARSON:** (Audio disruption) Garson
19 (audio disruption). I'm the attorney for Sanford
20 (audio disruption).

21 **CHAIR GIOVANNI:** So I think you cut out
22 there. Can we have your name again?

23 **MS. GARSON:** Okay. I can't touch it.
24 Don't touch. Okay.

25 Katherine Garson from Carlsmith Ball. I

1 represent -- I'm an attorney, and I represent
2 Sanford Service Center, who is the licensee of the
3 property.

4 **CHAIR GIOVANNI:** Do you swear the
5 testimony you're about to give today will be the
6 truth?

7 **MS. GARSON:** I'll tell the truth.

8 **CHAIR GIOVANNI:** Please proceed.

9 **MS. GARSON:** The question was about --
10 about --

11 **COMMISSOINER ATTA:** The status of the --
12 returning the condition back -- mitigation.

13 **MS. GARSON:** Yeah. So the condition is
14 when they're -- when they're complete with the
15 quarry, and they're still quarrying, so it's -- it's
16 still -- it's not restored. It's six months after -
17 - I think the condition is six months after the
18 completion of the quarry.

19 **COMMISSIONER ATTA:** And then what happens
20 to the land after that?

21 **MS. GARSON:** I'm hoping -- after it's
22 restored?

23 **COMMISSIONER ATTA:** Yeah, right. Do,
24 like, Kamehameha Schools have some plans for the
25 land or is this --

1 **MR. CHIPCHASE:** Back to me. Cal Chipchase
2 for the petitioner.

3 I'm not aware of any current plans that
4 Kamehameha Schools would have for the current quarry
5 area once operations conclude.

6 **COMMISSIONER ATTA:** Okay.

7 **CHAIR GIOVANNI:** Other than restoration?

8 **MR. CHIPCHASE:** And that's an obligation
9 on the licensee.

10 **CHAIR GIOVANNI:** Commissioner Atta,
11 anything further?

12 Commissioner Okuda?

13 **COMMISSIONER OKUDA:** Thank you very much,
14 Mr. Chair.

15 Since Ms. Garson is here, Ms. Garson, can
16 I ask a question. Mr. Chipchase gave an
17 explanation of why the environmental impact
18 statement, or the Chapter 343 assessment or
19 evaluation, hasn't been done. Can you identify the
20 name of the environmental consultant that was
21 working on it who's now not working on the
22 assessment?

23 **MS. GARSON:** Yes. It's GK Environmental.
24 It's in the EISPN.

25 **COMMISSIONER OKUDA:** Okay. Was there --

1 is there a reason why they are not going to continue
2 with the project? Because it seems like the lack of
3 an environmental impact statement is creating a
4 significant or substantial delay.

5 **MS. GARSON:** Yeah. So the consultant is
6 GK Environmental, LLC and nothing against them at
7 all, at all. Basically, it has more to do with, sort
8 of, internal coordination and communication issues
9 that I think is the issue. So when we get a new
10 consultant on board, I think those will be resolved,
11 and we can have -- with our new consultant, we want
12 to make sure that we keep the communication open,
13 have regular meetings, make sure everybody's on the
14 same page, and so I think -- moving forward, I think
15 that would work better. I'm not pointing fingers --
16 there's -- at our consultant at all.

17 **COMMISSIONER OKUDA:** Yeah. No. I
18 understand, you know, we all -- in practice, we get
19 a consultant, might not work out for many reasons.
20 Was there any disagreement regarding the potential
21 substance of the environmental impact statement or
22 environmental assessment or any Chapter 343 issue
23 which led to the change of environmental consultant?

24 **MS. GARSON:** No.

25 **COMMISSIONER OKUDA:** Okay. Thank you very

1 much.

2 Thank you, Mr. Chair.

3 **CHAIR GIOVANNI:** Thank you, Commissioner

4 Okuda.

5 Commissioners, anything further?

6 Commissioner Cabral?

7 **COMMISSIONER CABRAL:** Yeah. Am I clear
8 that my understanding would be --- or I would
9 consider some, maybe, common sense, but in the event
10 the Sanford lessee in this event were to not restore
11 the area as what -- I don't know yet what's going to
12 be required of that, but obviously there'll be a
13 large hole there. And at some point, you would need
14 to do something so we don't leave it in that, you
15 know, manner.

