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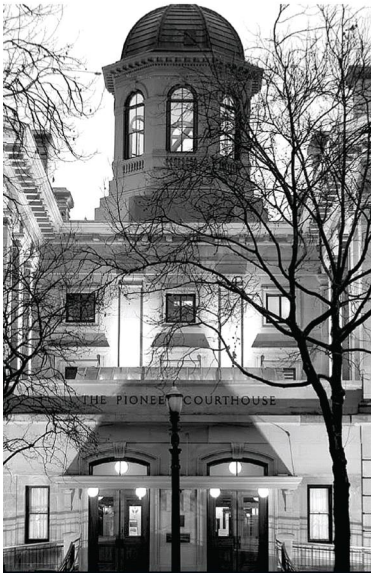
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STATE OF HAWAII

LAND USE COMMISSION

Meeting held on February 7, 2024

Commencing at 9:30 a.m.

Held at

West Hawaii Civic Center
Community Meeting Hale, Building G
74-5044 Ane Keohokalole Highway
Kailua-Kona, Hawaii 96740

I. CALL TO ORDER

II. APPROVAL OF MINUTES FOR DECEMBER 6, 2024

III. TENTATIVE MEETING SCHEDULE

**IV. A83-549 Kona Vistas, LLC
(Hawaii)**

Status and progress report and action (if necessary) in response to the 2022 annual report. Approximately 173.66 Acres, Identified by Tax Map Key No. 7-6-21; 4, 9, 10, 11, 12, 13, 15, 16, and 17 at Holualoa First and Second, North Kona, Hawaii.

V. Adjournment

BEFORE :



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PARTICIPANTS

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LUC COMMISSIONERS:

- Dan Giovanni, Chairman
- Lee Ohigashi
- Gary Okuda
- George Atta
- Mel Kahele
- Michael Yamane

- Kuike Kamakea-Ohelo
- Nancy Carr Smith

LUC STAFF:

- Daniel Orodener, Executive Officer (By Zoom)
- Scott Derrickson, Chief Planner
- Martina Segura, Planner
- Ariana Kwan, Chief Clerk
- Julie China, Esquire, Deputy Attorney General

OPSD:

- Alison Kato, Esquire, Deputy Attorney General (By Zoom)
- Katia Balassiano, Planning Program Administrator

COUNTY OF HAWAII:

- Michelle Ahn, Esquire, Deputy Corporation Counsel

PARTICIPANTS CONTINUED

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COUNTY OF HAWAII CONTINUED:

Jeff Darrow, Deputy Director, Hawaii Planning
Susan Kunz, Housing Administrator, Office of Housing
Community Development
Sylvia Wan, Esquire, Deputy Corporation Counsel

PETITIONERS:

Daryn Arai, Land Use Consultant
Michael Matsukawa, Esquire, Counsel
Richard Wheelock, Member of Kona Three, LLC
Robert Williams, Member of Kona Three, LLC
Roland Higashi, Member of Kona Three, LLC

PUBLIC TESTIMONY (ROUND 1):

David Blancett-Maddock
Diane Blancett-Maddock
Mark Van Pernis
Renee Inaba
Joel Gimpel
John Powell
Brandon Busch
Lamaku Mikahala Roy
Janice Kerr

PARTICIPANTS CONTINUED

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PUBLIC TESTIMONY (ROUND 1) CONTINUED:

Douglas Cichowicz

Craig Bo Kahui

Hiram Rivera

PUBLIC TESTIMONY (ROUND 2) :

David Blancett-Maddock

Diane Blancett, Maddock

Cheryl Tanguay

Joel Gimpel

Renee Inaba

John Powell

Hiram Rivera

Craig Bo Kahui

Mark Van Pernis

Janice Kerr

Douglas Cichowicz

1 **CHAIRMAN GIOVANNI:** Aloha mai kakou. Good
2 morning, everyone. This is the February 7th, 2023
3 Land Use Commission Meeting. This is an in-person
4 meeting which is being held at the West Hawaii Civic
5 Center, Community Meeting Hale, Building G 74-5044
6 Ane -- please forgive me if I mispronounce this --
7 Keohokalole Highway, Kailua-Kona, open to the
8 public.

9 Court reporting transcriptions are being
10 done from this Zoom recording of today's meeting.
11 Since we will be relying on the Zoom recording, we
12 encourage -- strongly encourage all meeting
13 participants to speak slowly, clearly, and directly
14 into your microphone, which I -- a little closer, as
15 I've just demonstrated. And before speaking, please
16 state your name and identify yourself for the
17 record.

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

1 the meeting now.

2 I will also share with all participants
3 that we will be taking breaks from time to time,
4 typically five to ten minutes every hour, and we
5 will also be taking a longer break for lunch if the
6 meeting continues into that hour.

7 My name is Dan Giovanni, and I have the
8 pleasure to serve as the LUC Chair. We currently
9 have nine seated commissioners. Along with me are
10 Commissioners Lee Ohigashi from Maui, Commissioners
11 Gary Okuda, Mel Kahele, Kuike Kamakea-Ohelo,
12 Commissioner George Atta from Oahu, Commissioner
13 Michael Yamane from Kauai, and Commissioner Nancy
14 Carr Smith from the Island of Hawaii. Commissioner
15 Brian Lee is excused from today's meeting.

16 In attendance by Zoom -- via Zoom and
17 available for questions is LUC Executive Officer,
18 Daniel Orodener. Seated beside me is LUC Chief
19 Planner, Scott Derrickson. We also have LUC Staff
20 Planner, Martina Segura, and LUC Chief Clerk, Ariana
21 Kwan. And to my left is LUC Attorney General, Julie
22 China. Again, court reporting transcriptions are
23 being done from this Zoom recording.

24 Our first order of business today is the
25 adoption of the minutes from our meeting of December

1 6th, 2023. Ms. Kwan, has there been any written
2 testimony submitted on the December 6th, 2023
3 minutes?

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

5 **CHAIRMAN GIOVANNI:** Are there any members
6 of the public who have signed up to testify on the
7 adoptions of the minutes from December 6, 2023?

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

9 **CHAIRMAN GIOVANNI:** Commissioners, are
10 there any corrections or comments on the minutes of
11 December 6, 2023? If not, is there a motion to
12 adopt the minutes?

13 **COMMISSIONER OHIGASHI:** I do.

14 **CHAIRMAN GIOVANNI:** Who is that?

15 **COMMISSIONER OHIGASHI:** So moved.

16 **COMMISSIONER YAMANE:** Second.

17 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi
18 moved, and it was seconded by Commissioner Yamane.
19 All in favor of adoption of the minutes, please
20 indicate by saying, "Aye."

21 **(All said, "Aye.")**

22 **CHAIRMAN GIOVANNI:** Any opposed? Hearing
23 none, the minutes are adopted. Thank you.

24 The next agenda item is the tentative
25 meeting of our forthcoming schedule. Mr.

1 Derrickson, would you please share with all of us
2 the updated schedule, potential schedule?

3 **MR. DERRICKSON:** I don't have the schedule
4 here. Do you have the schedule?

5 **CHAIRMAN GIOVANNI:** One second.

6 **MR. DERRICKSON:** I'm going to let our
7 Chief Clerk pull up the tentative meeting schedule.
8 Okay. No. I've got it.

9 Okay. So this is Scott Derrickson. March
10 6 and 7, we have a meeting scheduled on Oahu for
11 Halekua Development status report, and on the 7th
12 the litigation updates. We're going to be
13 postponing the hearing on the administrative rules
14 changes, and we have tentative -- we have nothing
15 scheduled on March 20th and 21st, but we're going to
16 ask you to keep those available.

17 We don't have anything scheduled right now
18 in April. On May 8th and 9th, we have May 8th on
19 Maui to hear a status report from Amfac HHFDC on
20 docket number 892686, and then on May 9, on Oahu,
21 tentatively to hear the Waimanalo Gulch special
22 permit. And then on May 22nd and 23rd, also for
23 Waimanalo Gulch, special permit.

24 We're anticipating the County taking
25 action and possibly filing with us sometime in late

1 March or early April, so that's why it's tentative
2 at this moment. And I think that's all for right
3 now.

4 **CHAIRMAN GIOVANNI:** Okay.

5 Commissioners, any questions or comments
6 on the potential schedule? Hearing none. Thank you
7 very much.

8 We'll move on to our next order of
9 business, which is the status and progress report on
10 A83-549 Kona Vistas, LLC. This is a status and
11 progress report in response to recently submitted
12 annual report 2022.

13 I'd like to remind all Commissioners that
14 this is a status report hearing and no decisions
15 will be made, and no motions for action are required
16 today. The Chair and the Commissioners can ask the
17 Petitioner and the parties for certain things. They
18 should be identified by the Commission and will be
19 followed up with letters from our staff if we have
20 specific questions that we'd like you to address
21 forthcoming to today's meeting.

22 I also want to note for the record that
23 the Petitioner filed two documents yesterday to
24 address questions raised in the staff review, an
25 initial response letter, and an amendment to that

1 response, and both have been posted on the website.

2 In those documents, the Petitioner raised
3 several questions that I do not expect that we will
4 be able to answer at today's hearing. And if the
5 Petitioner would like to pursue those questions
6 after today's hearing, they should consult with our
7 staff on the best way to get answers to their
8 questions. That may include a filing for a
9 declarative hearing -- a declarative ruling and
10 hearing on this matter. So it's a series of steps.

11 So our intent is to get everybody all the
12 answers to all their questions, but we have to be
13 procedurally correct in how we go about doing that.

14 Mr. Derrickson, did I correctly state that
15 for the record?

16 **MR. DERRICKSON:** I think you've gotten it,
17 yes.

18 **CHAIRMAN GIOVANNI:** Okay. Thank you.

19 So I'd like to start with the parties
20 identifying themselves for the record, and let me
21 remind you that any time you choose to speak in the
22 hearing today, please start by saying your name, and
23 then you may proceed. So let's start with the
24 Petitioner.

25 **MR. ARAI:** Good morning, Chair Giovanni

1 and Members of the Commission. Thank you for making
2 the long journey over here to Kona. Your presence
3 is much appreciated.

4 **CHAIRMAN GIOVANNI:** Thank you.

5 **MR. ARAI:** My name is Daryn Arai. I'm a
6 Land Use Planning Consultant assisting the
7 Petitioner, Kona Three, LLC. The Petitioner is
8 comprised of, on my left, Richard Wheelock. The
9 other two members of Kona Three are sitting in the
10 back, Mr. Roland Higashi and Mr. Robert Williams.
11 On my right is counsel for Kona Three, Michael
12 Matsukawa.

13 **CHAIRMAN GIOVANNI:** Thank you. One
14 second. So Mr. Arai, since you're not an attorney,
15 I need to swear you in, so let's just get that out
16 of the way now, if you don't mind. So do you swear
17 that the testimony that you will give to the
18 Commission today will be the truth?

19 **MR. ARAI:** Yes.

20 **CHAIRMAN GIOVANNI:** Thank you very much.
21 And if you do call witnesses other than Mr.
22 Matsukawa, we will swear them in at the time.

23 Okay. For the State of Hawaii, who is
24 here?

25 **MS. KATO:** Alison Kato, Deputy Attorney

1 General for Office of Planning and Sustainable
2 Development. Also, Katia Balassiano, Land Use
3 Division Administrator from the Office of Planning
4 and Sustainable Development. Thank you.

5 **CHAIRMAN GIOVANNI:** Ms. Kato is on Zoom.
6 Is that correct?

7 **MS. KATO:** Yes.

8 **CHAIRMAN GIOVANNI:** And here today, just
9 for the record, is who?

10 **MS. BALASSIANO:** I'm Katia Balassiano,
11 Land Use Division Chief with OPSD, Office of
12 Planning and Sustainable Development.

13 **CHAIRMAN GIOVANNI:** Yeah. Please state
14 that again.

15 **MS. BALASSIANO:** Sure. Hi, my name is
16 Katia Balassiano. I'm the Land Use Division Chief
17 at the Office of Planning and Sustainable
18 Development. I'm here in person, and our Deputy
19 Attorney General is on Zoom today.

20 **CHAIRMAN GIOVANNI:** Can I swear you in,
21 please.

22 **MS. BALASSIANO:** Sure.

23 **CHAIRMAN GIOVANNI:** Please state your name
24 and -- again, and the testimony you will be giving
25 today will be the truth.

1 **MS. BALASSIANO:** It will be the truth.

2 Katia Balassiano.

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

4 From the County of Hawaii?

5 **MS. AHN:** Good morning, Commissioners.

6 Michelle Ahn, Deputy Corporation Counsel,
7 representing the Planning Department. Okay. Good
8 morning, Commissioners. Michelle Ahn, Deputy
9 Corporation Counsel, representing the Planning
10 Department of the County of Hawaii. With me is
11 Deputy Planning Director, Jeff Darrow. And also
12 present are Susan Akiyama of Housing, and Deputy
13 Corporation Counsel Sylvia Wan -- Susan Kunz, I'm
14 sorry, of Housing.

15 **CHAIRMAN GIOVANNI:** I didn't get that last
16 part.

17 **MS. AHN:** I had mistakenly referred to
18 Susan as Susan Akiyama. Her name is Susan Kunz.

19 **CHAIRMAN GIOVANNI:** Very well.

20 Mr. Darrow, will you be giving testimony
21 today? Can I swear you in, please. Mr. Darrow,
22 will the testimony you're about to give today be the
23 truth?

24 **MR. DARROW:** Thank you very much.

25 **MS. KWAN:** We have members of the audience

1 that are hard of hearing. Can we have everybody
2 speak clearly and closely into the microphone to
3 enter good audio in the room.

4 **CHAIRMAN GIOVANNI:** We will. Do we need
5 to go back over anything that we've already done?

6 **MS. KWAN:** I don't think so for
7 introductions.

8 **CHAIRMAN GIOVANNI:** Okay. So it's a
9 reminder for everyone, including me, to speak loudly
10 and clearly and into the microphone. You got that,
11 everybody? Okay.

12 Commissioner Okuda?

13 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
14 I would like to make a disclosure.

15 **CHAIRMAN GIOVANNI:** Proceed.

16 **COMMISSIONER OKUDA:** I'd like to disclose
17 that when I was first nominated to sit on the Land
18 Use Commission almost eight years ago, I asked Mr.
19 Matsukawa to explain to me the fundamentals of land
20 use law, and he was gracious enough to take me
21 around Kona to explain the Kona farm lots and thing
22 like that.

23 I think I should disclose the fact that
24 I've known Mr. Matsukawa in the practice of law
25 maybe since the time I was licensed in 1981. But I

1 think it's important that I disclose the fact that,
2 initially, he was the person I went to, to find out
3 what I should or should not be doing. I'm not
4 saying I follow everything he says, but that
5 disclosure should be placed on the record.

6 A second thing I'd like to disclose is
7 even though this does not deal with Mr. Matsukawa
8 directly, I represent the ILWU Local 142 in an
9 action which involves his brother, Mr. Edward
10 Matsukawa of Kauai. None of these interests affect
11 anything financial for me. I have no financial
12 interest in the outcome of anything, and I don't
13 believe any of these relationships will affect what
14 I do with respect to this matter. Thank you, Mr.
15 Chair.

16 **CHAIRMAN GIOVANNI:** Thank you,
17 Commissioner Okuda.

18 Fellow Commissioners, do you have any
19 objection to Mr. Okuda continuing in this hearing in
20 light of his disclosures? Hearing none.

21 Parties, any objection to Commissioner
22 Okuda continuing in this hearing? Petitioner?

23 **MR. ARAI:** For the Petitioner, no
24 objection.

25 **CHAIRMAN GIOVANNI:** Please state your

1 name .

2 **MR. ARAI:** Oh, I'm sorry. Daryn Arai.

3 **CHAIRMAN GIOVANNI:** No objection?

4 **MR. ARAI:** No objection.

5 **CHAIRMAN GIOVANNI:** Okay. State?

6 **MS. KATO:** Alison Kato. No objection.

7 **CHAIRMAN GIOVANNI:** Thank you. County?

8 **MS. AHN:** Michelle Ahn. We have no
9 objection.

10 **CHAIRMAN GIOVANNI:** Thank you.

11 So Mr. Okuda, you may continue as -- in
12 this matter.

13 Fellow Commissioners, any other
14 disclosures at this time? Hearing none.

15 We will proceed. First, I will -- I'm
16 still discussing what the procedures are going to
17 be. And Commissioner Okuda short-circuited me by
18 making a disclosure before I told you we will be
19 making disclosures, so we've got that part done.

20 So I'm going to describe the procedure, so
21 I will recognize written public testimony that has
22 been submitted in this matter, identifying the
23 person and organizations who have submitted that
24 testimony. Next, I will call on members of the
25 public who wish to testify on the Kona Vista, LLC's

1 status and progress report.

2 Members of the public will each have three
3 minutes to provide their testimony, and then stand
4 by for -- to respond to any questions from the
5 parties or the Commissioners. When all questions
6 have been completed, the Chair will excuse the
7 witness and call the next witness.

8 After completion of the public testimony
9 portions of the proceedings, the Chair will call on
10 the Petitioner to provide its status report. The
11 Chair will then call on the County's Planning
12 Department, the Office of Planning and Sustainable
13 Development for the State, and for comments
14 regarding the status -- for comments regarding the
15 status report presented by Petitioner. The
16 Petitioner will then be allowed to respond to
17 comments made by the County and OPSD.

18 Commissioners will ask questions of the
19 parties at the conclusion of each of their
20 presentation if they have questions. At the
21 conclusion of the parties' testimony and
22 Commissioners' questions -- and this is important --
23 the public will be granted a second opportunity to
24 provide additional public testimony after they've
25 had the benefit of hearing from all the parties and

1 from hearing the questions and answers given to the
2 Commissioners. Once that concludes, the Commission
3 will enter into deliberations regarding the status
4 report and decide on any matters that it wishes to
5 continue or proceed with.

6 Again, I will note that I will be calling
7 for short breaks, typically five to ten minutes and
8 a longer one for lunch if we're still going. So are
9 there any questions from the parties on the
10 procedure for today?

11 Petitioner?

12 **MR. ARAI:** Daryn Arai for the Petitioner.

13 No questions.

14 **CHAIRMAN GIOVANNI:** Thank you.

15 From the State?

16 **MS. KATO:** Alison Kato. No questions.

17 Thank you.

18 **CHAIRMAN GIOVANNI:** Thank you.

19 The County?

20 **MS. AHN:** Michelle Ahn. We have no

21 questions.

22 **CHAIRMAN GIOVANNI:** Very well.

23 So please be informed -- this is for
24 everyone -- that all relevant records and documents
25 pertaining to this matter can be accessed for your

1 personal review on the LUC website. That's
2 <https://luc.hawaii.gov/a83-549>.

3 Public testimony. For members of the
4 public, please be reminded that the Commission will
5 not be considering the merits of this petition.
6 Rather, the Commission is learning about the current
7 state of the activities related to the docket,
8 including compliance with conditions and whether --
9 and will consider whether action is necessary.

10 I will now recognize written public
11 testimony submitted in this matter, identifying the
12 person and organizations submitting the testimony.
13 Ms. Kwan, has there been any written testimony
14 submitted on this matter?

15 **MS. KWAN:** Yes, Mr. Chair. We received 15
16 written testimonies that have all been published on
17 our website.

18 **CHAIRMAN GIOVANNI:** Is that at the
19 location on the website which I just gave a moment
20 ago?

21 **MS. KWAN:** Yes, Mr. Chair.

22 **CHAIRMAN GIOVANNI:** So I will repeat that
23 for everybody's reference. It's
24 <https://luc.hawaii.gov/a83-549>.

25 Thank you, Ms. Kwan.

1 Next -- now, I will call on any members of
2 the public to provide testimony on this agenda item.
3 Ms. Kwan, has anyone signed up to testify?

4 **MS. KWAN:** We have ten people signed up to
5 testify in the first round.

6 **CHAIRMAN GIOVANNI:** Very well. So we'll
7 begin with that process now and let me remind each
8 of you that I will swear you in, and then you'll
9 have three minutes to provide your testimony. And
10 then please remain for any questions that the
11 parties or the Commissioners may have.

12 Who is the first person?

13 **MS. KWAN:** First we have David Blancett-
14 Maddock.

15 **CHAIRMAN GIOVANNI:** Aloha, Mr. Maddock.
16 Will you please raise your hand and indicate whether
17 the testimony you're about to give today will be the
18 truth?

19 **MR. BLANCETT-MADDOCK:** Aloha, David
20 Blancett-Maddock. The truth and the whole truth,
21 thank you, sir.

22 **CHAIRMAN GIOVANNI:** So please state your
23 name and address and begin your three minutes.

24 **MR. BLANCETT-MADDOCK:** David Blancett-
25 Maddock, homeowner, full-time resident, Kona, 76-101

1 Kamehamalu Street, Kailua. Disclosure, I am an
2 attorney but not here in that capacity. I'm also
3 former Senior Planner for cities of Los Angeles and
4 Pittsburgh.

5 If I may begin my time now, I have three
6 minutes to talk about a 40-year story. That's not a
7 lot of time. So it's not a lot of time, so let's
8 get at it. The answer is we know -- now we know.
9 The day the developer comes with a piece of land
10 that he paid about \$600,000 in fair market value to
11 -- and in the course of these proceedings, I would
12 have said tomorrow, but later, when the declaratory
13 things are done, that land will be worth tens of
14 millions -- no, actually hundreds of millions of
15 dollars. It's a lot of money.

16 What goes on in this hearing is very
17 important because it's going to make -- make that
18 land super valuable. How's it possible? I can
19 explain the history of the string of developers who
20 plat under the Hawaiian cultural history and broke
21 promises on affordable housing, and got out and left
22 liabilities to this developer to fire sale --

23 **CHAIRMAN GIOVANNI:** Would you speak a
24 little slower. I know you're trying to squeeze in
25 three minutes --

1 **MR. BLANCETT-MADDOCK:** Well, I have four
2 pages. If you'll give me just a little indulgence
3 to get through --

4 **CHAIRMAN GIOVANNI:** We can't give you more
5 than three minutes --

6 **MR. BLANCETT-MADDOCK:** Then I'm going to
7 have to speak quickly, sir.

8 Let's be fair, your predecessors on this
9 board did not have the facts necessary to make an
10 informed and fair decision. Identification,
11 classification, importance of Hawaiian cultural
12 resources were left to the developer's paid
13 consultants.

14 They and you were never told that easily
15 discovered trails were on this land, one trail
16 appearing twice in U.S. maps and surveys. You were
17 given literally thousands of pages of developer paid
18 studies that concluded no significant impact, but no
19 one -- not one of those thousands of pages mentioned
20 the trails.

21 Instead, you were told that the wall's
22 clearly in view and some with double construction
23 typical of trail walls were mostly post-contact
24 cattle walls or farm walls. Ancient walls simply
25 common farm walls. History was erased by a mission

1 and misclassification like Hawaiian culture was
2 purged from this project.

3 And once it was purged, bad things
4 happened. They dug up a Hawaiian woman and her
5 child and moved her. They buried artifact. They
6 dug up the caves and removed the stuff and buried it
7 back over. They lost, you know, a petroglyph. All
8 kinds of things happened. But no more.

9 Now we know. Thanks to the independent
10 honorable men coming forward, we know that there are
11 at least two historical trails. The DLNR trails
12 expert, Jackson Bauer, Na Ala Hele came forward with
13 written and in-person testimony and evidence about
14 trails and trail alignments with known trail mauka
15 to makai. National Parks trails expert, Rick
16 Grimken also came forward with testimony concluding
17 that there were trails.

18 Renowned Tom Pohaku Stone appeared as a
19 native, direct descendant, an expert on previous
20 experience on adjacent trail investigation. And
21 thanks to Tom, we know that the walls classified by
22 the developers as post-contact cattle walls were
23 actually not cattle walls at all. The walls were
24 actually part of an ingenious and sacred system for
25 water diversion on a piece of land that's on a flood

1 plain that's sacred water and essential to the
2 sustainability of the Hawaiian people. We also know
3 that there were trails. He confirmed that as well.

4 Once the facts were known and once we had
5 the facts necessary to make an informed decision and
6 fair decision, the reviewing governmental bodies
7 begin to do the right thing. The PONC recognize the
8 trails and natural resources of substantial and
9 worthy of expenditure of County funds to ensure
10 preservation of significant natural resources and
11 aided -- added it to its list of properties eligible
12 for County purchase at market value, allowing this
13 developer to develop -- to exit with his profit.

14 The Hawaii County Resources Commission --
15 excuse me -- unanimously and unequivocally concluded
16 the CRC opinion of this project impact historical
17 assets is that this project will likely have a
18 substantial impact on historical assets and
19 recommended entire -- preservation of the entire
20 site in perpetuity.

21 We can blame our predecessors or your
22 predecessors for failing to stop society from
23 erasing Hawaiian culture from our landscape, but now
24 we know history will bear out our complicity if we
25 don't act on the true facts and project our -- and

1 protect our aina from being erased from the
2 landscape.

3 Yes, there are other issues relevant to
4 this hearing. All the agreements and approvals
5 expired years ago. This project was purchased --

6 **CHAIRMAN GIOVANNI:** Please summarize.

7 **MR. BLANCETT-MADDOCK:** I am. Thank you,
8 sir.

9 This project began 40-some years ago.
10 This -- this developer came into it late.
11 Everything's expired in this thing, but it goes on
12 and it goes on and it goes on, and my wife and I and
13 all these people have attended so many meetings over
14 Christmas and holidays, and it just keeps going.

15 They abandoned the use. They reverted to
16 cattle on the property, which is the agricultural
17 use that was originally there when this in fact
18 allows you to say that it should revert to the
19 original use.

20 Bottom line, yeah, the necessary facts to
21 act appropriately, and we cannot let this project go
22 forward this way. We know now. You know now.
23 Thank you.

24 **CHAIRMAN GIOVANNI:** Thank you very much.

25 Please remain for questions.

1 Petitioner, any questions?

2 **MR. ARAI:** Darin Arai for the Petitioner.

3 No questions.

4 **CHAIRMAN GIOVANNI:** Thank you.

5 County, any questions?

6 **MS. AHN:** Michelle Ahn. We don't have any
7 questions for the testifier.

8 **CHAIRMAN GIOVANNI:** Thank you.

9 State, any questions?

10 **MS. KATO:** Alison Kato, no questions.
11 Thank you.

12 **CHAIRMAN GIOVANNI:** Commissioners, any
13 questions of this witness?

14 Thank you very much. You may go now.

15 **MR. BLANCETT-MADDOCK:** Thank you, Mr.
16 Chairman.

17 **CHAIRMAN GIOVANNI:** Ms. Kwan, who is
18 number two?

19 **MS. KWAN:** We have Diane Blancett-Maddock.

20 **MS. BLANCETT-MADDOCK:** Aloha. My name is
21 Diane Blancett-Maddock.

22 **CHAIRMAN GIOVANNI:** Ms. Maddock, do you
23 swear that the testimony you're about to give will
24 be the truth?

25 **MS. BLANCETT-MADDOCK:** Yes, I do.

1 **CHAIRMAN GIOVANNI:** Great. Please
2 proceed. You have three minutes.

3 **MS. BLANCETT-MADDOCK:** Well, you know,
4 that's my husband, so we live in the same house.
5 I'm the other half of the Blancett-Maddocks.

6 The preservation of the cultural and
7 historical significance of this aina cannot be
8 minimized. Only -- one can only imagine the
9 cultural and historical artifacts and structures
10 that will be discovered when and if the stewards
11 have accessed the entire 70 acres and the trails are
12 accessible.

13 Already there are maps outlining two
14 historical trails, one on the north side of the
15 property and one on the south side. This site is
16 already on the Hawaii County comp list, which places
17 the County in the position to negotiate a purchase
18 price for this aina for preservation of all. As
19 noted, the site has not been in compliance for
20 development since, I believe, 2012, so that's over
21 12 years ago they have not been in compliance.

22 In addition, please consider the State's
23 generated flood watershed maps that cover and
24 converge on this site, bringing into question the
25 soundness of any developing or building on this site

1 with all that water swooshing down.

2 We're in the position to -- you are in a
3 position to preserve this aina for our culture and
4 historical appreciation into the future and support
5 the recommendation of the County PONC Commission and
6 the recommendation of the Hawaii County Cultural
7 Resource Commission to preserve this land.

8 An interesting note is Zendo Kern was part
9 of this development project until he became director
10 of the County -- County Planning Director. Thank
11 you for your time.

12 **CHAIRMAN GIOVANNI:** Thank you. Please
13 remain for potential questions.

14 Petitioner?

15 **MR. ARAI:** Daryn Arai for Petitioner and
16 no questions.

17 **CHAIRMAN GIOVANNI:** Thank you.
18 County of Hawaii?

19 **MS. AHN:** Michelle Ahn. No questions for
20 this testifier.

21 **CHAIRMAN GIOVANNI:** Okay. Thank you.
22 State?

23 **MS. KATO:** Alison Kato, no questions.
24 Thank you.

25 **CHAIRMAN GIOVANNI:** Commissioners? No

1 questions.

2 Thank you very much for your time and for
3 coming forward today.

4 Ms. Kwan, number three?

5 **MS. KWAN:** We have Mark Van Pernis.

6 **CHAIRMAN GIOVANNI:** Mr. Van Pernis, will
7 the testimony you give today be the truth?

8 **MR. VAN PERNIS:** Yes.

9 **CHAIRMAN GIOVANNI:** Please state your name
10 and address and then you have three minutes.

11 **MR. VAN PERNIS:** My name is Mark Van
12 Pernis. I'm a 40-plus year resident at Kona. I
13 live at 72-1173 Hoopai Road, Kailua-Kona. I'm a
14 former commissioner of the Kailua Village Design
15 Commission and also a former commissioner of the
16 Planning Commission.

17 First of all, I object to the fact that,
18 you know, limiting public testimony. When the
19 County and the developers have unlimited time, we
20 can't ask some questions either. I hope you read my
21 January 31st letter and enclosures. It's full of
22 facts and recommendations. This project is way
23 absolutely late, and now they're seeking another
24 ten-year extension. Decades have gone by.

25 They need a new plan that addresses

1 increase in population rates in Kona and the 700
2 cars their proposed development will deliver. We
3 need second lanes and turn lanes, and they need to
4 address this problem that you have and will see this
5 project is universally opposed by local -- local
6 population. Remember, you represent the community,
7 not here the developer or to aid developers and
8 selling their project and making money. A new plan
9 is needed.

10 Let me say that the project should be
11 done, to say the least. The problems at Kuakini,
12 which is a major state highway, which will serve as
13 the project, it's already at certain times
14 standstill traffic jams. Even emergency vehicles
15 can't get through.

16 So I ask you to -- if you could in any way
17 allow the project to proceed, to put a sunset clause
18 on it and also the -- to confront these folks. They
19 don't intend to develop the project. It's been sold
20 numerous times for profit, and the County gets
21 nothing. So please --

22 **CHAIRMAN GIOVANNI:** Please summarize.

23 **MR. VAN PERNIS:** -- I suggest saying no or
24 put it on conditions of the sunset clause or a
25 requirement that there be extinguish on the benefits

1 upon on the sale and the real developer, not these
2 guys, the real developer was going to build it as
3 ability and desire to do so, that they come before
4 the appropriate agencies with a new plan. You're
5 not here to help them sell the project.

6 **CHAIRMAN GIOVANNI:** Thank you. Please
7 remain for questions.

8 Petitioner, any questions for this
9 witness?

10 **MR. ARAI:** Daryn Arai for Petitioner. No
11 questions.

12 **CHAIRMAN GIOVANNI:** Thank you.

13 County, any questions?

14 **MS. AHN:** Michelle Ahn, no questions.

15 **CHAIRMAN GIOVANNI:** State, any questions?

16 **MS. KATO:** Alison Kato, no questions.

17 **CHAIRMAN GIOVANNI:** Commissioners, any
18 questions?

19 **MR. VAN PERNIS:** One other thing I want to
20 say --

21 **CHAIRMAN GIOVANNI:** One second, sir.

22 **MR. VAN PERNIS:** -- is that the County
23 Planning Department and Planning Director cannot be
24 trusted in this situation. The project in the past
25 was represented by the Planning Director who was

1 their consultant and was a former developer's
2 representative --

3 **CHAIRMAN GIOVANNI:** That information --

4 **MR. VAN PERNIS:** -- and Mr. Darrow and his
5 --

6 **CHAIRMAN GIOVANNI:** Mr. Van Pernis. Mr.
7 Van Pernis, I need you to stop there. That
8 information is on the record.

9 Commissioners, any questions?

10 **MR. VAN PERNIS:** They are disqualified as
11 well as Mr. Kern. That is the law. These are --
12 the entire department should be disqualified. And I
13 think that as loyal servants of Mr. Kern, Planning
14 Director, they are mouthing is position. Thank you.

15 **CHAIRMAN GIOVANNI:** Thank you. Your point
16 of view is understood. You may go now.

17 Commissioner Okuda?

18 **COMMISSIONER OKUDA:** This is not a
19 question. It's a disclosure. Just out of abundance
20 of caution, I'd like to disclose that during my
21 years of practice of law, I've also had cases with
22 Mr. Van Pernis. That knowledge and fact won't
23 affect my decision in this case. Thank you, Mr.
24 Chair.

25 **CHAIRMAN GIOVANNI:** Thank you for that

1 disclosure, Commissioner Okuda. I'll ask the
2 parties again if they have any objection to Mr.
3 Okuda continuing in light of that forthcoming
4 disclosure?

5 Mr. Arai?

6 **MR. ARAI:** Daryn Arai. No objections.

7 **CHAIRMAN GIOVANNI:** Thank you.

8 County?

9 **MS. AHN:** Michelle Ahn. No objection.

10 **CHAIRMAN GIOVANNI:** State?

11 **MS. KATO:** Alison Kato, no objections.

12 **CHAIRMAN GIOVANNI:** Fellow Commissioners,
13 any objection? Seeing none, Commissioner Okuda,
14 you're still stuck with us here today.

15 So Ms. Kwan, number four.

16 **MS. KWAN:** Next we have Renee Inaba.

17 **MS. INABA:** I thought I was number nine,
18 so there I'm sitting there thinking I have a minute
19 to like soak all this in.

20 **CHAIRMAN GIOVANNI:** Ms. Inaba, do you
21 swear the testimony you're about to give today will
22 be the truth?

23 **MS. INABA:** Absolutely.

24 **CHAIRMAN GIOVANNI:** Thank you. Please
25 state your full name and your current address, and

1 then you have three minutes.

2 **MS. INABA:** Okay. Okay. Thank you. My
3 name is Renee Inaba. My address is 75-6109 Paulehia
4 Street, in Kailua-Kona.

5 I just wanted to share, one, I appreciate
6 the disclosure. I wish everybody in the room and
7 related to this project would be as open about
8 things they should be disclosing. I'm not going to
9 call anyone out, but those people, I think, know who
10 they are in terms of conflicts of interest on the
11 project. I'm not talking about you guys.

12 It's -- I think it's important as we're
13 thinking about this, I -- I find myself a little
14 incredulous at the length of time this is taking for
15 everyone to get around this project. The issue is
16 this, it's been like 40 years. There's been other
17 developers that have tried and decided to pass.

18 Schuler Homes made a pass. They looked at
19 the property, wasn't buildable. That's what I was
20 told. Horton looked at it. Same problems. There's
21 waterway issues. There's cultural issues. There's
22 just -- it's almost like the land says, "No. No,
23 I'm not going to let you build here. There's a
24 problem with that." And now we know there's a lot
25 of cultural resources. There's endangered species.

1 There's a lot of issues there.

2 These things have been well documented,
3 you know, in what we've presented over the past
4 several years for the PONC, which is willing to
5 proceed with some, you know, conveyance to preserve
6 the property. With what's happened with already
7 Leeward Planning -- Leeward Planning sent the issue
8 to the Cultural Resources Commission, which has
9 said, "No, this should not go forward. The land
10 should be preserved in perpetuity because of the
11 issues."

12 Now, if you haven't had a chance to look
13 at the testimony that was done or the Cultural
14 Resources Commission meeting that led to their
15 conclusion that there should not be development
16 there, please do. It's really -- it's intriguing.
17 It's fascinating. It's educational. And it's
18 really important that we understand what the land
19 means. Once the land's been assaulted, we can't
20 recover that, you know, and that's -- that, I think,
21 is a key issue.

22 The other thing is when you think about
23 development, per se, you have these issues of, well,
24 what does it cost you down the road. So there are
25 legacy issues. So legacy can be, in relation to you

1 guys' commission and the others that have looked at
2 this, is it going to be a positive or a negative
3 legacy? Are we going to remember you for, oh, my
4 gosh, we have flooding in Kona now because now we've
5 diverted these waterways and whatnot, so --

6 **CHAIRMAN GIOVANNI:** Ms. Inaba, please
7 summarize.

8 **MS. INABA:** Sure. So I think we just have
9 to focus on the difference between profiteering and
10 public, you know. And public, when you talk about
11 things in Hawaii, we talk about malama pono, malama
12 the land. We need to malama aina.

13 And it's really important to me as a
14 person whose family's been here for many, many
15 generations and my husband's as well, that I want to
16 share one important thing. We -- we try, I think,
17 as a public to come to you all earnestly about our
18 concerns. And there's so much data that says this
19 isn't a good project to proceed with at all,
20 especially given the timeframe. But beyond that, I
21 think that for the developers' profiteering
22 perspective to say about the public that we are a
23 privileged class isn't really fair.

24 I mean, my people were plantation people,
25 worked the fields --

1 **CHAIRMAN GIOVANNI:** Please summarize.

2 **MS. INABA:** Yes -- so we were plantation
3 people. We weren't privileged. We don't live, you
4 know, up the coast. We're not on the Gold Coast.
5 We don't have the fancy, fancy houses. We just care
6 about our community and we care about our land, and
7 we care about preserving the culture. So I just ask
8 you to kind of just bear that all in mind. And when
9 you think legacy, think positive in terms of what
10 legacy you want to leave for open space and for
11 cultural preservation.

12 **CHAIRMAN GIOVANNI:** Thank you.

13 **MS. INABA:** Thank you.

14 **CHAIRMAN GIOVANNI:** Please stay for
15 questions.

16 **MS. INABA:** Okay. Sorry.

17 **CHAIRMAN GIOVANNI:** Petitioner?

18 **MR. ARAI:** Daryn Arai, no questions.

19 **CHAIRMAN GIOVANNI:** Thank you.

20 County?

21 **MS. AHN:** Michelle Ahn, no questions.

22 **CHAIRMAN GIOVANNI:** State?

23 **MS. KATO:** Alison Kato, no questions.

24 **CHAIRMAN GIOVANNI:** Commissioners?

25 Commissioner Okuda?

1 **COMMISSIONER OKUDA:** This is Gary Okuda.
2 Thank you, Ms. Inaba, for your testimony. Let me
3 ask this question. And let me preface my question
4 by saying I personally believe -- I'm just talking
5 about myself. I personally believe many times the
6 process that's followed may be as important or may
7 be more important than the outcome itself.

8 Now, you gave testimony that seems to
9 allege that there are conflicts of interest. Can
10 you state for the record who's in conflict and why?

11 **MS. INABA:** Oh, I think that was mentioned
12 in previous testimony, the fact that we have a
13 Planning Director that's been involved with the
14 developer in the past, and it's not always, you
15 know, disclosed in open forums. They -- they
16 commented. I was just referencing back to their --

17 **COMMISSIONER OKUDA:** Do you have personal
18 knowledge of that conflict or are you relying on
19 testimony that was given in this room today?

20 **MS. INABA:** No. It's been -- it's been in
21 evidence in a lot of different hearings that I've
22 been in.

23 **COMMISSIONER OKUDA:** Okay. So you're
24 saying one of the conflicts is the fact that the
25 current Planning Director, Mr. Kern, was

1 representing or working for or otherwise doing work
2 or affiliated with the Petitioner here, is that
3 correct?

4 **MS. INABA:** That's my understanding.

5 **COMMISSIONER OKUDA:** Okay. Besides that,
6 are there any other conflicts that you are referring
7 to?

8 **MS. INABA:** Well, I'll put it this way. I
9 think that there's a lot of times when --

10 **COMMISSIONER OKUDA:** Let me interrupt you
11 because --

12 **MS. INABA:** Yeah.

13 **COMMISSIONER OKUDA:** -- you know, we want
14 to make sure everyone gets to testify.

15 **MS. INABA:** Yes.

16 **COMMISSIONER OKUDA:** I'm interested in
17 specific facts which you believe show that specific
18 people are in conflict. So can you name names of
19 anyone else that you allege or claim is in conflict
20 of interest? And by the way, heads-up on everybody
21 else, I'll ask the Petitioner later to comment on
22 these things.

23 **MS. INABA:** Sure. I think they should.

24 It's just the group. As I understand it,
25 Kern was involved with all of them as a group, as

1 consultant, over a number of years, and, of course,
2 now, in his role as --

3 **COMMISSIONER OKUDA:** Okay. I understand
4 you mean Mr. Kern.

5 **MS. INABA:** Yes.

6 **COMMISSIONER OKUDA:** Is there anyone else
7 you can name? If I don't hear any other names, I'll
8 assume there are no other names.

9 **MS. INABA:** Just the other parties that
10 have been involved in the development.

11 **COMMISSIONER OKUDA:** Okay. But you --
12 okay.

13 **MS. INABA:** Because -- because they -- you
14 know, he was their consultant, so --

15 **COMMISSIONER OKUDA:** Oh, okay. I
16 understand --

17 **MS. INABA:** -- I mean, I think it's
18 incumbent upon them to do what you did, which is to
19 say --

20 **COMMISSIONER OKUDA:** Yeah, I'm just --
21 again, I'm --

22 **CHAIRMAN GIOVANNI:** Ms. Inaba --

23 **MS. INABA:** I don't think it's my --

24 **COMMISSIONER OKUDA:** -- names. Thank you.
25 I have no further questions. I was asking --

1 **CHAIRMAN GIOVANNI:** Yeah. Let the record
2 show the only named person was Mr. Kern, is that
3 correct? Is that your understanding, Commissioner
4 Okuda?

5 **COMMISSIONER OKUDA:** Yes, that is. And
6 that answers my question. I don't need any other
7 explanation. No disrespect, please.

8 **MS. INABA:** No, no. Not -- not at all.
9 Thank you.

10 **CHAIRMAN GIOVANNI:** Commissioners,
11 anything further?

12 Thank you, Ms. Inaba. You can be --

13 **MS. INABA:** You're welcome.

14 **CHAIRMAN GIOVANNI:** Number five?

15 **MS. KWAN:** Next we have Joel Gimpel.

16 **CHAIRMAN GIOVANNI:** Say that last name
17 again?

18 **MS. KWAN:** Gimpel, G-i-m-p-e-l.

19 **CHAIRMAN GIOVANNI:** Mr. Gimpel, will the
20 testimony you're about to give today be the truth?

21 **MR. GIMPEL:** Yes.

22 **CHAIRMAN GIOVANNI:** Would you please state
23 your full name for the record and your current
24 address and then --

25 **MR. GIMPEL:** Joel Gimpel. I live at 75-

1 628 North Mea Lanakila Place in Kailua-Kona, Hawaii.

2 **CHAIRMAN GIOVANNI:** That's great. You
3 have three minutes.

4 **MR. GIMPEL:** Thank you. As a retired
5 attorney, I'll be brief. Sorry for the pun.

6 **CHAIRMAN GIOVANNI:** That's a conflict of
7 interest right there.

8 **MR. GIMPEL:** But I'm retired.

9 **CHAIRMAN GIOVANNI:** Oh, that makes a
10 difference.

11 **MR. GIMPEL:** My written testimony that I
12 submitted focused on the issues that are being
13 considered by the County's Leeward Planning
14 Commission with respect to the Petitioner's
15 application for a ten-year time extension to
16 complete the proposed development. And that
17 testimony that I submitted noted that there are
18 various infrastructure issues such as traffic and
19 water and issues discovered and outlined by the
20 County's Cultural Resources Commission which filed a
21 report with the Leeward Planning Commission, but the
22 Leeward Planning Commission has not acted on that
23 report because they haven't met for about six
24 months. Their next meeting is scheduled for, I
25 think, the end of this month, which they might

1 finally get to it.

2 Anyway, the Cultural Resources Commission,
3 after nearly three hours, actually two and three-
4 quarter hours of testimony and discussion,
5 unanimously approved motions to recommend to the
6 Leeward Planning Commission that the proposed
7 development will likely have substantial impact on
8 historical and cultural assets on the subject
9 property, and that the area should be preserved in
10 perpetuity as a historic property.

11 Furthermore, if unfeasible, the report
12 states that further documentation regarding lineal
13 descendants and kamaaina knowledge of resources and
14 applicants, consultations with the community and
15 plans to have more open space and protect the
16 cultural resources and other property features
17 should be provided.

18 Now, if there are any questions, I'll be
19 happy to answer them.

20 **CHAIRMAN GIOVANNI:** Thank you, Mr. Gimpel.
21 Petitioner, any questions?

22 **MR. ARAI:** Daryn Arai, no questions.

23 **CHAIRMAN GIOVANNI:** County of Hawaii?

24 **MS. AHN:** Michelle Ahn. No questions for
25 Mr. Gimpel.

1 **CHAIRMAN GIOVANNI:** Thank you.

2 State?

3 **MS. KATO:** Alison Kato, no questions.

4 Thank you.

5 **CHAIRMAN GIOVANNI:** Commissioners?

6 Hearing none, thank you. You are excused.

7 **MR. GIMPEL:** Thank you. And I hope you
8 can all hear me. I'm speaking very close to the
9 mic.

10 **CHAIRMAN GIOVANNI:** You've done a great
11 job.

12 Number six?

13 **MS. KWAN:** Next we have John Powell.

14 **CHAIRMAN GIOVANNI:** Mr. Powell, do you
15 swear the testimony you're going to give today will
16 be the truth?

17 **MR. POWELL:** I do.

18 **CHAIRMAN GIOVANNI:** Oh, please state your
19 full name and your current address, and then you
20 have three minutes for oral testimony.

21 **MR. POWELL:** John Powell. 76-434 Kinau
22 Street, Kailua-Kona.

23 **CHAIRMAN GIOVANNI:** Please proceed.

24 **MR. POWELL:** The reason we're here is the
25 developers didn't like what they were hearing from

1 the Cultural Resource Commission or the Leeward
2 Planning Commission. They've gone around Enrons,
3 around everything. Their initial report said there
4 were no endangered species on the property, which is
5 not true.

6 Cultural Resources Commission saw -- saw
7 it for their own eyes. And the neighbors always --
8 next to this property always have the owls and the
9 Hawaiian hawks. We have hoary bats, rearing area
10 there, and the giant moths. That's never been
11 addressed.

12 Also, the drainage --

13 **CHAIRMAN GIOVANNI:** Sir, this is oral
14 testimony. We're not able to digest or put your
15 exhibits on the record. You can speak to them.

16 **MR. POWELL:** Drainage issues. This
17 property has severe drainage issues --

18 **CHAIRMAN GIOVANNI:** Please speak into the
19 microphone.

20 **MR. POWELL:** This property has severe
21 drainage issues and, according to FEMA, a lot of
22 this property, this is the property with the two
23 drainage issues, is in -- close to the flood plain
24 area and subject to flood -- flooding.

25 **CHAIRMAN GIOVANNI:** Can I clarify whether

1 or not you've submitted written testimony on these
2 issues?