16 If they -- when does that get described as
17 to what's going to be required? And if they were to
18 not do it, would then Kamehameha Schools be required
19 to fulfill that obligation?

20 **MS. GARSON:** So if I recall the terms of
21 the conservation district use permit, it's six
22 months after that the area needs to be restored, and
23 there is a plan. We're required to present a plan
24 about the restoration.

25 **COMMISSIONER CABRAL:** Okay. I won't be

1 here when all that happens, but I am familiar with
2 coal mining that's been done, not in the caves but
3 in areas where they just -- in Wyoming, where they
4 take out entire huge hillsides. The equipment used
5 is massive. But they're required to return it so
6 that every rolling hill looks identical.

7 So they have to go other places and get --
8 because they're not taking all of the dirt, though.
9 You know, they just take part. But they have to
10 bring back in enough substance and soil that the
11 entire terrain is identical, plant it with the same
12 exact type of top layers of dirt, which they save
13 when they take it apart, and the same grass is
14 planted.

15 So I'm interested in seeing what's
16 expected here, because clearly, we have other areas
17 where you could bring cinders in from somewhere else
18 and redo it. But I'm just saying I don't know -- I
19 don't know what the answer is. It's just an
20 interesting question. And Kamehameha Schools,
21 though, would have to, in the event that Sanford
22 does not comply, they would be required to comply
23 then?

24 **MR. CHIPCHASE:** Cal Chipchase again for
25 the petitioner.

1 Ultimately, Commissioner, the permit is --
2 obligates the landowner.

3 **COMMISSIONER CABRAL:** Right. Thank you
4 very much.

5 **CHAIR GIOVANNI:** Anything further,
6 commissioners? Thank you.

7 We'll proceed to the county for comment
8 and presentation.

9 **MS. TIAPULA:** Good morning. Deputy
10 Planning Director Jeff Darrow did file revised
11 comments yesterday on this project. We have no
12 additional comments, and we are willing to wait
13 until a new consultant is hired.

14 **CHAIR GIOVANNI:** Did Mr. Darrow provide a
15 summary of his comments?

16 **MS. TIAPULA:** Yes.

17 **CHAIR GIOVANNI:** Mr. Darrow, I need to --
18 state your name and affiliation for the record, and
19 then I'll swear you in.

20 **MR. DARROW:** Jeff Darrow, Deputy Planning
21 Director for the County of Hawaii Planning
22 Department.

23 **CHAIR GIOVANNI:** Do you swear the
24 testimony you're about to give is the truth?

25 **MR. DARROW:** I do.

1 **CHAIR GIOVANNI:** Please proceed.

2 **MR. DARROW:** Thank you.

3 In 2019, the county received the draft
4 EISPN to provide comments. In January of 2020, the
5 county planning department did respond with
6 comments. At that particular time, the process that
7 would have been available to the applicant in
8 regards to a general plan amendment would have been
9 that the applicant would submit.

10 Since 2020, the planning department has
11 initiated a comprehensive general plan amendment
12 update. And during that particular time until it's
13 finished, no applicant or person or entity can
14 submit a general plan amendment during that time.
15 So we were just updating our comments in regards to
16 that.

17 We have also taken steps to meet with the
18 applicant or the landowner and understand their
19 request so that we can incorporate that in our
20 general plan update. Thank you.

21 **CHAIR GIOVANNI:** Thank you.

22 Anything further from the county?

23 **MS. TIAPULA:** Nothing further.

24 **CHAIR GIOVANNI:** Commissioners, any
25 questions for the county?

1 Petitioner, do you have any questions for
2 the county?

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

4 **CHAIR GIOVANNI:** I don't need to do that,
5 but I'll give you a chance to rebut anything at the
6 end.

7 OPSD, do you have any comments, please?

8 **MS. KATO:** Alison Kato for OPSD. I just
9 have one brief comment regarding the timing of the
10 EIS. Petitioner mentioned that it will probably
11 take about two and a half years to complete it. I
12 just want to clarify that the EIS will need to
13 comply with the new EIS requirements that are
14 currently in effect.

15 Right now it falls under the old rules.
16 But if the EIS is not accepted by the LUC by August
17 4, 2024, five years after adoption, then it's going
18 to need to comply with the new rules. That's all.
19 Thank you.