3 **MR. POWELL:** All this would have been
4 submitted yesterday, but my computer was down. I
5 couldn't get it up until --

6 **CHAIRMAN GIOVANNI:** It's impossible to get
7 it in now. This is amenable -- what you're
8 attempting to do --

9 **MR. POWELL:** Well, all --

10 **CHAIRMAN GIOVANNI:** -- you can speak to it
11 --

12 **MR. POWELL:** -- this has -- this -- this
13 testimony is also in the record of Leeward Planning
14 Commission --

15 **CHAIRMAN GIOVANNI:** Very well.

16 **MR. POWELL:** -- if you want to go back and
17 look at that, you can.

18 **CHAIRMAN GIOVANNI:** Okay.

19 **MR. POWELL:** Then yesterday, I got a
20 letter from the group that in his -- in the
21 developer's testimony, they said they were going to
22 get 67 housing units from another development.
23 That's not true. Here's the letter stating it, and
24 it's in today's West Hawaii Newspaper, so that --
25 their credits -- as far as I know, they've never

1 built anything. They get the land, tear the land
2 up, get it ready, and sell the building part off to
3 others.

4 They had multiple lots in -- in different
5 subdivisions, never built a home. They could have
6 made a lot of money building homes and selling them,
7 but they didn't. All they're going to do is destroy
8 the property and then sell the building part to
9 somebody else. They didn't like the idea that the
10 Leeward Planning Commission was making -- if it goes
11 through, making them put the affordable housing on
12 this project.

13 The other thing is there's a petition out
14 there with over 790 signatures against this property
15 to protect the property. Nobody's against
16 affordable housing. I took offense to what the
17 developers said that we're against affordable
18 housing. That is the most untrue thing in the
19 world.

20 The problem is anything south of the
21 village is all car traffic. You can't walk to a
22 store and any of that. This other development
23 that's going in by Lowe's, the developer owns,
24 supposedly, 100 acres up there. He could put this
25 whole project up there and everybody -- you can

1 walk, bike to work, or whatever. When this original
2 process, they assumed there was going to be
3 businesses in the south Kona area. No, it all went
4 to the village and north. That's where all the
5 traffic is.

6 **CHAIRMAN GIOVANNI:** Could you please
7 summarize.

8 **MR. POWELL:** Traffic, bumper to bumper,
9 all day long. And just trying to get through the --

10 **CHAIRMAN GIOVANNI:** Please speak into the
11 microphone.

12 **MR. POWELL:** Here's another picture. So
13 Mr. Van Pernis was right about the traffic. It's --
14 it's terrible. And I wish all of you would go to
15 Kam III and drive it a couple of times in the
16 morning and in the afternoon, from Henry Street to
17 Kam III.

18 In summary, this land should be protected
19 and the threatened endangered species protected,
20 cultural resources protection, open space, and
21 education for gathering cultural practices. This
22 parcel is listed a priority on the PONC purchase.

23 **CHAIRMAN GIOVANNI:** Thank you. Please
24 stay for questions.

25 Petitioner, questions for this witness?

1 **MR. ARAI:** Daryn Arai, no questions.

2 **CHAIRMAN GIOVANNI:** County?

3 **MS. AHN:** Michelle Ahn, no questions.

4 **CHAIRMAN GIOVANNI:** Thank you.

5 State?

6 Please stay.

7 **MS. KATO:** Alison Kato, no questions.

8 **CHAIRMAN GIOVANNI:** Commissioners?

9 Okay. Thank you.

10 **MR. POWELL:** Can I add one other thing?

11 **CHAIRMAN GIOVANNI:** You may.

12 **MR. POWELL:** The gentleman at the end,
13 yes, I have personal knowledge. I was at a meeting
14 when the developer exposed his project and Mr. Zendo
15 Kern was his consultant. I was there.

16 **CHAIRMAN GIOVANNI:** Thank you.

17 So for everyone's benefit, I'd like to
18 clarify -- the Chair would like to clarify again
19 what's going on here from our perspective.

20 First of all, we understand and we
21 sympathize with concerns that are being brought
22 forward by the public, testimony, and in the written
23 testimony that we've received; however, the LUC no
24 longer has the ability to withdraw its prior
25 approval of this project that started 40 years ago.

1 And the reason for that is that there has been
2 substantial commencement on a portion of the
3 property that was originally proved.

4 Therefore, enforcement of any public
5 concerns lies with -- in our view, lies with the
6 County. So I just want to make that clear to
7 everyone. We understand where you're coming from,
8 but this is not a situation in which we can go back.

9 So somebody's raising their hand. You can
10 provide written testimony if you'd like and sign up
11 to do that. Pardon me?

12 **UNIDENTIFIED SPEAKER:** (Inaudible.)

13 **CHAIRMAN GIOVANNI:** So for example, I'm
14 just going to give an example, enforcement of the
15 conditions that were originally approved in this
16 Decision and Order by the Commission. Enforcement
17 is up to the County. The one -- the one aspect of
18 enforcement that the Land Use Commission has is to
19 revert the property back to its original
20 classification. Unfortunately, since there has been
21 substantial development on a portion of the
22 property, that option is not available to us.

23 **UNIDENTIFIED SPEAKER:** (Inaudible.)

24 **CHAIRMAN GIOVANNI:** So I'm going to leave
25 it there, and now we're going to return to the --

1 we're not going to be taking questions from various
2 persons of the audience. I'm just attempting to
3 clarify the situation as we understand it.

4 So Ms. Kwan, who's the next testifier?

5 **MS. KWAN:** Next we have Brandon Busch.

6 **CHAIRMAN GIOVANNI:** Mr. Busch.

7 **MR. BUSCH:** Aloha, everyone.

8 **CHAIRMAN GIOVANNI:** Mr. Busch, do you
9 swear that the testimony you're about to give today
10 will be the truth?

11 **MR. BUSCH:** Yes. And I -- oh, go ahead.

12 **CHAIRMAN GIOVANNI:** So please state your
13 full name and your current address, and then you
14 have three minutes.

15 **MR. BUSCH:** Yeah. Brandon Busch. I live
16 at 74-1477 Hao Kuni Street in Kona, and I have a
17 personal interest in a property in Kona Vistas as
18 well.

19 I don't have as much of a testimony as I
20 do just -- as I learn how this process works and
21 learn more about the history of the development here
22 we're talking about. As a practical matter, most
23 people I've spoken to, traffic seems to be one of
24 the number one issues that always comes up. And as
25 we've heard from a couple people, that's already a

1 major problem on Kuakini Highway right there.

2 The whole community, including -- I mean,
3 if you count everybody who commutes to the
4 businesses and resorts all up the coast, that
5 highway seems woefully inadequate to the present day
6 situation in Kona. And it just seems like a
7 development of this size would dramatically swamp a
8 very -- already a very bad bottleneck right there.

9 I travel through that area three to five
10 times a week, at least, sometimes more, and as soon
11 as you get past Lako Street right there, things
12 generally open up and you can finally get through.
13 But it often -- you often sit there for a good 20,
14 30 minutes, sometimes, and so that's today's issue.

15 And it seems like a project of this
16 magnitude -- what I would like is for maybe somebody
17 to speak to the way the LUC -- what kind of
18 coordination is there with traffic engineers, and is
19 there any sort of -- like, what are the public
20 resources for information for -- for community
21 involvement for questions related to this sort of
22 thing, because it seems like a cart before the horse
23 kind of situation where a -- where a significant
24 problem seems to need to be addressed before more is
25 added to the pressure there.

1 I have no idea where to turn, who to talk
2 to, who to ask, and so for a matter of public
3 record, it seems like it would be helpful if
4 something could be spoken to in that regard, so
5 people know where to go, know who to talk to, know
6 where to get more information.

7 **CHAIRMAN GIOVANNI:** Thank you. Hopefully,
8 we'll get a little clarity for you as the process
9 goes forward.

10 **MR. BUSCH:** Okay.

11 **CHAIRMAN GIOVANNI:** But for right now, I'm
12 going to turn it for questions to you from the
13 Petitioner, based on what remarks you've put on the
14 record.

15 **MR. BUSCH:** Okay.

16 **CHAIRMAN GIOVANNI:** Petitioner?

17 **MR. ARAI:** Daryn Arai, no questions.

18 **CHAIRMAN GIOVANNI:** County?

19 **MS. AHN:** Michelle Ahn, no questions.

20 **CHAIRMAN GIOVANNI:** State?

21 **MS. KATO:** Alison Kato, no questions.

22 **CHAIRMAN GIOVANNI:** Thank you.

23 Commissioners? Thank you.

24 **MR. BUSCH:** Is there just a simple -- are
25 there a couple of resources that could be pointed

1 out for the record for this meeting, just --

2 **CHAIRMAN GIOVANNI:** So let me say, just --
3 so today is -- it -- it depends on the hearing.

4 **MR. BUSCH:** Yeah.

5 **CHAIRMAN GIOVANNI:** So today's hearing is
6 for information to be shared in terms of a briefing
7 and an update like what's going on.

8 **MR. BUSCH:** Right.

9 **CHAIRMAN GIOVANNI:** What you're -- the
10 type of information you're seeking also comes up
11 very often if we had a hearing, for example, on
12 acceptance of environmental impact statement.

13 **MR. BUSCH:** Sure.

14 **CHAIRMAN GIOVANNI:** So an environmental
15 impact statement for a prospective project would
16 come before this Commission, and in that, there
17 would be very often testimony on the record and
18 studies and analyses and reports on the record about
19 traffic and traffic conditions --

20 **MR. BUSCH:** Right.

21 **CHAIRMAN GIOVANNI:** -- before, during, and
22 after the project. That is an opportunity for the
23 public and for the Commissioners and for all
24 interested parties to interact and comment on what's
25 been put forth by the Petitioner with regards to the

1 traffic impacts, whether it could be accepted or
2 not, or whether it's to be referred back for further
3 study or not, and eventually, that works its way
4 through the process, and the project may go forward
5 or not, depending on what's on the record. But
6 today's hearing is not about that.

7 **MR. BUSCH:** Got it. Understood that. I
8 was just wondering if -- if there was some kind of
9 resource or point of contact that could be mentioned
10 on the record --

11 **CHAIRMAN GIOVANNI:** You can go to our
12 website and find all the historical records on this
13 project.

14 **MR. BUSCH:** Okay. Fair enough.

15 **CHAIRMAN GIOVANNI:** Mr. -- Commissioner
16 Ohigashi?

17 **COMMISSIONER OHIGASHI:** Mr. Chairman, I
18 believe that we were going to be taking a break
19 pretty soon, and I'm sure that our representative
20 here, Mr. Derrickson, would be able to informally
21 respond to some of these questions about process and
22 information rather than the Commission trying to
23 explain it all.

24 **MR. BUSCH:** Sure.

25 **COMMISSIONER OHIGASHI:** So I would ask

1 that if any further testifiers have any concerns,
2 that they would wait through the break, and they can
3 speak informally with our staff as well, to
4 understand what is going on today. Thank you.

5 **CHAIRMAN GIOVANNI:** So I'm going to take a
6 break right now for ten minutes. It's currently
7 10:31. We'll come back on the record at 10:41. And
8 this is Mr. Derrickson, if you want to ask him a
9 question during the break, you can find him. Thank
10 you.

11 **(WHEREUPON, a recess was taken from 10:31**
12 **a.m. to 10:41 a.m.)**

13 **CHAIRMAN GIOVANNI:** Okay. We're going
14 back on the record. It is 9:41 (sic).

15 Ms. Kwan, will you please call our next
16 public witness.

17 **MS. KWAN:** Next we have Lamaku Mikahala
18 Roy.

19 **CHAIRMAN GIOVANNI:** Ms. Roy, please take a
20 seat. This is for oral testimony, not for -- (audio
21 disruption) or photograph -- we'll photograph it and
22 put it on the record.

23 **MS. ROY:** Thank you.

24 **CHAIRMAN GIOVANNI:** Ms. Roy, please raise
25 your hand. I'm going to swear you in. So the

1 testimony you're about to give today, will it be the
2 truth?

3 **MS. ROY:** Yes.

4 **CHAIRMAN GIOVANNI:** Please state your full
5 name, your current address, and then you have three
6 minutes for oral testimony.

7 **MS. ROY:** Lamaku Loren Mikahala Roy. 78-
8 6822 Kuakini Highway.

9 **CHAIRMAN GIOVANNI:** Thank you. Please
10 proceed.

11 **MS. ROY:** (Chanting.) The photo -- the
12 painting you see before you was done by Mr. Robert
13 Harms, a paraplegic who held the brush in his mouth.
14 In the 80's, this was prepared for my father, David
15 Keli'ihelemanua Roy, who restored the first Heiau in
16 the islands of Hawaii, in the Pacific and in the
17 entire world --

18 **CHAIRMAN GIOVANNI:** Ms. Roy, we appreciate
19 that, but we need you to speak into the microphone
20 so that we can get a transcription of your
21 testimony,

22 **MS. ROY:** Thank you.

23 The Miracle of Fatima, the Lady of
24 Lourdes, the Song of Bernadette, the life of Joan
25 d'Arc, the Immaculate Conception, and, reserved for

1 last, the birth of Jesus Christ, the son of God and
2 Savior of all mankind, who gave us the gift of
3 eternal life. These are all great and true events
4 of history that changed the life of people and
5 changed the life upon the earth.

6 Here now, told, is the miracle of Ahu'ena
7 Heiau at Kamakahonu, the ancestors of 'Oiwi speak,
8 prepare your hearts to know that the news you are
9 about to hear adds to this blessed list the Miracle
10 of Ahu'enaHeiau at Kamakahonu. This news for Hawaii
11 and the world has direct relevance to the Kona Vista
12 application.

13 I am Lamaku Mikahala Roy, Kahunanui of
14 Ahu'ena Heiau at Kamakahonu Hawaii. I'm the
15 daughter of the restorer of Ahu'ena Heiau, Ali'i
16 David Keli'ihelemauna Roy, Jr.

17 I was named by my father and Akua as
18 Kahuat the time of my father's passing. Now I am
19 one of two in the station of Ka Mamaka o Ka Lama
20 steadfast and worthy one of two who serve Akua in
21 the life and care of Ahu'ena Heiau at Kamakahonu,
22 Hawaii.

23 A County of Hawaii proclamation attached
24 pays tribute to my parents, especially my mother
25 presented at her community memorial service and

1 tells the Kauoha divine guidance of Akua and the
2 ancestors of 'Oiwī at Kamakahonu. Kamakahonu is the
3 first capitol of the Kingdom of Hawaii unified by
4 Kamehameha the Great -- Kamehameha Ahu'ena Heiau was
5 the personal temple of Kamehameha the First.
6 Ahu'ena Heiau was the first and only temple restored
7 in Hawaii, this -- the Pacific, and upon the earth.

8 As Pope Francis of the Catholic Church
9 represents and teaches the virtues of his faith, I
10 am the first Lamaku standing torch of Pacific people
11 of the modern era chosen to serve Akua from the
12 ancestors of 'Oiwī. I learn and teach of the first
13 'Oiwī in the Pacific.

14 By this letter attached that you've
15 received, the ancestors truthfully tell of the most
16 sacred history of Hawaii and all of earth may ever
17 hear. Before we were named Hawaii, our islands were
18 known as Kaluaokalani, the Second Heaven. Pu'u o
19 Kaluaokalani means the heart of the Second Heaven,
20 and it is in this realm that this proposed
21 development is located. For this reason, this
22 development cannot be built here.

23 By the ancestors of 'Oiwī, Divine Creator
24 of Heaven and Earth, now calls for a moratorium of
25 construction upon the lands known as Pu'u o

1 Kaluaokalani that span 40 miles from Kalokohonokohau
2 in the north to Honaunau in the south. This sacred
3 border is made for the best and most sacred of
4 reasons, for the life of the planet and all life
5 upon the plant.

6 The ancestors tell us that Akua teaches us
7 here. Here is Keaulama of the era of light where
8 Akuaplans to heal the planet and all life upon the
9 planet. The protection, veneration, and safekeeping
10 of these lands are necessary for the life of Akua's
11 plans. Can mankind do this? Will this call for new
12 thinking, new considerations of the U.S. and all
13 countries to orchestrate the wisdom of the Divine
14 Creator for the good of all mankind in the planet?
15 Yes.

16 Akua calls for the restoration of the
17 Kingdom of Hawaii as Akua for the creation of the
18 Kingdom of God upon the planet, beginning in
19 Kaluaokalani. At the very least, beginning the day
20 you are called to see that something truly sacred,
21 very historic to Hawaii, and to all the earth,
22 something lifechanging for Hawaii and the world is
23 happening.

24 This is being brought to you by the
25 decision you're called to make. You're in your seat

1 as the juror you are today for you've taken an oath
2 to Akua to serve here. Say "no" to the Kona Vistas
3 development, and yes to obedience to Akua mana-mana-
4 loa, most high god, to honor the miracle of Ahu'ena
5 Heiau at Kamakahonu.

6 In 1858 --

7 **CHAIRMAN GIOVANNI:** Will you please --

8 **MS. ROY:** -- France saw the --

9 **CHAIRMAN GIOVANNI:** Please summarize.

10 **MS. ROY:** Yes. In 1858, France, our Lady
11 of Lourdes, the beautiful story of the Song of
12 Bernadette. In May of 1917, in Portugal, the
13 Miracle of Fatima took place. I bring to you in
14 2010, the emergence of the miraculous coming forward
15 of the voices of the ancestors at Kamakahonu for the
16 world.

17 Gracious Members of the LUC, mostly from
18 the Island of Oahu, welcome. You have now heard a
19 magnanimous update on this project and why this and
20 other projects in 40-mile area represents God's
21 desire by way of the ancestors of (inaudible).

22 **CHAIRMAN GIOVANNI:** Thank you.

23 **MS. ROY:** Thank you.

24 **CHAIRMAN GIOVANNI:** Please stay for
25 questions.

1 Petitioner?

2 **MR. ARAI:** Daryn Arai, no questions.

3 **CHAIRMAN GIOVANNI:** Thank you.

4 County?

5 **MS. AHN:** Michelle, Ahn, County has no
6 questions for Ms. Roy.

7 **CHAIRMAN GIOVANNI:** State?

8 **MS. KATO:** Alison Kato, no questions.

9 **CHAIRMAN GIOVANNI:** Fellow Commissioners?
10 Commissioner Okuda?

11 **COMMISSIONER OKUDA:** This is Gary Okuda.
12 Thank you, Ms. Roy, for your testimony.

13 What is the distance from the Heiau that you are
14 custodian of to the project?

15 **MS. ROY:** You might be very interested to
16 know that, by God, the parameters of Ahuena Heiau
17 now expand to 40 miles.

18 **COMMISSIONER OKUDA:** Okay. But let's take
19 the -- because this is an important question for me
20 on one topic. What's the -- from the footprint that
21 Western Property Deeds might indicate, what's the
22 approximate distance from the Heiau to this project?

23 **MS. ROY:** I would have to ask your land
24 managers to give you an accurate number of miles if
25 you'd like to know the mileage.

1 **COMMISSIONER OKUDA:** Yeah. Your estimate
2 would be fine because you live in the area. What's
3 your estimate -- your best estimate?

4 **MS. ROY:** We are talking about the lands
5 between right in the middle of a 40-mile expanse, so
6 we're certainly talking about ten miles.

7 **COMMISSIONER OKUDA:** Okay. Ten miles.
8 That's good.

9 **MS. ROY:** Yeah.

10 **COMMISSIONER OKUDA:** I -- I'm asking the
11 next question in the context of this recent Hawaii
12 Supreme Court case called Flores-Case Ohana versus
13 University of Hawaii. It's found at Volume 153 of
14 the Hawaii Reports, page 76, specifically page 84.
15 The P.3d citation is 526 P.3d 601. That's the
16 Hawaii Supreme Court case which says that -- and I
17 quote, "an agency action must be preceded by
18 consideration of native Hawaiian traditional and
19 customary rights."

20 And that statement is part of the Hawaii
21 Supreme Court saying that government agencies, like
22 the Land Use Commission, have a duty to inquire and
23 protect with respect to the items that are protected
24 by Article 12 of the Hawaii State Constitution.
25 That comes out of the case Ka Pa'akai versus Land

1 Use Commission, found at 94 Hawaii 31, which is a
2 2000 Hawaii Supreme Court case.

3 Has anyone from the developer ever
4 contacted you or members of your family or any other
5 custodians of the Heiau to ask you for your input on
6 what the effect of this development would be on the
7 Heiau or any of the cultural resources for which the
8 Heiau is involved with or related to?

9 **MS. ROY:** No.

10 **COMMISSIONER OKUDA:** Okay. Thank you very
11 much. No further questions.

12 **CHAIRMAN GIOVANNI:** I want to thank you,
13 Ms. Roy, for answering a yes or no question with a
14 yes or a no.

15 The question was pretty long.

16 **COMMISSIONER OKUDA:** Yeah, I apologize for
17 the long question, but I wanted to put it in
18 context. Thank you very much.

19 **CHAIRMAN GIOVANNI:** Perfect. That's the
20 way it's supposed to work.

21 Ms. Kwan, who's next?

22 **MS. KWAN:** Janice Kerr. Janice Kerr.

23 **CHAIRMAN GIOVANNI:** Is that Kerr or Kern?

24 **MS. KERR:** Aloha. It's K-e-r-r. Janice
25 Kerr. 76-4320 Leilani Street.

1 **CHAIRMAN GIOVANNI:** You're way ahead of
2 me, Ms. Kerr. Do you swear the testimony you're
3 about to give will be the truth?

4 **MS. KERR:** Yes.

5 **CHAIRMAN GIOVANNI:** So please state your
6 full name and your current address, and then you
7 have three minutes.

8 **MS. KERR:** Okay. Janice Kerr. 76-4320
9 Leilani Street, Kailua-Kona, Hawaii 96740.

10 I'd like to start by quoting from the 23-
11 page report that Kona Vista's KV3 submitted on
12 January 30th, 2024 to your Commission. KV3 states,
13 quote, "There's a housing shortage, particularly for
14 the working class and economically challenged,"
15 closed quotes. And yet none -- no affordable
16 housing units are being built in this project.

17 Number two, KV3 states, quote, "Today
18 there's a shortage of infrastructure, mainly roads
19 and sewer systems. The subject property is one of
20 few that has sufficient infrastructure," closed
21 quotes.

22 Well, we all know that's not true. It is
23 a fact that this subject property does not have
24 adequate infrastructure, a fact supported by many
25 years of extensive general news reporting, photos,

1 years of testimony to Hawaii government councils,
2 commissions, and agencies.

3 Check the map. The KV3 property borders
4 Queen K. Highway. It's gridlocked 12 hours a day,
5 every day of the week, as are the alternative
6 routes. Queen K. is a state highway, and the state
7 controls the improvements, not KV3 or Hawaii County.

8 KV3 does not have the ability to add other
9 roads, police, fire, emergency services, hospitals,
10 doctors, nurses, teachers, schools, and on and on or
11 increase the number of workers maintaining County
12 beaches, parks, or control the number of residents'
13 interest who use County- and State-owned recreation
14 either. That is all a part of our infrastructure.

15 KV3 then complains about the opposition to
16 their project who had continued for so many years to
17 oppose this, calling us the privileged class. We
18 are not the privileged class, and we think it's
19 rather rude coming from privileged wealthy men
20 behind KV3. And it is a direct quote. You can look
21 at the report.

22 Regarding KV3 reference to sewers, there
23 is not one home, one residence in Kona Vista that is
24 on sewer, so I don't know where that comes from.
25 But we shouldn't be surprised that some of these

1 things are misleading in their report. They have a
2 history of false claims regarding this development.
3 They misled the County Council and the Cultural
4 Resources Commission recently by intentionally
5 submitting a report to the CRC, with survey results
6 from a completely different parcel of land that is
7 not even within the boundaries of this project.

8 They commissioned a survey on a parcel of
9 land that is east of their development area and then
10 reported no significant findings, when in fact there
11 are, as we have heard, cultural and archeologically
12 significant features on this land.

13 Okay. So now it's 2024. The population
14 in the area is -- I don't know -- 30,000, 35,000.
15 Also, if you look at the population counts that they
16 displayed in their -- in their paperwork that they
17 submitted, they put the wrong population for the
18 2020 census from don't know if it's an error or if
19 it's just a continuation of ways to mislead people.

20 **CHAIRMAN GIOVANNI:** Ms. Kerr, I need to
21 ask you to summarize.

22 **MS. KERR:** Okay. I will.

23 So all the conditions that made this
24 development viable 40 years ago have changed and are
25 irrelevant, including all the government foibles.

1 Only two things have not changed over the past 40
2 years: Number one, the cultural and archeological
3 importance of the property, and number two, the
4 invaluable West Hawaii flood plain in which the
5 property is located. Thank you.

6 **CHAIRMAN GIOVANNI:** Thank you. Please
7 remain for questions.

8 Petitioner, questions?

9 **MR. ARAI:** Daryn Arai, no questions for
10 the testifier.

11 **CHAIRMAN GIOVANNI:** Thank you.
12 County?

13 **MS. AHN:** Michelle Ahn, no questions.

14 **CHAIRMAN GIOVANNI:** Thank you.
15 State?

16 **MS. KATO:** Alison Kato, no questions.

17 **CHAIRMAN GIOVANNI:** Thank you.
18 Commissioners?

19 Thank you, Ms. Kerr. I appreciate you
20 coming forward.

21 **MS. KERR:** Thank you.

22 **CHAIRMAN GIOVANNI:** Ms. Kwan?

23 **MS. KWAN:** Next we have Douglas -- what he
24 said.

25 **CHAIRMAN GIOVANNI:** He's going to restate

1 it very slowly into the microphone for the record.

2 Spell it.

3 Please state your name and then also --

4 **MR. CICHOWICZ:** Douglas Cichowicz, P.O.

5 Box 1452 Kailua-Kona, part-time resident.

6 **CHAIRMAN GIOVANNI:** Let's start over. So

7 let me ask you to state your name and spell your

8 last name.

9 **MR. CICHOWICZ:** Oh, okay. Doug Cichowicz,

10 C-i-c-h-o-w-i-c-z. P.O. Box 1452 Kailua-Kona, par-

11 time resident.

12 **CHAIRMAN GIOVANNI:** Thank you. Do you

13 swear the testimony you're about to give will be the

14 truth?

15 **MR. CICHOWICZ:** Yes.

16 **CHAIRMAN GIOVANNI:** Please proceed. You

17 have three minutes.

18 **MR. CICHOWICZ:** First off, I'm going to

19 assume -- I want to thank you guys for being here.

20 I -- you know, I enjoy coming to these because it's

21 -- it opens up eyes to all developments and stuff on

22 the Hawaiian Islands. But I'm going to assume the

23 panel has read the 23-page report and seen the

24 photos. I'm going to assume. And I'm going to

25 assume some of you know where the property is. I

1 don't know if you've walked it, seen it, drove by
2 it.

3 Anyway, my big concerns are -- because I'm
4 looking at buying some property. Down below the
5 highway, I've got friends that live down there. And
6 when there's a major rain that drains just there,
7 they've got to put sandbags up, and it's flooding
8 their places. I mean, on some of these storms.

9 And I'm thinking, okay, so if I buy
10 something below there, I might get flooded. If I
11 buy something up above it, am I going to be the
12 cause of flooding it. And down the road when this
13 development gets sued from the people below because
14 it was developed up there, and the watershed will be
15 -- permeated soils will be compromised because of
16 all the pavement. So will that upper development
17 have to -- because I'm in Tahoe part of the time.

18 You have to keep all the water on your
19 property on your property, so they don't want it
20 going into the lake. So I'm assuming up there, are
21 they going to be having to stop the flow going down
22 into the ocean which causes issues down there in the
23 ocean, because I swim in the ocean all the time.

24 But anyway, so my question, too, is -- is
25 this going to cause major issues for the people down

1 below? I see it does over on some of the other
2 islands, the flooding. But anyway, if you guys are
3 successful with this, I want to buy 11 lots, one for
4 a helicopter pad because I know the damn emergency
5 vehicle will not be able to get up there because of
6 the traffic. But the others I want big views
7 because I've got friends and family that want a nice
8 Hawaiian lot.

9 Richard, nice to see you.

10 But I am concerned about the water rights
11 because when they start sucking more water out of
12 the ground there's less fresh water going in the
13 ocean, which causes issues with the water down
14 there. And I was kind of confused about some of the
15 stuff on this report that doesn't seem to make
16 sense. But then again, I always look at you because
17 I'm probably getting close to my three minutes.

18 **CHAIRMAN GIOVANNI:** You are, yep. Please
19 summarize.

20 **MR. CICHOWICZ:** Okay. The -- I got to
21 thank the -- where'd she go -- the lady --

22 **CHAIRMAN GIOVANNI:** Please speak into the
23 --

24 **MR. CICHOWICZ:** -- the Hawaiian lady. She
25 left. But anyway, I appreciate her coming to these

1 and doing her ceremony, but I'm thinking Hawaii --
2 if the Hawaiian -- if there's a big issue with the
3 Hawaiian people developing this, if they can stop a
4 big flipping telescope, they sure as hell can stop a
5 couple guys from developing in a flood plain.

6 Hallelujah.

7 Anyway, nice to see everybody.

8 **CHAIRMAN GIOVANNI:** Thank you. Please
9 remain for questions.

10 **MR. CICHOWICZ:** Wait, one other thing.
11 These guys are getting old. I'm surprised they just
12 don't --

13 **CHAIRMAN GIOVANNI:** Enough. Enough, sir.
14 Thank you. Please remain for questions.

15 Mr. Arai?

16 **MR. ARAI:** Daryn Arai, no questions.

17 **CHAIRMAN GIOVANNI:** Thank you.

18 County?

19 **MS. AHN:** Michelle Ahn, no questions.

20 **CHAIRMAN GIOVANNI:** State?

21 **MS. KATO:** Alison Kato, no questions.

22 **CHAIRMAN GIOVANNI:** Commissioners?

23 Okay. Thank you, sir.

24 **MR. CICHOWICZ:** I was hoping for
25 questions. Thank you, guys.

1 **MS. KWAN:** Last, we have Craig Bo Kahui.

2 **CHAIRMAN GIOVANNI:** Is he here? Oh, good.

3 Mr. Bo, could you please state your name
4 for the record?

5 **MR. KAHUI:** Aloha. My name is Bo Kahui.
6 And my address is 74-5146 Haleolono Place. I live a
7 block away at the Villages of Lai Opua Homestead.

8 **CHAIRMAN GIOVANNI:** Mr. Kahui, will the
9 testimony you're going to give today be the truth?

10 **MR. KAHUI:** The only truth.

11 **CHAIRMAN GIOVANNI:** Thank you. Please
12 proceed.

13 **MR. KAHUI:** I'm here today in support of
14 affordable housing. I'm a native Hawaiian, as
15 defined in the Hawaiian Commission Act of 1920.
16 Since 1920, they built some approximately over
17 20,000 units. 29,000 people -- of our people are
18 still waiting for affordable housing. We are the
19 natives waiting for housing.

20 I'm perplexed by the discussion about what
21 we should do about providing housing for our people.
22 And not just native Hawaiian, but for our kamaaina,
23 our kamalii. What are we to do? Our workforce.
24 Many of our people are leaving because we cannot
25 provide affordable housing. I've been a strong

1 advocate of the historical preservation of our
2 properties, but sometimes we weigh that over the
3 need to protect our families to stay home.

4 It's important that we understand the
5 global picture about how it's affecting our people
6 and our kamalii. Just before this hearing, I went
7 to Kuakini Heights affordable housing at the County
8 Council resolution to provide exemption for Kuakini
9 Heights. Yeah, one more hundred units for our
10 Kapuna and our Keiki. Why is that important? Well,
11 because we don't have affordable housing in Kona.
12 Hawaiian homes is supposed to be affordable housing,
13 but they cannot build them fast enough for our
14 people. So I come to these hearings and I tell
15 everybody, we need affordable housing. Not just for
16 the kamaaina, not just for the kamalii. But what
17 about our native people?

18 Not all Hawaiians qualify to go to the
19 homestead for various reasons. They make too much
20 money. Or they -- they choose not to. Something
21 about stigma. So I'm here to implore the Land Use
22 Commission, when looking at the decisions about this
23 particular petition and the Petitioner's request,
24 that there's a far greater issue here than some of
25 the arguments that were made, because I can tell

1 you, as a native Hawaiian, we need housing. We need
2 help. Thank you.

3 **CHAIRMAN GIOVANNI:** Thank you, Mr. Kahui.

4 I think I have that correct. Is it Kahui?

5 **MR. KAHUI:** Kahui.

6 **CHAIRMAN GIOVANNI:** Kahui.

7 **MR. KAHUI:** That's the short version.

8 **CHAIRMAN GIOVANNI:** My apologies, sir,
9 getting it incorrect, Mr. Kahui.

10 Mr. Arai, you have questions for this
11 witness?

12 **MR. ARAI:** Daryn Arai. I have no
13 questions of the --

14 **CHAIRMAN GIOVANNI:** Thank you.

15 County?

16 **MS. AHN:** Michelle Ahn, no questions for
17 Mr. Kahui.

18 **CHAIRMAN GIOVANNI:** State?

19 **MS. KATO:** Alison Kato, no questions.

20 Thank you.

21 **CHAIRMAN GIOVANNI:** Commissioners?

22 Commissioner Okuda.

23 **COMMISSIONER OKUDA:** Mr. Kahui, thank you
24 very much for your testimony. At least me, I hear
25 what you're saying. One of the issues that I

1 promise to ask when this proceeding continues is why
2 the affordable housing promise, which was ordered by
3 the Land Use Commission decades ago, hasn't been
4 built.

5 And you heard a little bit of an
6 explanation how our hands are a little bit tied by a
7 number of Hawaii Supreme Court decisions, but we
8 still have the right to ask the question after all
9 these decades, you know, and after the landowner and
10 successors getting the benefit of a rezoning to
11 urban, which gives value to the property and how
12 come we don't see the promised affordable housing?

13 So I assure you your concerns will be
14 raised later on in questions. And just a little
15 heads-up to everybody to be able to -- to explain,
16 you know, why, after all these decades, we don't see
17 affordable housing. Thank you.

18 **MR. KAHUI:** Was that a question or --

19 **CHAIRMAN GIOVANNI:** No, it's not a
20 question. It's a statement.

21 Commissioner Carr Smith?

22 **COMMISSIONER CARR SMITH:** I just wanted to
23 thank you both for providing another point of view.
24 I appreciate that, and we all know that this process
25 is not a simple one, and I'm sure we'll be hearing

1 more about, hopefully, how housing can be provided.

2 But I wanted to thank you, Bo. Thanks.

3 **CHAIRMAN GIOVANNI:** Yeah. The Chair wants
4 to express his appreciation for all of the testimony
5 today. And let me remind you that after we hear
6 from the parties today, any of you can come forward
7 for a second opportunity to weigh in based on new
8 information you could have -- you may hear.

9 Let the Chair also go on record saying
10 that he agrees with Commissioner Okuda that the
11 number one question on my mind is where's the
12 affordable housing that was promised. Thank you.

13 So that concludes the public testimony?

14 **MR. KAHUI:** Thank you.

15 **CHAIRMAN GIOVANNI:** Is there anybody who
16 did not sign up that now wants and has not come
17 forward already that wants to testify at this time
18 publicly?

19 The Chair will recognize you. Please come
20 in and state your name.

21 **MR. RIVERA:** Good morning. My name is
22 Hiram Rivera.

23 **CHAIRMAN GIOVANNI:** Mr. Rivera, will the
24 testimony you're about to give be the truth?

25 **MR. RIVERA:** Yes.

1 **CHAIRMAN GIOVANNI:** So state your full
2 name again and your current address, and then you've
3 got three minutes to say what you'd like.

4 **MR. RIVERA:** Yeah. My name is Hiram
5 Rivera. I'm a lifelong resident here in Kona. My
6 address is 74-4932 E Mamalahoa Highway.

7 **CHAIRMAN GIOVANNI:** Please proceed.

8 **MR. RIVERA:** Yes. I just want to comment
9 on this procedure. And I know the Land Use
10 Commission has spent the last 30 years approving
11 this and moving forward. And the question is that,
12 you know, why isn't affordable built. And that
13 question, I assume, will be answered as we go along
14 further today.

15 **CHAIRMAN GIOVANNI:** It will be asked. I'm
16 not sure it will be fully answered, but we will
17 certainly ask.

18 **MR. RIVERA:** But what I want you guys to
19 consider is we spent 30 years trying to get location
20 for housing. And I don't -- you know, I agree with
21 Bo, but at times, I don't agree -- I don't agree
22 that we all need assisted housing, that we all
23 Hawaiians that are broke. We're not, not all of us,
24 but those who need help.

25 My concern is the young kids, no place to

1 go. If we deny this project from moving forward,
2 then we deny 30 years of land development or land
3 that is earmarked for this type of housing goes
4 away. So we start another 20 or 30 years looking
5 for property. So we've got to really consider that,
6 what happens there.

7 The other thing I want you guys to
8 consider is we, as far as the archeological, that
9 there is mechanisms in place that has to qualify
10 that. Drainage, they have all the FEMA maps. They
11 have to do all these things. They just cannot just
12 do what they want. So they are controlled by all
13 different entities.

14 One of my biggest concerns is that we are
15 protecting everything that is Hawaiian, and we're
16 supposed. We're mandated to do that by law. But we
17 are not protecting the Hawaiian. He's moving out of
18 our state. We need to protect the Hawaiian. We
19 need to protect the kids that graduate from school
20 that can start a family in affordable unit and move
21 in their life and buy homes.

22 So I just want you to look at that from
23 that perspective. So I appreciate it.

24 **CHAIRMAN GIOVANNI:** Thank you very much.

25 Petitioner, Mr. Arai, do you have any

1 questions for this witness?

2 **MR. ARAI:** Daryn Arai, no questions.

3 **CHAIRMAN GIOVANNI:** Thank you.

4 County?

5 **MS. AHN:** Michelle Ahn, no questions for
6 Mr. Rivera.

7 **CHAIRMAN GIOVANNI:** State?

8 **MS. KATO:** Alison Kato, no questions.

9 Thank you.

10 **CHAIRMAN GIOVANNI:** Thank you.

11 Commissioners?

12 Thank you, Mr. Rivera. Thank you for your
13 time.

14 So now we're going to move to the
15 Petitioner for their status. Can you give us a
16 general indication of how much time you need for
17 your presentation?

18 **MR. ARAI:** Daryn Arai for the Petitioner.
19 Probably no more than ten minutes.

20 **CHAIRMAN GIOVANNI:** Okay. So please
21 proceed.

22 **MR. ARAI:** Oh. Good morning,
23 Commissioners. I just wanted to first orient you
24 with the location of the property in case you're not
25 familiar. I'm looking at the screen, so off to your

1 right. On the bottom, you'll see the project site
2 outlined in red. That comprises approximately just
3 under 69 acres of land.

4 On the bottom below the project site
5 outlined in red is a local -- I'm sorry, Kona
6 Vistas' subdivision which comprises 216 single
7 family residential lots. And I should note that
8 Kona Vistas was part -- part of the same lands that
9 was covered by the Decision and Order that's before
10 you today. So combined, you're looking at about 174
11 acres. Kona Vistas is about 103 acres, and, again,
12 the project site is just under 69 acres.

13 To the north or above the project site is
14 Pualani Estates, another single family residential
15 development. So with the project site being
16 situated between existing Kona Vistas and existing
17 Pualani Estates, the project itself will provide for
18 future interconnectivity between these two
19 subdivisions. And that is -- those roadway systems
20 are expressly within the Kona Community Development
21 Plan.

22 And if you need to look at a rendering, we
23 have it off to the left of the screen. It's -- I'm
24 sorry. Queen Ka'ahumanu Highway is on the left, and
25 mauka is on the right. Thank you. Sorry about

1 that. And again, the project will migrate --
2 consist of 450 multiple family residential units and
3 structures that are like duplex, fourplex, and six
4 plex facilities.

5 As others have mentioned during this
6 proceeding, you're looking at a process that has
7 covered the span of almost four decades with the
8 adoption of the original D and O back in 1984. The
9 original Petitioner was Gamlon and subsequently
10 Gamrex, but they spent 23 years developing the
11 existing Kona Vistas subdivision, which now, as I
12 mentioned, comprises 215 single family residential
13 lots.

14 The current Petitioner, Kona Three, LLC,
15 has purchased the subject property at the end of
16 2015 and has spent the last eight years trying to --
17 in proceedings related to an extension of time to
18 the zoning ordinance that was approved within six
19 months after the original D and O was issued in
20 1984.

21 The residents of Kona Vistas, some of them
22 who have testified today, it's actually part of
23 increment 1 and increment 2 that's covered by the
24 Decision and Order, and they have spent the last at
25 least two decades enjoying the experience of single

1 family home ownership in this area.

2 The Petitioner simply wishes to fulfill
3 what was promised 40 years ago, which is to create
4 or establish a mixed residential community within
5 this particular section of Kona. The Royal Vistas
6 project will provide 450 multiple family residential
7 units for those who cannot afford single family
8 residential homes like you experience in Kona Vistas
9 or in Pualani Estates.

10 I should also note that this project,
11 based on the condition A within the D and O that
12 requires a ten percent allocation of affordable
13 housing units, and the Petitioner is anticipating a
14 20 percent allocation based on the County's
15 Affordable Housing Code. You could be looking at up
16 to 112 affordable units being provided in
17 conjunction with this project.

18 Now, I want to stay focused on the purpose
19 that we're here today, which is this is a status
20 meeting, so if you don't mind me looking more
21 directly at my notes, I want to briefly go over what
22 the applicant -- the Petitioner has accomplished
23 over the years since this acquisition at the end of
24 2015.

25 And that includes completing improvements

1 to the Holualoa Drainage as required by the County,
2 complete a dedication of County -- dedication to the
3 County of roadway sections within Kona Vistas'
4 subdivision; secured an SMA permit and FEMA CLOMR,
5 which is Conditional Letter of Map Revision, for
6 drainage improvements associated with a 12-acre site
7 that was intended to be utilized for affordable
8 housing.

9 And if you look back -- I apologize. If
10 you look back to the site map, off to your left you
11 see a lighter orange outlined piece of land. That
12 is the 12 acres that Petitioner actually purchased
13 with the intention of using that site for affordable
14 housing. The Petitioner also conducted a new
15 archeological inventory survey of a former school
16 site located on the mauka portion of the project
17 site that was no longer being pursued by Hawaii
18 Preparatory Academy as their facility.

19 Also, they prepared a Chapter 343
20 compliant environmental assessment with the Planning
21 Department issuing a finding of no significant
22 impact, in September of 2021. That process alone,
23 the EA process took about two years to navigate
24 through that proceeding.

25 Within the EA that was accepted by the

1 Planning Department, an updated TIAR was prepared,
2 biological survey was prepared, a cultural impact
3 assessment was provided or prepared. SHPD they also
4 approved the archeological inventory survey as well
5 as the associated preservation plans. During the
6 preparation of the EA, there was also consultation
7 with the residents within Kona Vistas. And I should
8 note for the record that the EA and the issuance of
9 the FONSI was not appealed by anyone.

10 The Petitioner continues to work with
11 Office of Housing and Community Development to
12 satisfy its affordable housing obligations,
13 resulting in two agreements that we anticipate will
14 need to be replaced and how should the applicant be
15 successful in securing a time extension from the
16 County to its zoning ordinance.

17 So let's see. I should also note that
18 last year, the Petitioner spent about half of that
19 year in proceedings before the Cultural Resource
20 Commission as part of the proceedings for the time
21 extension that was being heard by the Leeward
22 Planning Commission. The request for the time
23 extension was submitted in June of 2002, and we are
24 still in process, and we're hoping that we can
25 conclude that process by the end of this year.

1 So with that, the status report -- and we
2 apologize it was submitted to you just yesterday or
3 at least in the last two days, but it focused on
4 addressing the two questions that were highlighted
5 to the Petitioner by the LUC staff. And that is
6 regarding the status of condition A regarding
7 affordable housing and also regarding the total
8 housing unit allocation that was originally
9 represented in the Decision and Order.

10 So with that, I should note that condition
11 A was satisfied back in 1993 upon redistricting of
12 increment 2 of this particular project, and also a
13 new agreement was put into place as recently as
14 2021, so the applicant has made -- I'm sorry -- the
15 Petitioner has made sincere efforts to satisfy its
16 affordable housing obligation.

17 And, as I mentioned, the Petitioner will
18 -- is also anticipating that these agreements --
19 affordable housing agreements will ultimately need
20 to be amended because we anticipate that should the
21 time extension be granted, the County will compel
22 the Petitioner to comply with its affordable housing
23 requirement which currently sits at 20 percent.

24 And finally, regarding the original
25 housing allotment, representations that the project

1 comprises a total, quote, Kona Vistas and Royal
2 Vistas project of 690 units, that was represented as
3 far back as 1984 in records and during proceedings
4 before the Land Use Commission. So we believe that
5 the current project is consistent with
6 representations made before the Land Use Commission.

7 So with that -- hopefully, that was
8 concise enough, but with that, the Kona Three team
9 stands ready to answer any questions that you may
10 have.

11 **CHAIRMAN GIOVANNI:** Thank you, Mr. Arai.

12 Let me open it to questions from the
13 Commissioners.

14 Commissioner Atta?

15 **COMMISSIONER ATTA:** I was just wondering,
16 they haven't bought the 12-acre parcel to the --
17 there's a discussion of whether they're going to get
18 the 12 acres?

19 **MR. ARAI:** The -- Daryn Arai. The
20 property has been purchased by the Petitioner and
21 they still retain ownership of that property.

22 **COMMISSIONER ATTA:** Oh, I see.

23 **MR. ARAI:** So it's kind of interesting
24 that you have a Petitioner that has various
25 opportunities available at its disposal to satisfy

1 its affordable housing obligations whether it's
2 offsite at this 12-acre parcel, onsite, or even the
3 use of credit as allowed by the County's housing
4 code.

5 **CHAIRMAN GIOVANNI:** Commissioners?
6 Commissioner Okuda.

7 **COMMISSIONER OKUDA:** This is Gary Okuda.
8 Maybe I'm a little bit confused. How many
9 affordable housing units are planned to be built?
10 Can you tell us that right now?

11 **MR. ARAI:** Kona Vista, which consists of
12 215 lots, was compelled to provide ten percent,
13 which is 22 lots for affordable housing. Those
14 units or those lots were never provided or
15 constructed by the previous -- the original
16 Petitioner. Kona Three, the current Petitioner, is
17 willing to assume that prior unfulfilled obligation
18 as well as the obligations under condition A that
19 will fall upon them. So that will equate to 67
20 units -- 67 affordable housing units that is
21 obligated on the Petitioner.

22 **COMMISSIONER OKUDA:** Yeah. And not to
23 mince words here, you can consult with Mr.
24 Matsukawa, but you know, the obligation to build
25 affordable housing, that's not something that the

1 current owner just, you know, graciously assumes.
2 It's a condition that runs with the land, meaning
3 it's basically an encumbrance on title. You agree?

4 **MR. ARAI:** Agree.

5 **COMMISSIONER OKUDA:** Okay. So -- so that
6 I'm clear, when everything is done and I'm going to
7 ask then when is everything going to be done -- but
8 when everything is done, whenever that date rolls
9 around, how many affordable housing units are we
10 going to have? Can you tell us or you can't tell us
11 now?

12 **MR. ARAI:** Based on the current concept of
13 450 units, in addition to the obligations under the
14 215-unit Kona Vistas, we're looking at 67 units.
15 That is --

16 **COMMISSIONER OKUDA:** Okay.