20 **CHAIR GIOVANNI:** I see a little confusion
21 there on the dates. I want to make sure that the
22 timeline that Mr. Chipchase presented is consistent
23 with your understanding.

24 **MR. CHIPCHASE:** Chair, Cal Chipchase. My
25 timeline included the DBA, so -- so it's a little

1 fractured, and I think two and a half years were
2 presented, but if we don't make the acceptance of
3 the final environmental impact statement by the
4 deadline set out in the rules, of course, we will
5 comply with the new rules.

6 **CHAIR GIOVANNI:** Okay. But your current
7 prediction is you'll be done in time, under the
8 existing --

9 **MR. CHIPCHASE:** We hope so, Chair.

10 **CHAIR GIOVANNI:** And as Ms. Kato pointed
11 out, if you don't meet that deadline for whatever
12 reason, then the new rules --

13 Your position, Ms. Kato, is the new rules
14 would go into effect.

15 **MS. KATO:** Yes. Sorry, I may have
16 misunderstood the timeline.

17 **MR. CHIPCHASE:** Not at all. And we
18 completely agree with Ms. Kato.

19 **MS. KATO:** But yes, it is a tight
20 deadline.

21 **CHAIR GIOVANNI:** Okay.

22 Commissioners, any questions further for
23 the --

24 Mr. Atta -- Commissioner Atta?

25 **COMMISSIONER ATTA:** I just have a quick

1 question. You know, as you close the old quarry and
2 you start the new quarry, there's a question that's
3 in my mind that says, what -- this commission hasn't
4 in the past looked very much about what happens to
5 the land after it's been used. You know, and that
6 seems to be -- we haven't looked at that before.
7 And that -- and -- you know, it's -- I think it's an
8 important question.

9 And then you look at the new quarry.
10 You'd like to say, well, what are we going to do
11 with the existing question, and it's kind of a --
12 kind of a thinking about what the idea of the land
13 is. And so when it's no longer a quarry, what is it
14 going to be after that? And so I'm just wondering
15 if there's something that KS (sic) looks at that or
16 if it's just left empty suddenly.

17 **MR. CHIPCHASE:** I appreciate the question,
18 Commissioner. And just to be clear, this would be -
19 - I wouldn't view it as an old quarry and a new
20 quarry. I'd view it as an expansion of the quarry
21 area to ensure there's sufficient material to meet
22 the existing needs.

23 The -- in my experience, Commissioner,
24 this commission has looked at the use of the land
25 and the condition of the land after the closure of

1 any quarrying operations. And so the SPs that I've
2 been involved in that have involved quarrying do
3 usually include -- or have always included, I guess,
4 would be clearer to say conditions related to the
5 condition of the property following the completion
6 of the quarrying operations.

7 And those conditions include the
8 representations that the applicant has made, which
9 typically include, as Ms. Garson said, with the
10 existing CDP, a plan for the restoration and
11 remediation of the area, as well as incorporating
12 specific conditions related to the property once the
13 SP has ended, once the quarrying operation has
14 concluded.

15 So I would say this commission has looked
16 at those things, at least at the initial permitting
17 state, and has been involved in crafting and
18 imposing those kinds of conditions which I think are
19 appropriate. In this matter, those conditions, of
20 course, will part of, eventually, if we receive the
21 approvals we need along the way, the SP that allows
22 the quarrying operations on ag land if the DBA is
23 ultimately approved.

24 And I think, Commissioner, I think all the
25 current commissioners and whoever is there at the

1 time will be interested in the plan that the
2 applicant develops for remediation and closure, and
3 we'll be interested in imposing those conditions.

4 From the landowner's perspective, this is
5 our land. You know, Kamehameha Schools cares about
6 its property today and at the conclusion of these
7 operations, so we'll be very interested as well in
8 ensuring that appropriate restoration, remediation
9 conditions are imposed on our licensee.

10 **COMMISSIONER ATTA:** And will the
11 commission have the opportunity to review the future
12 plans?

13 **MR. CHIPCHASE:** Yes. That will be part of
14 the SP proceedings, Commissioner.

15 **COMMISSIONER ATTA:** Oh, okay.

16 **MR. CHIPCHASE:** Thank you.