17 **MR. ARAI:** -- required.

18 **COMMISSIONER OKUDA:** Okay. So is the --
19 is the -- is your client committing itself to build
20 67 units?

21 And the reason -- let me tell you where my
22 mind is, and you tell me whether my mind is crazy or
23 not, but see, I don't want to get into this
24 amorphous area about, oh, but we got these housing
25 credits that are floating around and next thing I

1 know, a bunch of people are indicted by the Federal
2 Grand Jury in Honolulu. Yeah? So I want to know,
3 is your client committed to building the 67 units or
4 we don't have that commitment at this point in time?

5 **MR. ARAI:** Daryn Arai. The best response
6 we can offer you at this time, Commissioner Okuda,
7 is that the obligation sits at ten percent
8 currently, as expressed by condition A. In order to
9 -- the actual number of affordable units to be
10 constructed is dependent on the number of total
11 units they are actually able to successfully place
12 upon the land.

13 And they still have to go through the
14 entire process of site engineering, grading,
15 drainage improvements, utility improvements. All of
16 these things could have an ultimate effect on the
17 actual number of units that gets placed on the
18 ground, but it is that number that gets placed on
19 the ground that help when we determine the quantity
20 of affordable units to be assessed upon them, based
21 upon the current ten percent under condition A.

22 Hopefully, that clarifies it.

23 **COMMISSIONER OKUDA:** Yeah. So in other
24 words, right now, all of us in the room now, we're
25 really just speculating on the ultimate number of

1 affordable housing units, correct?

2 **MR. ARAI:** Correct.

3 **COMMISSIONER OKUDA:** Okay. And we're
4 really speculating -- or to use plain English, we're
5 just guessing when this speculative number might or
6 might not be constructed, correct?

7 **MR. ARAI:** That is correct.

8 **COMMISSIONER OKUDA:** And what assurance,
9 since we've waited like 40 years -- I'm using the
10 collective "we" for the Land Use Commission. What
11 assurance that 20 years from now, whoever takes our
12 place on the Land Use Commission, assuming we're not
13 abolished by then, you know, that the community's
14 going to still see the same situation except it's
15 going to be with a new owner who comes in and gives
16 commitments that, oh, we're going to -- we're going
17 to make this thing right. Yeah, it took 50 years,
18 60 years, but this time around we're going to do it
19 right.

20 What assurances does the community or the
21 Commission have that we're really going to see any
22 of this housing?

23 **MR. ARAI:** Daryn Arai. The only assurance
24 I can probably give you is that nothing will happen
25 if the entitlements are not retained in place to

1 allow this project to proceed forward.

2 **COMMISSIONER OKUDA:** So in other words,
3 the bottom line here, just to speak frankly, is
4 we're just going to have to trust you folks. That's
5 really what this comes down to, right?

6 **MR. ARAI:** That -- that I think -- that is
7 a compelling question because, obviously, securing
8 the necessary land use entitlements is one of the
9 initial steps one must take in order to try to stand
10 up a project. A developer once told me years ago
11 that proceedings before the government probably
12 represents this much, and I'm just showing a small
13 little gap between my fingers.

14 The stuff that happens behind the scenes
15 is huge. The financing, the discussions with
16 insurance companies, working with lenders, doing the
17 engineering, dealing with the archeological, all of
18 that happens after the basic entitlements are put
19 into place. The Petitioner is simply asking for the
20 opportunity to pursue that path. And again, they're
21 hoping they can be successful in accomplishing this
22 project.

23 It took the previous Petitioner 23 years
24 to stand up the 215 lots in Kona Vistas. 23 years.
25 The Petitioner before you today has now been before

1 the County for a total of eight years trying to get
2 a ten-year time extension. Kind of awkward, but it
3 kind of puts things in proper perspective, I think.

4 **COMMISSIONER OKUDA:** So this delay is the
5 County's fault?

6 **MR. ARAI:** I'm not saying it's the
7 County's fault. I'm saying that's the process. The
8 process of studies, engineering, hearings,
9 addressing community concerns, going back to
10 hearings. It's all about process, and process takes
11 time. But they're trying to do the right thing in
12 the right way, and it's just taking a lot of time.

13 By the way, I'm well aware that I'm
14 getting crossed by an attorney, so I think there's a
15 point where I'm trying my best, but -- yeah.

16 **COMMISSIONER OKUDA:** Well, I -- I'd like
17 to blame your counsel, Mr. Matsukawa, that I did
18 listen to him when he was telling me what to look
19 for when I'm on the Commission, so --

20 **MR. ARAI:** So I can blame him, then?

21 **COMMISSIONER OKUDA:** Yeah, you can blame
22 him.

23 **MR. ARAI:** Okay.

24 **COMMISSIONER OKUDA:** Well, you know, and
25 maybe Mr. Matsukawa, because I do respect him a lot,

1 you know.

2 Mr. Matsukawa, I mean, what are we to do
3 on the Commission where we seem to have these cases
4 where applicants, landowners make these promises to
5 the community and we don't see compliance? I know
6 one of the former Commissioners, Dawn Chang, started
7 suggesting -- she's head of DLNR now -- that maybe
8 the applicants should be required to post a
9 performance bond so that if infrastructure is not
10 put in, we go to the bonding company and make the
11 bonding company go and pay for it.

12 Or if the affordable housing is not put
13 in, we go to the bonding company and make the
14 bonding company put in -- I mean, what do we do to
15 make sure that promises to the community and to the
16 Commission are kept? What do we do?

17 **MR. MATSUKAWA:** Mike Matsukawa. As a
18 public citizen, I think I can say some of the land
19 use statutes may need to be re-examined to give both
20 the certainty to the developer and the landowner and
21 the certainty to the public.

22 Justice Eddins just recently wrote in the
23 Honua our plant case in Hamakua that maybe what was
24 good before is no longer good today. And I was kind
25 of stunned at a Supreme Court Justice who would have

1 penned such a sentence at the end of an opinion
2 dealing with an important issue of energy for the
3 Big Island. But I think he must have been making a
4 good observation that perhaps what worked 40 years
5 ago maybe doesn't work well today.

6 But in the world of law, you have vested
7 rights. You have statutes. You have processes that
8 Mr. Arai spoke to that tries to protect the public
9 and the landowner at the same time --

10 **COMMISSIONER OKUDA:** Yeah. Well, okay.
11 Let me -- I don't mean to cut you short. Maybe my
12 more specific question is what should the Land Use
13 Commission have done in the last 40 years or what
14 did the Land Use Commission do in the last 40 years
15 which hindered or prevented the development of this
16 affordable housing?

17 **MR. MATSUKAWA:** I can only say this much,
18 you know, I wasn't around at the time when Mr.
19 Gamlon, Gomel (phonetic), or Mr. Kashiwa was around
20 or when the Texas Hui was around, but I think there
21 was a key moment when the RS lots, the single family
22 lots, were fully developed and sold. And looking
23 around, the Kona Vista homes are up. The affordable
24 housing wasn't up. And that moment somehow came and
25 went. That was the magic moment.

1 Where -- where is the affordable housing?
2 Ten percent of 215 houses already sold that ten
3 percent was gone. It should have been on the
4 ground.

5 **COMMISSIONER OKUDA:** Yeah. But -- yeah.

6 **COMMISSIONER OHIGASHI:** Commissioner
7 Okuda, can I just follow up on that part?

8 **COMMISSIONER OKUDA:** That's okay.

9 **COMMISSIONER OHIGASHI:** That's what --
10 that's what I was concerned --

11 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi,
12 you have the floor.

13 **COMMISSIONER OHIGASHI:** That's what I was
14 concerned about. It seems to me that there is an
15 obligation of 22 houses right there right now, this
16 minute. And has the County in any manner tried to
17 enforce the building of 22 houses, 22 -- have you --

18 **MR. MATSUKAWA:** That part --

19 **COMMISSIONER OHIGASHI:** Were there
20 discussions into whether or not it should be built
21 or not, because that's your obligation right now,
22 this minute, isn't it?

23 **MR. MATSUKAWA:** That's correct. And all
24 the homes in the RS section have deed covenants,
25 yeah, that their properties are subject to the 21

1 homes -- 21.5 homes being produced.

2 **COMMISSIONER OHIGASHI:** Well, I'm going to
3 just guess it -- round up to 22, so --

4 **MR. MATSUKAWA:** Yeah, yeah. I'm sure,
5 yeah. 22. I'm sorry. Yeah.

6 But I -- I don't know the answer because I
7 -- I wasn't around at the time, and some of the
8 players involved are all gone now.

9 **COMMISSIONER OHIGASHI:** Well, perhaps,
10 wouldn't it -- at this point in time, wouldn't it be
11 on good faith that your company or your client
12 offered to build 22 -- to satisfy an existing
13 condition or requirement that you have?

14 **MR. MATSUKAWA:** They had --

15 **COMMISSIONER OHIGASHI:** Is it up and has
16 that been nixed by the County or has that been
17 offered or -- and has any progress or anything been
18 done about that?

19 **MR. MATSUKAWA:** Yeah. There was a
20 contract to do the housing on the 12-acre parcel
21 that lies directly across the highway, but then the
22 agreement was cancelled by the County housing
23 office, so we're back to square one, you know. They
24 wanted to build it there.

25 **COMMISSIONER OHIGASHI:** So to satisfy your

1 agreements and your conditions, you were to build
2 the 22 houses on this additional but under an
3 agreement with the County, and then they cancelled
4 that?

5 **MR. MATSUKAWA:** That's my understanding.

6 **COMMISSIONER OHIGASHI:** Okay. And you --
7 that would be very frustrating if I was a developer,
8 wouldn't it?

9 **MR. MATSUKAWA:** Yes, it certainly has
10 been.

11 **COMMISSIONER OHIGASHI:** And the -- the
12 second thing is this offsite lot that you're talking
13 about, does that have all the entitlements necessary
14 to build?

15 **MR. MATSUKAWA:** Yes.

16 **COMMISSIONER OHIGASHI:** Okay. So
17 irrespective of whether or not you used that lot or
18 not, that lot can be developed in accordance to
19 whatever entitlements it does, and we can lose that
20 for low income housing. Is that right? In other
21 words, you can build whatever you can build on that
22 --

23 **MR. MATSUKAWA:** Well, yes. Yes. Yes.

24 **COMMISSIONER OHIGASHI:** Right?

25 **MR. MATSUKAWA:** Yes.

1 **COMMISSIONER OHIGASHI:** Okay. So --

2 **MR. MATSUKAWA:** The SME permit was
3 obtained some time ago and a FEMA CLOMR was also. I
4 think it's obtained.

5 **COMMISSIONER OHIGASHI:** And just one
6 further question. And Mr. Okuda, if -- Commissioner
7 Okuda, if I may.

8 From what I understand, this figure of 66,
9 67 is based upon the ten percent, but from what I
10 understand is that the County is --

11 **MR. MATSUKAWA:** Is at 20 percent.

12 **COMMISSIONER OHIGASHI:** -- would -- would
13 -- as a condition of extending your zoning would
14 probably require 20 percent, is that right?

15 **MR. MATSUKAWA:** That's correct. That's
16 correct.

17 **COMMISSIONER OHIGASHI:** Okay. And so
18 we're -- this is the situation now, 22 you got to do
19 --

20 **MR. MATSUKAWA:** Yes.

21 **COMMISSIONER OHIGASHI:** Six --

22 **MR. MATSUKAWA:** For the --

23 **COMMISSIONER OHIGASHI:** 66 total, 67 total
24 if you follow the ten percent. And maybe double all
25 of that, which comes up to about 130, 130-some-odd

1 homes if they grant you that extension, right?

2 **MR. MATSUKAWA:** I think Mr. Arai could
3 probably do the math better than I can.

4 **COMMISSIONER OHIGASHI:** Yes, but I'm just
5 giving you --

6 **MR. MATSUKAWA:** Yeah. Yeah.

7 **COMMISSIONER OHIGASHI:** I'm just giving
8 you a roundabout -- I'm just trying to sum up in my
9 mind what's going on. Right?

10 And the last question that I would have on
11 this is -- which you'll probably refer me to the
12 County, is how long will it take us to get that
13 extension?

14 **MR. ARAI:** Daryn Arai. I'll defer that
15 last question. But regarding the units, and if Mr.
16 Matsukawa jumps in if I'm not seeing things the
17 right way, but the 22 units that was obligated --
18 was an obligation by the previous Petitioner who
19 actually developed Kona Vistas.

20 **COMMISSIONER OHIGASHI:** It's yours now.

21 **MR. ARAI:** Well, that's what I need to get
22 clear in my head because Kona Three, the current
23 Petitioner, their lands are within increment 1, but
24 the 22 units was actually based on the development
25 of the single family residential site in Kona

1 Vistas. The current Petitioner's proposal only
2 affects the multiple family side, which is 450
3 units. Kona Three is willing to assume the
4 unfulfilled responsibility of the previous
5 Petitioner --

6 **COMMISSIONER OHIGASHI:** I'm sorry, but
7 your council said it's your obligation.

8 **MR. ARAI:** Okay. Well, I just want to --

9 **COMMISSIONER OHIGASHI:** Okay? You know,
10 I'm not sure what you're trying to do.

11 **MR. ARAI:** Yeah, yeah. Well, I'm just
12 trying --

13 **COMMISSIONER OHIGASHI:** My question was
14 more in terms what are you -- what you going -- what
15 are you required to build, when are you going to do
16 it, and under these different circumstances.

17 **MR. ARAI:** Okay. Okay.

18 **COMMISSIONER OHIGASHI:** That's all I
19 wanted. Thank you very much.

20 **MR. ARAI:** Okay. Thanks.

21 **CHAIRMAN GIOVANNI:** Commissioner Okuda,
22 back to you.

23 **COMMISSIONER OKUDA:** Yeah. And I'm not
24 going to go over what Commissioner Ohigashi did
25 because that was a good completion of my questions

1 regarding that.

2 Mr. Matsukawa can also answer these.

3 These are more procedural questions. But Mr.

4 Matsukawa, do you agree that before the Land Use

5 Commission can take any further action on anything,

6 extension, or anything else regarding this project,

7 there has to be a -- the Land Use Commission must

8 comply at that point in time with the Ka Pa'akai

9 versus Land Use Commission standards?

10 In other words, the Flores case, Ohana
11 versus University of Hawaii case says that before we
12 take any action, before we act, we at that point
13 have to be sure that we have carried out our duties
14 under Ka Pa'akai.

15 **MR. MATSUKAWA:** Yeah. The Supreme Court
16 decision basically says that.

17 **COMMISSIONER OKUDA:** At this point in
18 time, does the developer have, in your opinion, a
19 study which complies with the requirements of the Ka
20 Pa'akai case to the extent where that information
21 can be presented in complete form to the Land Use
22 Commission or does the information or study by the
23 developer have to be updated?

24 **MR. MATSUKAWA:** No. It's all finished
25 already. It was finished before the application for

1 the time extension was made. It's just that the way
2 it came in, it's a consolidation of several
3 different parts. Some parts are in the EA. Some
4 parts are in a separate study, et cetera, et cetera,
5 so the -- the work has been done, and the planning
6 commission was given the information on the Ka
7 Pa'akai.

8 **COMMISSIONER OKUDA:** Okay. Ka Pa'akai,
9 the analysis required by Ka Pa'akai requires not
10 only to look at the impacts at the specific project
11 site, but impacts which might actually be beyond the
12 boundaries of the project site, isn't that correct?
13 It's a case-by-case basis, but Ka Pa'akai says you
14 have to look at impacts in general. Is that a fair
15 statement?

16 **MR. MATSUKAWA:** Yeah, I would agree. And
17 it, like you said, depends on the facts of each
18 case.

19 **COMMISSIONER OKUDA:** Okay. During public
20 testimony, you heard testimony that apparently the
21 custodians of the named heiau have not been
22 consulted. Were they consulted? And if they
23 weren't consulted, what in Ka Pa'akai or Flores
24 indicates that as a matter of law such consultation
25 is not required?

1 **MR. MATSUKAWA:** It depends on what you
2 call consultation. There were discussions with
3 several members of the native Hawaiian community,
4 including Ms. Mikahala Roy.

5 **COMMISSIONER OKUDA:** Okay. So that's your
6 testimony. She was consulted.

7 **MR. MATSUKAWA:** She participated in
8 several public hearings.

9 **COMMISSIONER OKUDA:** Okay. Well, anyway,
10 whoever is participating in or with respect to the
11 Ka Pa'akai related studies or submissions, that
12 would be documented in those documents, correct?

13 **MR. MATSUKAWA:** Yes.

14 **COMMISSIONER OKUDA:** Okay. Thank you. Do
15 you view a need under the Unite Here Local 5 versus
16 Kuilima case, the case -- or actually, versus City
17 and County of Honolulu, which we all call the
18 Kuilima case, which requires updated environmental
19 assessments or environmental impact statements. Is
20 that, in your view, going to be required if and when
21 some type of request is made to the Land Use
22 Commission?

23 **MR. MATSUKAWA:** It's already been done and
24 accepted by the Planning Department.

25 **COMMISSIONER OKUDA:** Okay. And that study

1 was completed as of what date?

2 **MR. MATSUKAWA:** 2021 -- 2022.

3 **COMMISSIONER OKUDA:** Okay.

4 Thank you, Mr. Chair. I have no further
5 questions.

6 **CHAIRMAN GIOVANNI:** Thank you,
7 Commissioner Okuda.

8 Commissioners, anything further?

9 So I -- I have a -- the Chair has a couple
10 of similar questions primarily on the housing. I
11 know it's -- everything's subject to your further
12 deliberations, negotiations, and settlement with the
13 County, but I really like to focus on what your
14 intentions are.

15 What do you intend to do as the developer
16 with regards to housing? Will it be built onsite?
17 How many do you want to build? When are we going to
18 see a shovel in the ground? Please tell me your
19 intentions.

20 **MR. ARAI:** If you don't mind, I would like
21 to defer that specific question to our
22 representative, the Petitioner's representative, if
23 that's okay with you. Would you be okay if I allow
24 Mr. Wheelock to respond to that particular question?

25 **CHAIRMAN GIOVANNI:** Sure, absolutely. And

1 I -- Mr. Wheelock, I'll swear you in just before you
2 start. Mr. Wheelock, do you swear that the
3 testimony you're about to give will be the truth?

4 **MR. WHEELLOCK:** Yes. Richard Wheelock
5 swears so.

6 **CHAIRMAN GIOVANNI:** Please proceed.

7 **MR. WHEELLOCK:** Our intentions remain,
8 since 2015, to develop the property that was
9 promised 40 years ago for local folks, 450 units.
10 The affordable housing can be a part of it or it can
11 be outside. Whatever comes first and whatever can
12 get approval from the County and whatever agencies
13 are involved.

14 **CHAIRMAN GIOVANNI:** So I think that we
15 heard in discussion that it is likely or possible
16 that it would -- the affordable housing would amount
17 to as many as 20 percent or 130 to 140 units of
18 affordable housing. Is that your understanding and
19 is it -- if so, is it your intention to build that
20 many units?

21 **MR. WHEELLOCK:** Our understanding is that
22 there are 22 units outstanding that are already
23 obligated and should have been built by the previous
24 developer but were not. We are required to assume
25 that obligation and we stand by that.

1 As far as the balance, Chapter 11, which
2 can be explained by the County, requires 20 percent.
3 Since the County cancelled the existing offsite
4 agreement on parcel 25, the cancellation letter also
5 said that we were required to ascribe to the new
6 Chapter 11 requirements of 20 percent on our 450.
7 That would indicate 90 units for 450. 90 plus 22 is
8 about -- I'm sorry --

9 **CHAIRMAN GIOVANNI:** 112.

10 **MR. WHEELLOCK:** -- 112. Thank you. Kailua
11 High School, what can I say.

12 **CHAIRMAN GIOVANNI:** So is it your
13 intention, if that plays out that way, to build 112?

14 **MR. WHEELLOCK:** We've had some experiences
15 with reversals from the County's position. There
16 has been input from project opponents, challenging
17 the validity of building offsite or onsite. Until
18 we get those answers, I really can't commit anything
19 to you other than whatever gets approved, we will be
20 bound by.

21 **CHAIRMAN GIOVANNI:** So what is your
22 intention in terms of the timing of those? One of
23 the concerns this Commission often faces for
24 different projects is not only do they take decades
25 to implement, but the affordable housing doesn't

1 come soon enough. It comes on the tail end and it's
2 -- it's oftentimes a real frustration to get it
3 built at all.

4 What is your intention once you settle on
5 a number, whether it be 112 or something different?
6 What is your intention in terms of the timing of
7 when that affordable housing would be built?

8 **MR. WHEELLOCK:** As mentioned earlier, we
9 are going before the Leeward Planning Commission
10 later this year and then before the County Council.
11 If the County Council approves the project, the
12 extension specifically requested, it is our
13 intention to proceed immediately with design,
14 engineering, permitting, and start the project,
15 which is required by County ordinance to be built in
16 two increments.

17 Typically, a project of this size would
18 take about ten years, barring great recession or
19 some third party event, North Korea launches on
20 Honolulu, who knows, but that would be our
21 intention. Once we are able to get the
22 entitlements, I would expect the project to be built
23 within ten years.

24 **CHAIRMAN GIOVANNI:** So that's the total
25 project. My question was the timing of the

1 affordable housing, which would be 10 or 20 percent
2 of the total relative to the 80 to 90 percent, which
3 are not affordable, when would they be built?

4 **MR. WHEELLOCK:** By 2025 we could probably
5 get started in about 18 months. If it's on the
6 subject property, it will take longer because we
7 have to get the intersection approval from DOT
8 Highways. That will take about two years. Then
9 we'll have to build that intersection. We would put
10 the affordable housing in the first increment, so --

11 **CHAIRMAN GIOVANNI:** That's what I'm
12 looking for right there. We'll put the affordable
13 housing in the first increment of houses to be
14 built. Is that what you said?

15 **MR. WHEELLOCK:** Yes.

16 **CHAIRMAN GIOVANNI:** Okay. Thank you. I'm
17 going to reserve additional questions that I have
18 floating in my mind on the housing until we've heard
19 the benefit of testimony from the other parties, but
20 I just wanted to alert you to that. You'll get an
21 opportunity later after --

22 **MS. ROY:** (Inaudible.)

23 **CHAIRMAN GIOVANNI:** I'm sorry, ma'am. I
24 explained the procedure. You have an opportunity,
25 but if you cannot make time for us, this is not the

1 time for you to testify.

2 **MS. ROY:** (Inaudible.)

3 **CHAIRMAN GIOVANNI:** You are entitled to
4 submit written testimony at any time, so you can --
5 anything you want to put on the record, you may, but
6 we cannot take time at this moment for additional
7 public testimony. We will be doing that probably
8 just after lunch. And I'm sorry if you can't be
9 with us. Yes.

10 **MS. ROY:** (Inaudible.)

11 **COMMISSIONER OKUDA:** Chair, I -- I
12 understand what everybody said, and everybody,
13 including what you're saying right now, I understand
14 all of it and all of the things that were said,
15 answers, my concerns, and questions. I understand
16 everything.

17 **MS. ROY:** For the record, I have never
18 been --

19 **COMMISSIONER OHIGASHI:** Chair, call a
20 recess.

21 **MS. ROY:** I have never been -- come to by
22 this --

23 **CHAIRMAN GIOVANNI:** I'm going to call a
24 recess. Off the record. This witness is not --
25 please. Please respect the process, ma'am. Ms.

1 Roy, please respect the process. We're trying to
2 accommodate and make time for you. Take five
3 minutes.

4 **(WHEREUPON, a recess was taken from 11:54**
5 **a.m. to 12:01 p.m.)**

6 **CHAIRMAN GIOVANNI:** Okay. We're going
7 back on the record. It's 12 o'clock -- 12:01. Back
8 on the record.

9 So where we departed, we were still doing
10 questioning for the Petitioner. Let me turn it back
11 to the Petitioner and ask, did you have any further
12 comment or answers that you wanted to -- because we
13 got disrupted there when we abruptly adjourned.

14 **MR. WHEELLOCK:** None by me, sir.

15 **CHAIRMAN GIOVANNI:** Thank you.

16 Mr. Arai?

17 **MR. ARAI:** I think we're okay. Thank you
18 very much.

19 **CHAIRMAN GIOVANNI:** Okay.

20 Mr. Matsukawa?

21 **MR. MATSUKAWA:** I'm done. Thank you.

22 **CHAIRMAN GIOVANNI:** Okay.

23 Commissioner Okuda?

24 **COMMISSIONER OKUDA:** Chair, this is just a
25 question so that I don't have to make another

1 disclosure.

2 Mr. Wheelock, can you tell me what class
3 you graduated from Kailua High School?

4 **MR. WHEELOCK:** 1971, and I'm the youngest
5 member of Kona Tree, so we hope to get this done
6 soon.

7 **COMMISSIONER OKUDA:** Yeah. Okay. Your
8 brother might have been my elementary school
9 classmate. I don't even remember what he looks
10 like. But I put that on the record --

11 **MR. WHEELOCK:** Was that Jeff?

12 **COMMISSIONER OKUDA:** I'm not sure. That's
13 how far away it is.

14 Okay. Thank you very much, Mr. Chair.

15 **CHAIRMAN GIOVANNI:** Thank you.

16 Commissioners, anything further for the
17 Petitioner at this time?

18 Commissioner Atta?

19 **COMMISSIONER ATTA:** I just remembered that
20 I know Mr. Wheelock many, many years ago, and I
21 didn't recognize him at first. I just wanted to say
22 that, you know, that I know him and have done work
23 with him before. But you know, it just was only for
24 a project in Oahu, so --

25 **MR. WHEELOCK:** Aloha e, George.

1 **COMMISSIONER ATTA:** Yeah.

2 **CHAIRMAN GIOVANNI:** So thank you for that
3 disclosure. Let me ask the parties if they have any
4 objection to Mr. Atta -- Commissioner Atta
5 continuing as a Commissioner on this hearing by
6 virtue of his disclosure? Mr. Arai?

7 **MR. ARAI:** Daryn Arai. Petitioner has no
8 objection.

9 **CHAIRMAN GIOVANNI:** County?

10 **MS. AHN:** Michelle Ahn. Considering it
11 was long enough ago that Commissioner Atta did not
12 recognize Mr. Wheelock, we have no objection.

13 **CHAIRMAN GIOVANNI:** Fair observation.
14 State?

15 **MS. KATO:** Alison Kato, no objection.

16 **CHAIRMAN GIOVANNI:** Fellow Commissioners
17 other than Mr. Atta? Okay. Mr. Atta is cleared to
18 continue.

19 Okay. This hearing is going to swing to
20 the County. And I just want to -- County is next.
21 So the County is next. Can you give me an
22 indication of the time that you would like to -- for
23 your prepared presentation?

24 **MS. AHN:** Michelle Ahn. Five minutes or
25 less.

1 **CHAIRMAN GIOVANNI:** Okay. And I do expect
2 we're going to have a fair amount of questions for
3 you. And in that respect, I'm going to take a lunch
4 break now, and it's going to be a short one. It's
5 going to be limited to 25 minutes. And we'll come
6 back at 12:30, and then we'll resume with the
7 County. Thank you.

8 **(WHEREUPON, a recess was taken from 12:04**
9 **p.m. to 12:31 p.m.)**

10 **CHAIRMAN GIOVANNI:** Okay. We're going
11 back on the record as soon as these gentlemen find
12 their seats. So for everyone's -- so we're back on
13 the record at 12:32 -- or 1:02. What is it? 12:31?
14 Back on the record at 12:31.

15 You know, this -- late this morning we had
16 some question -- a little bit of an uprising about
17 process, and so our Chief Planner, Mr. Derrickson,
18 took the time during a break to share with some of
19 the members of the public more information about the
20 process and opportunities they have to follow up and
21 get involved.

22 I wanted to have Mr. Derrickson share that
23 guidance for everyone's benefit, not just the people
24 he was lucky enough to speak to directly. So Mr.
25 Derrickson, if you don't mind, and I've been

1 reminded by -- we need to speak into the microphone.

2 **MR. DERRICKSON:** Aloha. Scott Derrickson,
3 Chief Planner. I was able to talk to a number of
4 people about a number of different things. First, I
5 want to emphasize everything that's involved with
6 this specific petition, you can find up on the Land
7 Use Commission's website, which the Chair provided
8 the link to. Also, I want to remind everybody that
9 you can submit written testimony via email or
10 regular mail to the Commission on this issue or any
11 issues at any time.

12 One of the things I was trying to explain
13 was that this process today is not about whether to
14 approve this project or not. This project has been
15 approved for almost 40 years. Today we're trying to
16 get a status report to find out where this project
17 stands in terms of its completion.

18 I also tried to explain as well, and I
19 think the Chair did earlier, that once the
20 Commission approves a project with conditions, after
21 a certain point if a project has put in sufficient
22 infrastructure, met some of the main conditions,
23 then it's substantially commenced, the Commission
24 then does not have the ability to revert the
25 property. The primary way of ensuring that the

1 Commission's conditions are enforced is the
2 responsibility of the County under Hawaii Revised
3 Statute Section 205-12.

4 So Ms. Roy, in particular, wanted to know
5 how she could participate in this process and be
6 able to directly question the different parties.
7 And I explained to her that there is a process
8 called intervention. It requires a formal petition,
9 and I did ask her that if that's something she wants
10 to try to pursue in the future, that she should
11 contact our staff, and we can try to work through
12 that issue with her. I think that's -- that's the
13 main things that I covered.

14 **CHAIRMAN GIOVANNI:** So one more thing, Mr.
15 Derrickson. If somebody wants to contact staff,
16 what's the best way to do that? Is there a phone
17 number? Is it email? Can you give them the contact
18 info?

19 **MR. DERRICKSON:** Sure. There's multiple
20 ways nowadays to contact staff. Direct on the
21 telephone. It's (808) 587-3822. You can also
22 contact us via email. The easiest way is to go up
23 on our website at luc.hawaii.gov, and that page
24 itself will provide you with our mailing address, a
25 direct link that you can send us an email, and

1 again, that's also where, if you want to find out
2 the full history of this project, all the filings
3 that have occurred, you can access it there
4 digitally.

5 **CHAIRMAN GIOVANNI:** Thank you. Okay.

6 We'll now resume with the County in terms
7 of the presentation on status for this project. Ms.
8 Ahn?

9 **MS. AHN:** Thank you, Chair. The County
10 has submitted written testimony with background and
11 contextual details, which is available on the Land
12 Use Commission website, so I'm not going to repeat
13 all of that testimony here today.

14 Regarding Zendo Kern, the current Planning
15 Director of the County of Hawaii, the question of
16 potential conflicts of interest related to Director
17 Kern's prior work was raised before the Board of
18 Ethics. It has been addressed. It has been
19 resolved. Director Kern is walled off from certain
20 matters that relate to his prior work.

21 So for example, completion of this Kona
22 Vistas development is one such project which -- with
23 which Director Kern has had no involvement. So from
24 the time the application was submitted in 2022, as
25 the Petitioner mentioned, the chain of command stops

1 with Deputy Director Jeff Darrow, who is sitting
2 beside me today. Director Kern has had no
3 involvement in the application, the background work,
4 or the recommendations that are emerging from the
5 Planning Department related to this project.

6 Also, as discussed during Petitioner's
7 report and the questioning of Petitioner, there was
8 a prior agreement related to affordable housing
9 concerning that 12-acre -- approximately 12-acre
10 site makai of the highway. That agreement was made
11 in 2005, and it was contingent upon completion of
12 certain drainage improvements by Kona Vistas, LLC.
13 So Kona Vistas, LLC never completed those drainage
14 improvements, and that agreement was extended,
15 extended, extended, and then it ultimately expired,
16 so it was not cancelled by the County. It expired
17 after seven amendments.

18 And then as for current status of this
19 project, the application was submitted in 2022, and
20 the County has made a recommendation -- the Planning
21 Department has made a recommendation to the Leeward
22 Planning Commission, so that is part of our local
23 County process that we're currently going through.
24 So the recommendation of the Planning Department
25 does address some of the issues that were raised by

1 the public testifiers here today.

2 One that was mentioned was about water
3 running off. So the recommendations from the
4 Planning Department include that all development-
5 generated runoff shall be disposed of onsite and
6 shall not be directed toward any adjacent
7 properties. Prior to receipt of final plan
8 approval, the applicant shall submit a drainage
9 master plan to the Department of Public Works for
10 review and approval.

11 So similar to the drainage issue, we have
12 recommendations related to traffic and environmental
13 assessments. That's all part of our process which,
14 as testifier Mr. Hiram Rivera pointed out, we have
15 departments and agencies that oversee these
16 different matters, and so it's being taken into
17 consideration and it's part of our recommendation to
18 the Leeward Planning Commission that the rezoning
19 not be approved without these conditions attached.

20 So as I said, that is in process. We sent
21 our recommendations to the Leeward Planning
22 Commission. The representation from Petitioner was
23 that they could complete the entire multi-family
24 housing portion within ten years. So that, again,
25 is part of our recommendation that the rezoning be

1 conditional upon having all of this done within ten
2 years. If not, it will have to come back before the
3 County Council.

4 Regarding the number of affordable housing
5 units, the recommendation that we submitted to the
6 Leeward Planning Commission has a couple of
7 conditions related to affordable housing. One of
8 them is about compliance -- strict compliance with
9 condition A of the State Land Use Commission's
10 Decision and Order from 1984.

11 So that would require 10 percent of the
12 total dwelling units to be affordable housing
13 constructed onsite, and then we have another
14 recommendation that the multi-family portion be
15 subject to the current requirements of Chapter 11 of
16 our Hawaii County Code, which, as mentioned
17 previously, currently requires 20 percent to be
18 affordable housing.

19 So that, by my calculation, would be a
20 total of 112 affordable housing units with at least
21 67 affordable housing units being onsite. And, as I
22 said, Deputy Director Jeff Darrow is here with me,
23 and we remain ready and willing to answer any
24 questions that you have. Thank you.

25 **CHAIRMAN GIOVANNI:** Thank you, Ms. Ahn.

1 Commissioners, questions?

2 Mr. Okuda, do you have anything?

3 **COMMISSIONER OKUDA:** I'll defer to anyone
4 else.

5 **CHAIRMAN GIOVANNI:** Oh, you're up.

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

7 And thank you for that information of walling off
8 Mr. Kern. I think that that helps with just gaining
9 confidence of everyone.

10 Can I ask a similar question I did of the
11 Petitioner? So based on all this explanation, when
12 are we going to see the first affordable housing
13 unit?

14 **MR. DARROW:** Aloha, Chair Giovanni and
15 Members of the Land Use Commission. Jeff Darrow
16 with the Planning Department.

17 As Ms. Ahn referred to, our conditions
18 within our proposed change of zone amendment, it
19 does speak to timing in regards to affordable
20 housing. This would be in the County's comment
21 letter on page 6, more specifically, condition X,
22 and it speaks to the requirement of having an
23 affordable housing agreement established by the
24 Petitioner with the Office of Housing prior to plan
25 approval, and it says that -- oh, I'm sorry. This

1 is, yes, condition X.

2 And the affordable housing agreement shall
3 be implemented prior to occupancy of any unit in
4 each phase. So they need to comply with whatever
5 that agreement says prior to any occupancy with each
6 phase that they build in their project.

7 **COMMISSIONER OKUDA:** So right now, can you
8 give us an estimated date when somebody could turn
9 the key on the first affordable housing unit, which
10 oftentimes is really not affordable, but let's just
11 use the definition of affordable housing that's used
12 by the government. I mean, when are we looking at
13 when, you know, somebody's going to actually move
14 in, or we really don't know at this point in time?

15 **MR. DARROW:** Well, I think it's been
16 addressed by the Petitioner as far as, you know, if
17 everything is dependent upon his process that we're
18 currently going through for the amendment. If that
19 is passed, they will have a particular amount of
20 time, ten years, to complete construction of the
21 project. And so they're saying, I believe, on the
22 record, it was 18 months.

23 Is that correct? I think they said 18
24 months that they'll start seeing activity once
25 approvals are granted. But again, it's getting

1 through this process which has been extremely
2 timely.

3 **COMMISSIONER OKUDA:** Yeah. Without
4 getting into the editorial comment about 40 years,
5 but maybe your counsel can react or tell me what she
6 thinks about -- about this. You know, the law has
7 this equitable action called specific performance,
8 right? And specific performance is where if certain
9 conditions are met or elements are met, the court
10 can order someone or an entity to perform a promise
11 that the entity or person promised to do and hasn't
12 done.

13 And you know, if we want to get real
14 technical, we can look at that case, Scotella, S-c-
15 o-t-e-l-l-a, versus Osgood. That's 4 Haw. App. 20,
16 a 1983 Hawaii Supreme Court case. But these
17 specific performance types of lawsuits or actions,
18 they go back to England. It's, you know, even
19 before the American Republic was founded.

20 Is there anything in the law that you know
21 about which prevents a party from filing a specific
22 performance lawsuit against landowner that has
23 promised to do certain things to the community or
24 for the community, such as affordable housing, where
25 these promises are contained in a Land Use

1 Commission order, and it just hasn't been performed
2 or done? Is there anything that prevents that type
3 of lawsuit being filed to basically get the show on
4 the road?

5 **MS. AHN:** Commissioner, you just said that
6 the case law goes back before the founding of this
7 country, so I don't know if there's anything in all
8 those years of law that would be applicable here. I
9 do know that specific performance is not appropriate
10 for every type of agreement, and in this instance,
11 this Petitioner -- I know we're saying that they are
12 bound to the prior decisions and orders and what has
13 been going on with this land, but they're not the
14 original developer.

15 So if we want specific performance from
16 the person who made the promise, I don't know how,
17 as a practical matter, we would find them and hold
18 them accountable.

19 **COMMISSIONER OKUDA:** Well, isn't it true
20 that the Land Use Commission order, the Decision and
21 Order which includes all of these promises, as we
22 say in the law, it runs with the land; in other
23 words, it's an encumbrance on title; in other words,
24 it's an encumbrance on title; in other words, if you
25 acquire title to that property, you're stuck with

1 those provisions?

2 **MS. AHN:** In such a lawsuit, what would we
3 be praying for?

4 **COMMISSIONER OKUDA:** Oh, we'd be praying
5 for the court to order the landowner or whoever
6 holds title to do the things that were promised, in
7 this case, build the affordable housing, and --

8 **MS. AHN:** We are going through our County
9 process right now to achieve that result, so the
10 multi-family housing was always part of the existing
11 Kona Vistas -- not existing, but the Kona Vistas
12 single family subdivision that was created, it's all
13 one project. It's all one development. So we're
14 partway through the process, and, as I said, it's --
15 we made our recommendation to the Leeward Planning
16 Commission. The County process is ongoing. It
17 doesn't mean that ultimately all of the
18 recommendations will be approved and the rezoning
19 amendment will be approved as requested by the
20 Petitioner, but we're going through the process.

21 **COMMISSIONER OKUDA:** Yeah. Well --

22 **MS. AHN:** And ultimately, the end result
23 would be having this multi-family component built
24 with the affordable housing for our low- and middle-
25 income residents of Hawaii County.

1 **COMMISSIONER OKUDA:** Yep. I -- I
2 understand that. I'm just asking whether or not
3 this type of lawsuit would be something -- well, is
4 it -- do you know of any authority in the Hawaii
5 cases or statute or anything like that which would
6 -- which expressly prohibits using a lawsuit for
7 specific performance to basically ensure compliance
8 with these types of promises?

9 By the way, you know, I understand the
10 comment that, well, the -- this is a new landowner.
11 But the point is this, before anyone buys a piece of
12 property, they usually do due diligence which is to
13 see what are the encumbrances on title, or, in plain
14 English, what they're going to have to comply with.
15 And if you don't like what you -- you have to comply
16 with, well, then you don't buy the property or you
17 don't pay as much as you might have paid if there
18 weren't these encumbrances.

19 So is there anything in the law that
20 prohibits a specific performance lawsuit to compel
21 people to follow the promises that they made? Can
22 you site to any authority that says, you know, this
23 is not -- or specific performance is not available
24 in this type of situation?

25 **MS. AHN:** You're asking about specific

1 performance to enforce a promise made before the
2 Land Use Commission, yeah?

3 **COMMISSIONER OKUDA:** Yes.

4 **MS. AHN:** And I'm here representing the
5 County, and I believe the Land Use Commission has
6 their own counsel who might be able to answer or
7 address your concerns.

8 **COMMISSIONER OKUDA:** Well, no, no. I just
9 -- I'm asking the County because, you know, if
10 something like this takes place later, I don't want
11 to hear from the County like, oh, wow, you know,
12 this should not have been done because it's very
13 clear under the law it shouldn't have been done.
14 I'm kind of doing what we all call in the law,
15 right, a Rule 11 kind of compliance question.

16 Okay. Well, let me -- let me ask a
17 related question. Oh, I'm sorry. Mr. Darrow?

18 **MR. DARROW:** Thank you, Commissioner
19 Okuda. So in this particular case, right now, if we
20 had a Petitioner that said, I want to build the
21 affordable housing, they cannot. Right now, what
22 holds them up is the process that we are currently
23 going through. They cannot get a building permit.
24 They cannot do anything until they go through this
25 process and update this ordinance that will allow

1 them to do what we're trying to get this project to
2 do, including the affordable housing.

3 **COMMISSIONER OKUDA:** Yeah.

4 **MR. DARROW:** So again, I mean, if your
5 question is, can we make them build affordable
6 housing through a lawsuit, the same thing would have
7 to happen. You have to get the approvals to allow
8 you to do the development through the Council.

9 **COMMISSIONER OKUDA:** Yeah. Maybe just to
10 make it clear what my motivation or thought is here.
11 You know, the DW Aina Le'a versus Bridge Aina Le'a
12 case says that we have no power to revert the
13 property back to its prior designation once there's
14 substantial commencement as set forth in the
15 representations or the Land Use order. And you
16 know, to tell you the truth, that makes sense.

17 If a piece of property is better suited
18 for urban development, then, yeah, it should be
19 urban. But what I believe the Supreme Court in DW
20 Aina Le'a also warned about was the fact that
21 property that had been given these entitlements,
22 rezoning, if you can call it that, if the
23 improvements or promises are not kept to the
24 community, what that allows is basically land
25 speculation.

1 In other words, people make money off of
2 the fact that there's upzoning from ag to urban or
3 conservation, you know, to urban, and they don't
4 even have to do anything for the community just to
5 make money off the property. So the frustration I
6 think I personally have is we're seeing these
7 dockets where all these promises have been made 20,
8 30, 40 years ago, and you see transfers of title of
9 property, I don't see any evidence that these were
10 charitable transfers. You know, it looks like there
11 was consideration passing hands.

12 And you know, we're faced with a housing
13 situation that just gets worse and worse and worse.
14 And promises aren't kept, so I'm trying to see
15 whether or not, in addition or as a supplement to
16 reversion, which might not be the best appropriate
17 measure, maybe the thing to do to force landowners
18 to live up to their promises is a specific
19 performance lawsuit. And if they can't comply with
20 the court order, maybe we should have contempt of
21 court proceedings after that and daily fines for not
22 complying, and maybe then they'll come to the County
23 and do what they're supposed to do with the County.

24 So anyway, that's a long explanation. If
25 somebody in the audience knows about some case which

1 says that specific performance cannot be used, you
2 know, to enforce a promise made, you know, I'd be
3 interested to know about that.

4 Thank you, Mr. Chair.

5 **CHAIRMAN GIOVANNI:** Commissioner Okuda,
6 let me -- let me --

7 **MS. AHN:** Commissioner?

8 **CHAIRMAN GIOVANNI:** Ms. Ahn, please
9 proceed.

10 **MS. AHN:** Sorry for interrupting. I just
11 wanted to respond, if I may, to the last statement
12 made by Commissioner Okuda that if we sued them,
13 then maybe the developers would come back to the
14 County and comply. I just want to point out in this
15 instance that this Petitioner did come to the County
16 and is trying to go through our process. They filed
17 their application, and, as I mentioned before, we
18 are going through our County process.

19 So this is a developer that has been in
20 contact with us and is cooperating with us, and we
21 like to encourage that kind of attitude among the
22 developers here. Thank you.

23 **CHAIRMAN GIOVANNI:** One second. I want to
24 get a clarification on the dialogue between
25 Commissioner Okuda and the County, and it's by

1 example. So I'm trying to understand where you're
2 coming from and where you're going to, Commissioner
3 Okuda. And maybe the best way would be a
4 hypothetical.

5 So in the instance that the developer,
6 Petitioner, continues the process with the County,
7 which the County and the Petitioner have represented
8 is ongoing, and it has a logical endpoint, even
9 though it may be -- take an undetermined amount of
10 time, it has a logical endpoint. Once we reach that
11 endpoint, we heard clearly today from the developer,
12 the owner, that the intent is to build affordable
13 housing in the first segment of structures that are
14 built.

15 So is the question you have, Commissioner
16 Okuda, that in the event that the developer does not
17 fulfill that promise, that somebody -- who -- has
18 the opportunity to bring such a lawsuit? Is that
19 what you're talking about?

20 **COMMISSIONER OKUDA:** Yes, it is. And I'm
21 -- I'm talking in general terms, okay? I'm not
22 suggesting necessarily that anybody bring a specific
23 performance lawsuit here, because, again, the Hawaii
24 case law says, correct, that equitable -- specific
25 performance is an equitable action, so the Court

1 would weight what really is going on. You know,
2 it's not like an automatic death penalty or anything
3 like that. But it's to -- it's who can bring that
4 lawsuit, Mr. Chair. I guess in the end, the Hawaii
5 Supreme Court's going to have to decide that, but
6 the Hawaii Supreme Court has said in numerous cases
7 that -- and I'm not sure if it's the Kuilima case,
8 but a number of cases -- I believe one of them is
9 one of the Mauna Kea cases that environmental types
10 of cases have broad community standing, so in other
11 words, almost any interested person in the community
12 can bring the lawsuit.

13 I'm not advocating lawsuits to solve the
14 problem. It's just looking for an additional tool
15 so that we at the Commission don't feel like people
16 come back to us and say, yeah, we didn't comply with
17 your conditions, but, hey, we did a little bit of
18 work or we did work here, so like, under Bridge Aina
19 Le'a, you can't touch us. And the counties aren't
20 enforcing these conditions, you know?

21 I mean, for example, we see non-
22 agricultural activities taking place on agricultural
23 lands, but we don't have any power to do anything
24 about it. So I'm just seeing whether or not the law
25 prohibits specific performance as an additional

1 tool, where appropriate, to make people live up to
2 their promises to the community. That's all. Thank
3 you.

4 **CHAIRMAN GIOVANNI:** Thanks for that
5 clarification -- statement, not a question.

6 So Commissioner Ohigashi?

7 **COMMISSIONER OHIGASHI:** I'm not sure who
8 can answer this, but on condition X that you
9 highlighted, it says this requirement shall be
10 approved by the Administrator of Housing -- Office
11 of Housing and Committee Development prior to
12 initial plan approval. An affordable housing
13 agreement shall be implemented prior to occupancy of
14 any unit in each phase.

15 What does that mean? I mean, does it
16 dictate how -- whether or not you're going to build
17 these affordable housing first or you have to build
18 them first before you can build the other housing?
19 How -- how -- what does that condition actually
20 mean? Or does it mean that? Does it mean anything?