17 **CHAIR GIOVANNI:** Just clarification, Mr.
18 Chipchase, the existing quarry area, land area for
19 the existing quarry that you expect to close, you --
20 do you expect to continue or expand that existing --
21 so my question is: The DBA and subsequent SP will
22 be for the area that is the existing quarry plus the
23 expanded --

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

25 **CHAIR GIOVANNI:** So the remediation plan

1 would be at the end of the --

2 **MR. CHIPCHASE:** When operations end there.

3 **CHAIR GIOVANNI:** Yeah. Okay.

4 Commissioners, anything further at this
5 time?

6 Okay. Mr. Chipchase, do you have any
7 further comment or rebuttal?

8 **MR. CHIPCHASE:** Nothing, Chair.

9 **CHAIR GIOVANNI:** Commissioners, do you
10 have any final questions or comments for the
11 parties?

12 This is a final call or the second call
13 for public testimony on this agenda item. Are there
14 any members of the public who wish to testify on the
15 status and progress report of Kamehameha Schools on
16 A19-807? Thank you.

17 Now we'll have further discussion.
18 Commissioners, this has been a status report, and
19 we're not required to take any specific action at
20 this time. And if no action is taken, the
21 requirement of continued annual status reports will
22 remain in effect.

23 Is there any further discussion or
24 suggestion of actions to be taken by the
25 commissioners?

1 The Chair will entertain a motion
2 regarding how the commission should proceed on this
3 matter, including, for example, that we would just
4 continue with the regular scheduled progress
5 reports.

6 I'm looking for some action, and
7 Commissioner Cabral is coming forward.

8 **COMMISSIONER CABRAL:** I would make a
9 motion that we continue to receive our reports and
10 look to take action once the environmental impact
11 statement is prepared and all the information is
12 available.

13 **CHAIR GIOVANNI:** Thank you.

14 Do I have a second to that motion?

15 **COMMISSIONER YAMANE:** Second, Chair.

16 **CHAIR GIOVANNI:** Seconded by Commissioner
17 Yamane. Any further comments on the motion?

18 The Chair will be supporting this motion,
19 and, in particular, on your status reports, would be
20 looking for (audio disruption) on your forecast of
21 future events that might occur over the next few
22 years.

23 **MR. CHIPCHASE:** Understood, Chair.

24 **CHAIR GIOVANNI:** Yeah, thank you.

25 All in favor of the motion, signify by

1 saying, "aye."

2 (All responded "aye.")

3 CHAIR GIOVANNI: Any opposed? So be it.

4 Motion is approved.

5 MR. CHIPCHASE: Thank you, commissioners.

6 CHAIR GIOVANNI: The Chair would like to

7 take a short break of -- what time is it now?

8 10:47. We will come back at 10:57 or 11 -- we'll

9 come back at 11 o'clock.

10 (Recess taken from 10:47 - 11:01 a.m.)

11 CHAIR GIOVANNI: So we plan to go in, as

12 we're agendized, we'll go into Executive Session.

13 We're going into Executive Session, and it

14 will be confidential discussions, and so this will

15 be limited to commissioners and Ms. China

16 representing the Attorney General's Office.

17 And also, I think, Commissioner Okuda, you

18 wanted to be excused as well. Is that correct?

19 COMMISSIONER OKUDA: Yes, that's correct.

20 I asked to be excused. If you want me to give a

21 short reason, I --

22 CHAIR GIOVANNI: No need. You gave the

23 reason last time, and I'll do it in your stead.

24 COMMISSIONER OKUDA: Okay.

25 CHAIR GIOVANNI: So let me ask anybody

1 that's not a commissioner and not Ms. China to
2 excuse themselves from the room.

3 **(Executive Session, 11:02 - 11:40 a.m.)**

4 **CHAIR GIOVANNI:** Okay. We're back in
5 regular session. It's 11:40.

6 Commissioners, any further business today?
7 Hearing none, this meeting is adjourned. And it's
8 in recess, I should say, not adjourned, until
9 tomorrow morning -- at what time, Ariana?

10 **MS. KWAN:** 9 a.m.

11 **CHAIR GIOVANNI:** 9 a.m. tomorrow. Back
12 here same room?

13 Okay. See you then. Thank you.

14 **(Meeting recessed at 11:41 a.m.)**

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CERTIFICATE

I, Jodi Dean, do hereby certify that the proceeding named herein was professionally transcribed on the date set forth in the certificate herein; that I transcribed all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true, and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 6th day of July, 2023.



Jodi Dean