21 **MR. DARROW:** Well, no, it means that, as
22 part of the agreement because this is proposed to be
23 a phase project, we didn't want to front in the
24 project with all affordable housing. It's kind of
25 -- it's a tiered project. So as they come in for a

1 phase, 10 percent or 20 percent of that phase has to
2 be part of that first phase. And it has to be
3 completed prior to certificate of occupancy for that
4 phase, so they cannot go the next phase unless
5 that's completed.

6 **COMMISSIONER OHIGASHI:** Wouldn't -- the
7 developer seems to say that they want to start on
8 the housing beginning -- wouldn't it make sense for
9 the County to see if whether or not they will
10 deliver the low cost housing prior to --

11 **MR. DARROW:** They -- they can --

12 **COMMISSIONER OHIGASHI:** -- acceptance of
13 -- as a condition part so that you get the housing
14 in your hand and then they're free to build whatever
15 else they want to build in accordance with the
16 plans?

17 **MR. DARROW:** Again, I mean, that is a
18 possibility that can happen. The applicant can
19 choose to do that. But in this particular case,
20 we've recommended this particular direction for
21 phase --

22 **COMMISSIONER OHIGASHI:** Well, I hope that
23 the County takes a look at it more carefully and
24 make that decision.

25 The second thing I wanted to know is what

1 does that do to the 22 already houses that have to
2 be built?

3 **MR. DARROW:** This would be condition W.

4 **COMMISSIONER OHIGASHI:** Oh. So it wasn't
5 in here, W.

6 **MR. DARROW:** It should be just above it.

7 **COMMISSIONER OHIGASHI:** Now, so what does
8 that mean?

9 **MR. DARROW:** That means they have to
10 comply with --

11 **COMMISSIONER OHIGASHI:** When do they build
12 it? Do they build it before the starting of this
13 whole process? Does that go towards the 20 percent
14 or 10 percent or the total amount --

15 **MR. DARROW:** So the --

16 **COMMISSIONER OHIGASHI:** -- how does that
17 work? I'm curious.

18 **MR. DARROW:** Yeah. This is -- this has
19 some unique issues related to affordable housing.
20 So originally, in 1983, when the original
21 reclassification happened for increment 1, there
22 were four conditions. Condition A was the
23 affordable housing condition. In 1993, when they
24 were approved for the redistricting of increment 2,
25 findings of fact number 29 said that the Petitioner

1 addressed condition A with the 12-acre property.

2 So up to a period of time, condition A --
3 and it was all through the construction of the 215
4 units -- was addressed to the satisfaction of the
5 Land Use Commission. So the question is now before
6 the County, which we're taking the stance that if
7 the 12-acre site is not part of this, then they have
8 to do 10 percent and onsite offer for sale at
9 affordable rates of lots or lots and houses.

10 If it -- it sounds like the 12-acre site
11 is still an option that they can build affordable
12 housing on that. So they could go ahead and build
13 however many units they can build on the 12-acre
14 site, and that appears to be acceptable based on the
15 1993 Decision and Order.

16 **COMMISSIONER OHIGASHI:** I'm going to talk
17 to you from a practical point.

18 **MR. DARROW:** Sure.

19 **COMMISSIONER OHIGASHI:** It doesn't seem to
20 me that the County -- that's a real problem for the
21 County because, on the one hand, the County holds
22 the power to extend the zoning ordinance. And under
23 that zoning ordinance, it can create conditions
24 which would determine where the 22 houses should be
25 built. And rather than saying that, well, we're not

1 sure that the -- that the D and O accepts this as
2 29, in my mind the D and O calls for 22 houses.

3 They may have recognized it at that time,
4 the 12 acres address that. But the County has
5 determined that that doesn't meet the 22 housing
6 requirements. So as a condition of zoning, the
7 County could solve this problem immediately and make
8 that determination. Let me go back one more step.
9 That's my comment. It's not a question.

10 The second -- the second -- the second
11 question that I really have is that you have to go
12 through what is called an amendment of zoning to
13 increase the date, right? Assuming that that does
14 not happen. For some reason, the community enrages
15 all the Council people. The Council people says,
16 hey, we're not going to do this anymore. What
17 happens to the 22 houses?

18 **MS. AHN:** If I could just address your
19 comment that you pointed out was a comment, not a
20 question --

21 **COMMISSIONER OHIGASHI:** I don't want to
22 worry about that. That's just my comment. I want
23 to ask -- answer the question. The question is what
24 happens to the 22 houses if they say no? And you
25 can -- you can write a brief if you want to, but --

1 my comment -- but I don't really care about that.

2 That's just my comment.

3 What I really want to know is the question
4 is what happens? What happens to the 22 houses?

5 **CHAIRMAN GIOVANNI:** Ms. Ahn, you may
6 proceed with your own comment.

7 **MS. AHN:** Thank you. I just wanted to
8 point out that the County has to approve this
9 rezoning amendment and their only concern is not
10 limited to what would satisfy the Land Use
11 Commission's condition A from 1984. So they might
12 have other considerations in mind such as not
13 putting all the low income people in one corner of
14 the development, you know, and having them spread
15 out so it's not like, oh, the poor people are over
16 there, you know.

17 So I just wanted to point out that as we
18 go through our County process, there might be other
19 considerations that come into play as far as what
20 conditions are recommended and ultimately approved.

21 **COMMISSIONER OHIGASHI:** My question still
22 stands. What happens?

23 **MR. DARROW:** To be honest with you, I mean
24 --

25 **CHAIRMAN GIOVANNI:** Please be honest.

1 **MR. DARROW:** Yeah. I -- I -- yeah. I
2 don't know. I mean, basically, if we try to guess,
3 they won't have a zoning ordinance, which won't
4 allow them to continue with their project. We have
5 215 built houses. Does that fall on the backs of
6 the owners of those 215 houses? Does it fall on the
7 Petitioner who purchased a portion of the property?
8 Does it fall on the previous developer who --
9 whether they're around or not? I'm not sure.

10 **COMMISSIONER OHIGASHI:** Isn't that
11 something that should be gamed out and thought about
12 by -- since you're going to have to enforce the
13 terms of that 22 houses.

14 **MR. DARROW:** Our goal --

15 **COMMISSIONER OHIGASHI:** And -- you know,
16 and I know your goal is to get this past --

17 **MR. DARROW:** Correct.

18 **COMMISSIONER OHIGASHI:** -- to -- to build
19 more houses and things like that.

20 **MR. DARROW:** Right.

21 **COMMISSIONER OHIGASHI:** I'm just saying
22 that, hey, you better plan for what happens if it
23 doesn't happen.

24 **MR. DARROW:** Yeah.

25 **CHAIRMAN GIOVANNI:** Commissioners,

1 anything further for the County?

2 Petitioner, I just want to remind you, you
3 will be given an opportunity to rebut anything you
4 hear from the dialogue between the County and the
5 Commission and the State and the Commission.

6 Hearing nothing more, thank you very much.

7 So State, OPSD, do you have a position or
8 comment?

9 **MS. KATO:** Alison Kato. Our comments will
10 be given by Katia Balassiano. Thanks.

11 **CHAIRMAN GIOVANNI:** Thank you, Ms. Kato.

12 So Ms. Balassiano?

13 **MS. BALASSIANO:** Hello. Katia Balassiano
14 with Office of Planning and Sustainable Development.
15 OPSD is satisfied with the materials submitted and
16 the updates provided today. We hear the
17 Petitioner's uncertainty and reluctance to commit to
18 production of a certain amount of units, and I think
19 Jeff Darrow from the County explained the reasoning
20 very well.

21 However, we do believe that the Petitioner
22 has been working diligently to fulfill the
23 conditions. We've seen the conditions that are
24 being proposed by the County for the extension of
25 the zoning ordinance and believe they are

1 sufficient. We have checked with the State's DOT in
2 regards to the outstanding conditions there and
3 understand that once the County zoning is in place,
4 there are some additional matters that need to be
5 resolved with the DOT; however, they have been kept
6 apprised of this process. They did weigh in on the
7 environmental assessment, as did SHPD, and believe
8 that Ka Pa'akai has been satisfied with the
9 archeological inventory, the preservation plan, and
10 the burial treatment plan, and SHPD has weighed in,
11 in regards to the environmental assessment that was
12 done very recently. We believe it is current. It
13 is not stale.

14 However, if, of course, there is future
15 work that triggers an environmental assessment, then
16 another one will need to be done as the Petitioner
17 has already shared with you folks. And I think,
18 finally, we just want to be on record saying that we
19 support in the production of housing in this
20 particular area. Thank you.

21 **CHAIRMAN GIOVANNI:** Thank you. I want to
22 -- I have a quick question before I turn it over to
23 the other Commissioners. We heard a lot of comments
24 from the public today about the traffic in the area,
25 and you just mentioned that DOT has weighed in and

1 reviewed the situation. Can you summarize for
2 everyone's sake whether DOT is imposing any --
3 whether the TIAR is current, whether it needs to be
4 updated, whether or not there is specific conditions
5 that DOT is looking for to help address problems
6 with traffic, et cetera. Do you have anything you
7 could share with us beyond what you've already said?

8 **MS. BALASSIANO:** Yes. The -- in 2021, the
9 TIAR was submitted to the DOT for review as part of
10 the Petitioner's zoning amendment application. And
11 the DOT commented on this TIAR and, again, had the
12 opportunity to review the TIAR as part of the
13 environmental assessment.

14 They remain concerned about the -- the
15 intersection with the State highway and recommended
16 that alternative options be explored. We understand
17 also that the Petitioner has been in communications
18 with the adjacent property owners, and that there is
19 concern about traffic in the area. And so the DOT
20 will wait and have a conversation with the
21 Petitioner after the zoning ordinance is extended to
22 discuss the details of what that intersection would
23 look like.

24 **CHAIRMAN GIOVANNI:** So I just want to
25 comment for the community members that have raised

1 concern about traffic, which is a very legitimate
2 concern. So TIAR is an acronym for traffic study.
3 It is typically done as part of an environmental
4 assessment for a project. And that portion of the
5 environmental assessment specifically related to the
6 TIAR and the consequences of that, as Ms. Balassiano
7 has shared, is taken up directly by the Department
8 of Transportation --

9 **MS. BALASSIANO:** The State Department of
10 Transportation.

11 **CHAIRMAN GIOVANNI:** The State Department
12 of Transportation. It's a State highway. And so
13 that's the process that she has explained. It's
14 still a work in -- my takeaway from what you've just
15 said is that DOT recognizes the issue and it's still
16 a work in progress before anybody agrees to a
17 solution.

18 **MS. BALASSIANO:** That is correct.

19 **CHAIRMAN GIOVANNI:** And a solution would
20 be a condition for the project going forward.

21 **MS. BALASSIANO:** Yes. Probably, yes.

22 **CHAIRMAN GIOVANNI:** Okay. Thank you.

23 Okay. Commissioners, anything further for
24 OPSD?

25 Commissioner Okuda?

1 **COMMISSIONER OKUDA:** Thank you for
2 testifying. This is a process question since the
3 Office of State Planning is supposed to be like the
4 public guardian on a lot of these planning cases.
5 Does it concern you that we've had all this
6 testimony against the project either -- and you
7 know, it can be characterized as misguided or well
8 informed, but I'm just saying does it concern the
9 Office of Planning that you have all this testimony
10 against the project and people seem concerned enough
11 to hang around or attend, you know, this meeting
12 into now the afternoon. I mean, does that raise a
13 concern for the Office of State Planning?

14 **MS. BALASSIANO:** Certainly. All voices
15 are important. All different perspectives should be
16 incorporated. However, we also recognize that there
17 are many people who are not in this room at this
18 point in time who may have also weighed in
19 previously in the County's various long-range plans
20 that suggest that this is an area where housing
21 should be developed.

22 **COMMISSIONER OKUDA:** Well, does the Office
23 of State Planning believe that it might make sense
24 to have some engagement with at least the people who
25 came here to this hearing because, by their action,

1 they're showing, you know, more than just what
2 sometimes is described as flippant concerns. I
3 mean, they're spending their time and their
4 afternoon here. I mean, would it be --

5 **MS. BALASSIANO:** I would not suggest these
6 are flippant concerns at all.

7 **COMMISSIONER OKUDA:** Yeah, I know. I'm
8 not either. And that's why I'm saying does the
9 Office of State Planning maybe have some ideas of
10 engaging with the people who are here to see whether
11 -- you know, if they've got concerns that might be
12 addressed, the Office of State Planning can look at
13 that --

14 **MS. BALASSIANO:** There's an extensive
15 public process that is ongoing right now of which
16 this is part. There have been meetings before the
17 Planning Commission. There will be meetings before
18 the Planning Commission. All of those are open to
19 the public --

20 **COMMISSIONER OKUDA:** Okay. Well, let me
21 -- let me just ask the straightforward question.
22 Are you willing to meet with these people who are in
23 this room today to hear their concerns more in
24 depth? Because a number of them have said three
25 minutes is not enough to -- to spell out their

1 concerns, or, hey, they've just got to go someplace
2 else. We might as well be straight with them --

3 **MS. BALASSIANO:** OPSD is always willing to
4 hear and speak with the public on all matters --

5 **COMMISSIONER OKUDA:** Who should they call
6 -- how should they contact OPSD? Actually, let's
7 make it clear. Who should they contact? If you can
8 give the people in the room a name and contact
9 information so if they want to engage with OPSD,
10 there's somebody they can contact.

11 **MS. BALASSIANO:** They can contact me.

12 **COMMISSIONER OKUDA:** Okay.

13 **MS. BALASSIANO:** My email is
14 katia.balassiano@hawaii.gov, and I can be here after
15 the meeting to provide that email address to those
16 who ask. I also have some cards with me that I'd be
17 happy to distribute.

18 **COMMISSIONER OKUDA:** Okay. That's very
19 generous of you to do that because the last time I
20 asked the similar question in Honolulu, and I won't
21 mention names, after ten minutes, the Chair -- not
22 the current Chair but the prior Chair told me, you
23 might as well not ask because you're not going to
24 get an answer. So thank you very much for providing
25 that information.

1 **CHAIRMAN GIOVANNI:** Let me echo that.

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

3 **CHAIRMAN GIOVANNI:** Thank you very much
4 for providing that access information, which is
5 similar to how I try to give direction on how to
6 contact staff on these matters. So we share your
7 willingness and receptiveness to public inquiry.

8 **MS. BALASSIANO:** I'm happy to help.

9 **CHAIRMAN GIOVANNI:** Okay. Commissioners,
10 anything further? Hearing none.

11 Thank you very much. We shall proceed.
12 So Petitioner, do you have any further rebuttal
13 comments that you want to make about any aspect?
14 Please take your time.

15 **MR. ARAI:** Daryn Arai for the Petitioner.
16 Both myself and Mr. Matsukawa would like to offer
17 some responses to the discussion. First of all,
18 just to further elaborate on the venue for our
19 community engagement, I want to emphasize that this
20 process did include in Chapter 343 environmental
21 review, which was a public review process. There
22 were proceedings before the Leeward Planning
23 Commission, proceedings before the Cultural Resource
24 Commission. And shortly, we will be heading back to
25 the Leeward Planning Commission once again with

1 final proceedings before the Hawaii County Council.
2 Most of these processes are Chapter 91 processes, so
3 there will be opportunity for public notification
4 and written and verbal comments as well.

5 There was also a discussion regarding
6 promises, as far as the provision of affordable
7 housing. I'd like to remind Commissioners and
8 remind ourselves, too, that we can make certain
9 representations, but ultimately, what happens on the
10 ground is going to be dictated by the Hawaii County
11 Council because they, by virtue of Chapter 46, have
12 the power of zoning, so they will set forth all the
13 conditions and requirements that they expect from
14 this -- the Petitioner.

15 At the very least, they need to make sure
16 that those conditions uphold the conditions as
17 expressed by the Land Use Commission in its Decision
18 and Order. So I just want to put that on the table.
19 And finally, with that being said, we had one
20 question where condition A does speak to the offer
21 for sale of these affordable units, and our
22 representation was that we wanted to offer certain
23 units for rent and certain units for sale. So
24 that's the type of priority that we were seeking,
25 but I understand your earlier comments about whether

1 or not you can dive into that type of proceedings.

2 But it shows you that what the applicant
3 is -- I mean, the Petitioner is asking for today is
4 just the blessing to proceed forward because it's
5 going to require a lot more discussions, a lot more
6 negotiations, a lot more investigations before they
7 can memorialize a final agreement that will provide
8 for the necessary affordable housing units.

9 If Mr. Matsukawa had --

10 **CHAIRMAN GIOVANNI:** Before we go to Mr.
11 Matsukawa, I just want to restate, and by example,
12 if the Petitioner wants to -- desires to amend an
13 existing condition of a decision ordered by the LUC,
14 that's a process. And the best way to understand
15 that process is by consultation with staff. So you
16 have an idea what you want to accomplish, you talk
17 to staff. What's the pathway to see if that can be
18 done?

19 **MR. ARAI:** Thank you very much.

20 **CHAIRMAN GIOVANNI:** Okay. Mr. Matsukawa.

21 **MR. MATSUKAWA:** Thank you. In reference
22 to Mr. Okuda's questions about enforcement remedies,
23 I know there's a court case for a case that arose in
24 Honolulu, and it turns on the issue of standing.
25 Plaintiff was trying to enforce a public ordinance,

1 and objections were raised that an ordinance doesn't
2 necessarily give a private member of the public,
3 though affected, the standing to enforce the public
4 ordinance, leaving it to the enforcing authority of
5 the County.

6 That's been more or less the general
7 position of courts nationwide. It turns on
8 standing. And you have to interpret the benefits
9 being conferred to whom, et cetera. It -- it's a
10 difficult challenge. The -- except for the area of
11 Article 1, Section 9, which the environmental
12 guarantee that the State Constitution gives to any
13 person pertaining to an environmental issue. Like
14 the Kuilima environmental assessment that was 20, 25
15 years old and they wanted to expand the project, but
16 the EIS was 20-some years old, that's an
17 environmental issue, so any person could then
18 enforce that.

19 As to Mr. Ohigashi's question, I think
20 it's a -- it raises a good question about who holds
21 the burden for the 22 units that have been built or
22 lots that have been built. And as I see the
23 condition that was recorded, it appears in every
24 deed to every lot in the first part of this project,
25 on the 215 lots. They all have this exception that

1 the lot owner accepts the condition as an
2 encumbrance on his or her title.

3 So I guess, in response to Mr. Ohigashi's
4 statement, I guess we're all tied together to get
5 condition A done and the 22 lots created.

6 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

7 **COMMISSIONER OHIGASHI:** I have another
8 question. I was looking at your schematics. And it
9 seems like it's a multi-family unit. Essentially,
10 it's like a -- all similar types of units. Some may
11 be two bedrooms. Some may be three bedrooms. Some
12 maybe one bedroom. Right? But they're all similar
13 type of units, is that right?

14 **CHAIRMAN GIOVANNI:** Yeah.

15 **COMMISSIONER OHIGASHI:** And you don't --
16 do you plan to build special type of units for the
17 low cost housing portion that is different from the
18 regular?

19 **CHAIRMAN GIOVANNI:** Please state your
20 name.

21 **MR. WHEELOCK:** Richard Wheelock. In
22 general, poor door planning is a bad idea. We do
23 not have that intention.

24 **COMMISSIONER OHIGASHI:** So -- so we can be
25 -- we can be reasonably assured that even if we --

1 if the County requires you to place the low cost
2 housing up front in this multi-family unit, that
3 essentially, it will have the same units as the
4 regular sales price.

5 **MR. WHEELLOCK:** Richard Wheelock. So the
6 lower units, if you look at the site plans, plan for
7 174 rentals. That's one of the reasons that we need
8 and know that we can do rentals. Previously, the
9 affordable housing agreement allowed us to provide
10 an offsite, subject to improvements. That deal is
11 now off the table, it appears. So --

12 **COMMISSIONER OHIGASHI:** That's not my
13 question. My question more deals with whether or
14 not you sell them or rent them, it's the same units
15 that you're offering to as regular price units,
16 right?

17 **MR. WHEELLOCK:** There's two types of units.
18 The lower units are for rent and they're limited to
19 two stories in response to neighborhood concerns
20 about heights. As we go up the mountain and it gets
21 steeper, it goes to two and three story buildings
22 built as townhouse complexes.

23 **COMMISSIONER OHIGASHI:** Okay. So --

24 **MR. WHEELLOCK:** We would go ahead and
25 incorporate within those two types of construction

1 units that met the affordable housing requirements.

2 **COMMISSIONER OHIGASHI:** And would it be
3 correct to say that just because they're low cost --
4 what's the term? Low cost housing?

5 **CHAIRMAN GIOVANNI:** Affordable.

6 **COMMISSIONER OHIGASHI:** Affordable
7 housing, that does not mean they're for the poor.

8 **MR. WHEELLOCK:** Richard Wheelock. The
9 language in the D and O refers to low and median
10 income residents of the State of Hawaii. So it's
11 our understanding that that's who we're supposed to
12 provide it for.

13 **COMMISSIONER OHIGASHI:** So this idea where
14 we create an enclave of poor owners wouldn't occur
15 in your development, would that?

16 **MR. WHEELLOCK:** That is not our plan, no.

17 **COMMISSIONER OHIGASHI:** Okay. I just
18 wanted to clear that up because I had this
19 impression from the County that they were concerned
20 -- they had concerns that they would be creating a
21 poor enclave within -- and -- by -- by requiring low
22 and medium cost housing, affordable housing up
23 front. No further questions.

24 **CHAIRMAN GIOVANNI:** Thank you,
25 Commissioner.

1 Anything further? So are you -- have you
2 concluded your remarks from the Petitioner?

3 **MR. ARAI:** Daryn Arai. Yes, we've
4 concluded our questioning.

5 **CHAIRMAN GIOVANNI:** Okay. Okay.

6 It's now time for a second round of public
7 testimony.

8 Ms. Kwan, do we have anybody that wants to
9 testify?

10 **MS. KWAN:** Yes. We have ten signups.

11 **CHAIRMAN GIOVANNI:** Okay. So we're going
12 to have to move through this a little more
13 expeditiously. I'm sorry that we don't have three
14 minutes to spare for each of you. So let's -- we're
15 not going to be able to do that, so we're going to
16 limit the commentary to half the time, so a minute
17 and a half.

18 So let's call the first witness.

19 **MS. KWAN:** First witness is David
20 Blancett-Maddock.

21 **CHAIRMAN GIOVANNI:** Mr. Maddock, you're
22 still sworn in, so please proceed.

23 **MR. BLANCETT-MADDOCK:** I raise a
24 constitutional issue on the ability to respond at a
25 public hearing when the time's been cut to half the

1 time that's been allocated, even recognizing the
2 past, so I raise an objection.

3 Number two, I am a lawyer, so I heard the
4 stuff about specific performance and all those kinds
5 of things. I heard testimony that they could not
6 build affordable housing, which is ridiculous. If
7 you refer back to 84.23, the original allowance of
8 this particular zoning, it said that the second
9 stage shall not go forward until the conditions are
10 met. And specifically in A and B, they were subject
11 to reversionary interests, so this could revert back
12 to the original zoning.

13 I'd invite you to look at those because
14 they're very specific. They're time specific. But
15 then the second phase can't even be considered until
16 after the first one's completed, and it was never
17 completed because the 22 units of affordable housing
18 were never produced in the first phase. So I invite
19 you to go back and look at that, particularly, Mr.
20 Okuda. I think you understand what I'm talking
21 about because of your expertise. It might be
22 helpful to your Commission.

23 The other thing is capacity. I heard
24 testimony that I don't find credible here. The
25 developer said that within 18 months, they could

1 begin building affordable housing was actually the
2 way they put it. They testified before the Zoning
3 Commission just before it went back to these other
4 cultural groups, that they don't have the capacity.
5 They don't have the money to build anything right
6 now.

7 They weren't even going to seek their
8 investors until after this was approved. So I would
9 say it's disingenuous to claim that you're going to
10 be able to move in 18 months if you don't have, as
11 you were saying, whether it's bonded or whatever,
12 you don't have any investors and you don't have the
13 actual resources yourself. I might ask them some
14 questions about that if I were on this Commission.

15 There's another thing. This is very hard
16 because I've got a lot of notes here.

17 **CHAIRMAN GIOVANNI:** You know you can
18 submit everything you want to say in writing.

19 **MR. BLANCETT-MADDOCK:** I understand, but
20 you know, it's -- this is fresh in my mind, and I
21 would -- I would really like the opportunity just to
22 address a couple of things if you just let me look
23 at my notes for a couple of seconds.

24 But I would invite the board to go back
25 and look at the stages that were included in these.

1 There were teeth in the original ordinances. The
2 teeth were removed sometimes by amendments to some
3 extent, but they did provide for a reversion if any
4 of the conditions in A and B were not met. A and B
5 included the affordable housing, which was never
6 met, so reversion is on the table.

7 Also, abandonment. This particular --
8 including this particular owner, has reverted the
9 use of the land back to agricultural. They've ran
10 cattle on it. There's a letter in the Department --
11 an email to me regarding this because we raised
12 concerns over cattle on the property in which the
13 Planning Department, it said that the owner admitted
14 that they were under contract with people to run
15 cattle were the ranchers on this land, and they were
16 going to deal with it. We still hear cows mooing
17 today. People have testified to observing the
18 cattle.

19 **CHAIRMAN GIOVANNI:** Please summarize.

20 **MR. BLANCETT-MADDOCK:** I'm trying. I'm
21 actually trying to rebut, which is a little bit
22 harder. If you --

23 **CHAIRMAN GIOVANNI:** Please try.

24 **MR. BLANCETT-MADDOCK:** Yeah, right. Let
25 me look at my very abbreviated notes. My wife has

1 me in the habit of doing that for the benefit of
2 everybody.

3 So fixing the statutes really isn't
4 something that we even should be at an issue here.
5 We don't need to fix the statutes. It's kind of
6 like the border. Well, the laws were there. What's
7 happened is everybody's allowed them to erode.

8 And as far as a private suit, it's hard to
9 say what could happen with a private suit, but as
10 far as we're looking at these other conditions where
11 we're looking at the State saying, just like the
12 County is, the State enforcing the environmental
13 assessment and those kinds of things. You've got
14 testimony from me. You can go back and look at the
15 testimony.

16 They appeared before the cultural group
17 and appeared before the Council and appeared before
18 the Planning Commission and it appeared before PONC,
19 where how -- how -- even -- whether it was ever
20 appealed or was ever appealed or not within the
21 appeal period, how can you rely on a report that now
22 we know in the face of it that it just omitted all
23 the information that you need that's essential to
24 make a decision. That's just not feasible.

25 And -- and certainly, the State should be

1 taking a look at that and saying, well, wait a
2 minute, you didn't disclose this and we were relying
3 on you to disclose this. The State didn't conduct
4 that study. The employer paid for someone to
5 conduct that study. Those people sat there --

6 **CHAIRMAN GIOVANNI:** Please conclude.

7 **MR. BLANCETT-MADDOCK:** -- and they denied
8 these things in the hearings, saying there's no --
9 nothing on the property, and then they went up
10 against experts and -- and Hawaiians who said the
11 contrary.

12 So the bottom line here is it can't -- I
13 would like to submit to this Commission that it
14 can't move forward, period, under the first
15 condition, that it hasn't met the 22 units that are
16 required in the first condition. And under the
17 strict enforcement of the terms of that condition,
18 which are allowable, A and B were -- I don't care
19 about substantial compliance if it didn't meet those
20 first two conditions in the first -- under an
21 obligation not to move forward. Let them build the
22 22 units.

23 Another thing -- oh, this came to mind. I
24 want to get this on the record. They mentioned that
25 they're going to use affordable housing --

1 **CHAIRMAN GIOVANNI:** You're abusing your --
2 you're abusing your opportunity here.

3 **MR. BLANCETT-MADDOCK:** Let me just point
4 this out, though. Sale of lots for -- sale of lots
5 for housing --

6 **CHAIRMAN GIOVANNI:** We're in recess. Five
7 minutes.

8 **(WHEREUPON, a recess was taken from 1:33**
9 **p.m. to 1:37 p.m.)**

10 **CHAIRMAN GIOVANNI:** Okay. Back on the
11 record.

12 Let me reassert the privilege the
13 community has. At any time, you can put in -- we
14 welcome your comments, whether they be argumentative
15 or otherwise, in writing. You want us to see them?
16 You want us to digest them? Give them to us in
17 writing. It's more effective. But you do have the
18 opportunity two times today to present your
19 testimony. Hopefully, it's not redundant and we can
20 make the best use of time. But please respect the
21 time that I give you so that we can all participate
22 in this process.

23 Seeing that the witness has not returned
24 for questioning, we will now proceed to number two.

25 **MS. KWAN:** Next on the list I have Diane

1 Blancett-Maddock.

2 **CHAIRMAN GIOVANNI:** Diane, please, you're
3 still under oath. You have a minute and a half.

4 **MS. BLANCETT-MADDOCK:** Aloha. My name's
5 Diane Blancett-Maddock. I just wanted to quickly
6 say two things. I wanted to clarify, the 450 units
7 that the -- the landowner's proposing in his current
8 project application to the County for time extension
9 of the 450 units, at least 200 of them are
10 designated for sale and for short-term rentals. So
11 out of these 450, at least 200 are not even going to
12 be eligible for any affordable housing units.

13 And the last time extension was placed in
14 2002, before the County ordinance, and it had -- it
15 was a Sixth Amendment, and it had stated that they
16 had five years to complete the project, and that
17 would have taken up to 2007, so we're already way,
18 way, way past that.

19 And the other comment that someone made
20 about the project being mostly completed, if it was
21 mostly completed we wouldn't be -- it wouldn't need
22 a time extension because the project would be
23 ongoing if they hadn't abandoned what they were
24 doing from the 2007. Thank you.

25 **CHAIRMAN GIOVANNI:** Thank you.

1 Any questions from the Petitioner?

2 **MR. WHEELLOCK:** Richard Wheelock. We have
3 never represented we're going to do short-term
4 rentals. We have no intention to do short-term
5 rentals.

6 **MS. BLANCETT-MADDOCK:** Well, excuse me.
7 Page 46 from your petition to the County states that
8 you're going -- that you're eligible for over 200
9 short-term rentals on the application to the County
10 --

11 **CHAIRMAN GIOVANNI:** This is not the time
12 and place to debate that issue.

13 **MS. BLANCETT-MADDOCK:** Sorry.

14 **CHAIRMAN GIOVANNI:** So both of your
15 positions are on record. Thank you.

16 So County, any questions?

17 **MS. AHN:** Michelle Ahn, no questions.

18 **CHAIRMAN GIOVANNI:** State?

19 **MS. KATO:** Alison Kato, no questions.

20 **CHAIRMAN GIOVANNI:** Commissioners?

21 Thank you.

22 Next?

23 **MS. KWAN:** Cheryl Tanguay.

24 **CHAIRMAN GIOVANNI:** Ms. Tanguay, did you
25 testify this morning? Okay. I'll have to swear you

1 in. So please state your name and address, but do
2 you swear that the testimony you're about to give
3 will be the truth?

4 **MS. TANGUAY:** Yes. Cheryl Tanguay.

5 **CHAIRMAN GIOVANNI:** Your address?

6 **MS. TANGUAY:** 76-4378 Lalani Street. My
7 testimony will be true.

8 **CHAIRMAN GIOVANNI:** Please proceed. You
9 have a minute and a half.

10 **MS. TANGUAY:** I -- I submitted some
11 written testimony --

12 **CHAIRMAN GIOVANNI:** Thank you.

13 **MS. TANGUAY:** -- and I want to direct all
14 of your attention to it. Because what I'm concerned
15 about is in all the meetings I have attended, I've
16 noticed that the developer has some shortfall that
17 never seems to get fulfilled.

18 In the Leeward Commission meeting last
19 December of '22, the Commissioners asked the
20 developer for an overlay because at that point we
21 were discussing the antiquities on the site. And
22 the developer had his complete layout of 450 units
23 with no respect to any of the antiquities and was
24 asked to produce an overlay which he still has not.
25 I would love to see that because, again, when the

1 Cultural Resources Commission comes back and states
2 that the property should be undeveloped in
3 perpetuity, I think we have to respect that.

4 There's -- we are not just talking about
5 affordable housing. We are talking about a long-
6 term effect that whatever this development does is
7 going to change forever in Kona. I would like to
8 point out, too, that previous -- previously, the
9 developer was calling the development the Kona
10 Villages at Kona Vista. And suddenly the name
11 became, obviously, in recognition of the specialness
12 of the site, Royal Vistas.

13 So right there, I think the developer has
14 conceded that there's something special about this
15 site.

16 **CHAIRMAN GIOVANNI:** Please conclude your
17 remarks.

18 **MS. TANGUAY:** And to that, that is my
19 point. I would like very much for somebody to
20 follow up. I have been on the -- I have been in
21 attendance at all of these meetings, the PONC
22 meetings, and I am part of the Kona Community Plan
23 Community Representative for its revision.

24 **CHAIRMAN GIOVANNI:** Thank you. Please
25 stand by for questions.

1 Petitioner?

2 **MR. ARAI:** Daryn Arai, no questions.

3 **CHAIRMAN GIOVANNI:** Thank you.

4 County?

5 **MS. AHN:** Michelle Ahn, no questions.

6 **CHAIRMAN GIOVANNI:** State?

7 **MS. KATO:** Alison Kato, no questions.

8 **CHAIRMAN GIOVANNI:** Thank you.

9 Commissioners? Thank you.

10 And thank you for your time today.

11 Next?

12 **MS. KWAN:** Next we have Joel Gimpel.

13 **CHAIRMAN GIOVANNI:** Mr. Gimpel, you're
14 still under oath, and I'm speaking as loud as I can
15 into the microphone, and I know you'll do the same.

16 **MR. GIMPEL:** I'll speak right into the
17 microphone like most of us don't.

18 Pursuant to an article in today's West
19 Hawaii Today Newspaper, Kona Three's 2023 annual
20 report submitted to this body, the Land Use
21 Commission, last week specifies that it has agreed
22 with the Ahai Group -- Makani Maeva is the person's
23 name -- to provide 67 affordable housing units. But
24 that group denies any relationship and that there is
25 no agreement to satisfy the affordable housing

1 requirements with Kona Vistas in any way.

2 Specifically, the article quotes Mr. (sic)
3 Maeva. Kona Three approached us for 67 affordable
4 housing credits, but at the time we didn't know what
5 project they were intending to use the credits for.
6 When we understood the intention was to use the
7 credits for a controversial project, Kona Vistas, we
8 made it clear we have another project in the works,
9 Kuakini Heights, and we could not be involved in a
10 politically charged project. We have no
11 relationship with Kona Three. We have no commitment
12 to sell Kona Three affordable housing credits.
13 We're simply trying to get approval for our 100-unit
14 Kuakini Heights project which is a hundred percent
15 affordable for 61 years. I question why the
16 misunderstanding. What is the problem here? There
17 must be some sort of a miscommunication. Thank you.

18 **CHAIRMAN GIOVANNI:** Thank you.

19 Petitioner, any comment or questions?

20 **MR. ARAI:** No questions.

21 **CHAIRMAN GIOVANNI:** Thank you.

22 County?

23 **MS. AHN:** Michelle Ahn, no questions.

24 **CHAIRMAN GIOVANNI:** Thank you.

25 State?

1 **MS. KATO:** Alison Kato, no questions.

2 **CHAIRMAN GIOVANNI:** Commissioners?

3 Thank you, Mr. Gimpel.

4 **MR. GIMPEL:** Thank you.

5 **CHAIRMAN GIOVANNI:** Next?

6 **MS. KWAN:** Up next we have Renee Inaba.

7 **CHAIRMAN GIOVANNI:** Ms. Inaba, welcome
8 back. You're still under oath. Please proceed.
9 You have one and a half minutes.

10 **MS. INABA:** Thank you. I'll start now.
11 Okay. I'm going to go kind of quickly because a
12 minute and a half is fast. A couple of things, it
13 seems like so many traunches of activity with this,
14 right? Leeward Planning, Cultural Resources, PONC,
15 and so on and so forth, you know, and it all has to
16 coalesce at some point.

17 It's almost like I wish we could put
18 something in the middle that was the brain trust so
19 you guys had the benefit of all of those things. So
20 I would just ask you to go back and look at the
21 records on things like that, the different
22 organizations committees and stuff. I'm just trying
23 to talk fast, guys. Sorry.

24 It was also my understanding that the
25 developer did plan to use short-term vacation

1 rentals. I understand 450 units will be thousands
2 more cars on our roads every day, in areas where
3 Department of Transportation needs to look at the
4 lay of the highways. Grade and curvature are really
5 dangerous and were done improperly, and people will
6 die. So it's kind of like you may rue the day you
7 put a thousand more cars easily onto the highway.

8 The traffic study that was done in 2021,
9 y'all remember COVID, right? So traffic study done
10 in 2021 really doesn't show what I think Mark Powell
11 showed with the picture of all the traffic. And we
12 all know that that's a problem.

13 Just quick, please read the articles in
14 West Hawaii Today. There was one on the 29th of
15 January and then one that came in today. It's just
16 so much you have to be careful of. I'm not saying
17 anybody's doing this on purpose, but you know, if it
18 looks like subterfuge, we just got to make sure
19 we're getting to the facts and the details of things
20 and getting to the real nut of the issues.

21 The environmental assessment study has a
22 lot of questions. It was big. It was thick. Most
23 of us read it and we know that there's lots of holes
24 in that. So just to say it was big and it was
25 thick, and that's impressive because you can use it

1 as a giant paperweight doesn't really help in this
2 case.

3 Affordable housing never really has worked
4 in Hawaii, though, really either, and so the problem
5 is what is it. Is it just kind of a matter, I
6 wonder --

7 **CHAIRMAN GIOVANNI:** Please summarize.

8 **MS. INABA:** Sure. Short-term vacation
9 rentals. Look what happened in Maui after the fire.
10 They had to put people into the places that normally
11 are for short-term vacation rentals. I think we're
12 just using up too much of our resources in Hawaii,
13 period, with short-term vacation rentals. And
14 affordable housing, you show me an example when it
15 really, really worked in Hawaii. I wish it did
16 because I think we need to do better. Thank you for
17 your time.

18 **CHAIRMAN GIOVANNI:** Thank you. Please
19 stand by.

20 Questions, Petitioner?

21 **MR. ARAI:** Daryn Arai. Not a question but
22 just a clarifying statement due to reference twice
23 already to short-term vacation rental, Petitioner is
24 not proposing short-term vacation rentals. The
25 citation in the application was simply

1 acknowledgement acknowledging the law.

2 The law does allow short-term vacation
3 rentals in a project with this type of zoning. The
4 developer cannot prohibit it. That would be
5 contractual zoning, and that's prohibited by law.
6 Just to clarify. Thank you.

7 **CHAIRMAN GIOVANNI:** Thank you.

8 County?

9 **MS. AHN:** Michelle Ahn. We have no
10 questions.

11 **CHAIRMAN GIOVANNI:** State?

12 **MS. KATO:** Alison Kato, no questions.

13 **CHAIRMAN GIOVANNI:** Commissioners?

14 Thank you, Ms. Inaba.

15 **MS. INABA:** Question, would you guys like
16 a copy of the letter concerning --

17 **CHAIRMAN GIOVANNI:** You can submit it --

18 **MS. INABA:** -- the credits?

19 **CHAIRMAN GIOVANNI:** You -- you can submit
20 it if you choose.

21 **MS. INABA:** Yeah. I'll just hand it to --

22 **CHAIRMAN GIOVANNI:** No. Submit it in
23 writing.

24 **MS. INABA:** This is the letter about the
25 credits for affordable housing, just the one that

1 Joel referenced.

2 **CHAIRMAN GIOVANNI:** Okay.

3 Who's next?

4 **MS. KWAN:** Up next we have John Powell.

5 **CHAIRMAN GIOVANNI:** John Powell. Mr.

6 Powell.

7 **MR. POWELL:** Well, we've heard several
8 things, but the community is the one that did the
9 environmental work. The developers' environmental
10 work just scraped over everything. We, the group,
11 people, locals that knew the history of the land, we
12 got into it and dug deep and found all these
13 archeological features that were pre and post
14 contact period.

15 If you go back to the Cultural Resources
16 Committee meeting, please, listen to it. It's a
17 long meeting. But Mr. Stone put it where it
18 belonged. You've already heard that these are going
19 to be like condos, 40-foot-plus tall, a lot of them,
20 so you're going to have some issues there.

21 You already said because of engineering
22 and grading, they don't know how many units they can
23 build. Well, with that type of structure in this
24 narrow, basically, property, with the two drainage
25 areas, it's going to impossible to get that many

1 units. But they're telling you that they'll be
2 affordable.

3 Well, what is affordable? Okay. So if
4 the rent is so much on the rental units, people can
5 barely afford that, and then they drum the monthly
6 condo fees on top of that, they can't afford it. So
7 whatever the affordable number is has to be rent and
8 the condo fees.

9 DOT has no plans on the highway -- to
10 improve the highway. The jobs you heard 40 years
11 ago doesn't work today. Yes, 40 years ago, the
12 developments, they hopefully were going to be
13 businesses and stores, they're all this way.
14 They're all north. This is where the affordable
15 housing should be so people don't have to commute to
16 buy bread, groceries, and go to work. You can walk
17 a bull in town. Thank you.

18 **CHAIRMAN GIOVANNI:** Please stand by.

19 Any questions for this witness?

20 **MR. ARAI:** Daryn Arai, no questions.

21 **CHAIRMAN GIOVANNI:** County?

22 **MS. AHN:** Michelle Ahn, no questions --

23 **CHAIRMAN GIOVANNI:** Thank you.

24 State?

25 **MS. KATO:** Alison Kato, no questions.

1 **CHAIRMAN GIOVANNI:** Commissioners?

2 Thank you.

3 So I have a sense that there's still a
4 little confusion about what is within the province
5 of the Land Use Commission. Many of the concerns
6 that have been expressed by the community are well
7 taken, but they need to be addressed, if you'd
8 listen to the process that's ongoing, with the
9 Leeward Planning Commission and the County. That's
10 where the action is.

11 It's not like the -- the Land Use
12 Commission can get involved in that level of detail
13 at this point in time on this project. So thank you
14 for bringing your concerns forward, but if you want
15 to act on them, you've got to go a little different
16 direction than us.

17 Next?

18 **MS. KWAN:** Hiram Rivera.

19 **CHAIRMAN GIOVANNI:** Mr. Rivera, is he
20 still here?

21 **MS. KWAN:** No.

22 **CHAIRMAN GIOVANNI:** I think he left.

23 Next?

24 **MS. KWAN:** Craig Bo Kahui.

25 **CHAIRMAN GIOVANNI:** Kahui. Mr. Kahui, are

1 you still here? He left?

2 **MS. KWAN:** Mark Van Pernis.

3 **CHAIRMAN GIOVANNI:** Mr. Van Pernis. Sir,
4 you're still under oath. Please proceed.

5 **MR. VAN PERNIS:** Yes, I'm still under
6 oath. You mentioned that there was some disclosure
7 about the conflict of interest. I obviously didn't
8 see it. I assume it's an opinion from the county
9 that Mr. Kern does not have a conflict. It's never
10 been presented to the Board of Ethics or anybody
11 else, but the staff also has that conflict of
12 interest.

13 The law is that if the principal has a
14 conflict of interest, the staff does, too. So I
15 suggest to the State an objective review by the
16 County is done. On behalf of the County, distribute
17 it to everybody who is making decisions or providing
18 input. Mr. Kern has publicly published his support
19 for this project, his prior client. And we have a
20 40-year-old or 30-year-old recommendations which are
21 not relevant today.

22 Thirty years ago, Kuakini was reversible.
23 Now it's back to back for miles, stop and go, how
24 the DOT could possibly say that's acceptable that
25 can handle that number of cars.

1 Now, let me address the questions that
2 were represented here. In my 45 years of law
3 practice, I've represented many developers in this
4 county. Here's what will happen. You know this is
5 an LLC. That means limited liability company. It
6 means no personal liability to the individuals.
7 They will not obligate themselves as individuals,
8 but the LLC obligate itself, for instance, for
9 affordable housing.

10 And then without building the affordable
11 housing and without doing off-site infrastructure
12 requirements such as the stacking lane, dangerous to
13 this development entrance, they will declare
14 bankruptcy after selling the (inaudible) money and
15 distributing it to the partners that will then file
16 bankruptcy. What's going to happen time and time
17 again in this county, and that's what will happen
18 here all the affordable housing is useless to these
19 guys unless you make whatever decision that benefits
20 them financially contingent upon that being built by
21 a certain date wiht a sunset clause --

22 **CHAIRMAN GIOVANNI:** Mr. Van Pernis, I have
23 to ask you to conclude.

24 **MR. VAN PERNIS:** I have one other thing.
25 They can -- they -- Mr. Kern has said we can satisfy

1 affordable housing, but buy land. Get some cheap
2 land, ag lands, in Hilo or Puna, and give it to the
3 County and you're done. So the County has lots of
4 land as a result of this but no affordable housing
5 for a while. So all you can go buy affordable
6 housing that's useless unless you can get small
7 cabanas or it's contingent.

8 **CHAIRMAN GIOVANNI:** Please conclude.

9 **MR. VAN PERNIS:** So let's cut the B.S. and
10 get down to reality. One last thing, Mr. Kern
11 raises specific performance there is none available
12 here because you have no promises at -- I promise if
13 I develop. It's been sold three or four times.
14 They're going to get the zoning change intelligible
15 again. So --

16 **CHAIRMAN GIOVANNI:** Please stand by for
17 questions.

18 Mr. Arai?

19 **MR. ARAI:** Daryn Arai, no questions.

20 **CHAIRMAN GIOVANNI:** County?

21 **MS. AHN:** Michelle Ahn. I just would like
22 to address Mr. Van Pernis' comment or implication
23 that the entire Planning Department of the County of
24 Hawaii might be being directed by Mr. Kern or
25 thinking that, you know, they have to approve this

1 because Director Kern had been involved in the past.

2 But if you look at what this project is
3 and where it is proposed to be, it is consistent
4 with the Hawaii General Plan. It's consistent with
5 the Kona Community Development Plan. It is in the
6 Kona Urban Area on our Land Use maps. So this
7 project, the multi-family portion of this project is
8 an appropriate use of this land.

9 So you know, the entire Planning
10 Department of the County of Hawaii is not making
11 this recommendation just because Director Kern had
12 been involved in the past. As stated previously, he
13 has been walled off from this process. He was not
14 involved in the recommendations that emerged from
15 the Planning Department to the Leeward Planning
16 Commission. And, again, this process is ongoing.
17 The Leeward Planning Commission is reviewing the
18 recommendations, and then it goes before the County
19 Council. So that should, hopefully, address your
20 concerns that Director Kern's influence might have
21 somehow affected this process.

22 **CHAIRMAN GIOVANNI:** Thank you for your
23 comment --

24 **MR. VAN PERNIS:** May I respond?

25 **CHAIRMAN GIOVANNI:** No. I think she

1 responded --

2 **MR. VAN PERNIS:** She said it was a
3 question.

4 **CHAIRMAN GIOVANNI:** She said she had a
5 comment.

6 **MR. VAN PERNIS:** And said statement or a
7 question.

8 **CHAIRMAN GIOVANNI:** No. We'll proceed.
9 State, do you have any questions for this
10 witness?

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

12 **MR. VAN PERNIS:** The Planning Commission
13 is stepping on our Planning Director --

14 **CHAIRMAN GIOVANNI:** Sir --

15 **MR. VAN PERNIS:** -- their --

16 **CHAIRMAN GIOVANNI:** Sir, your time is up.
17 Thank you.

18 Next?

19 **MS. KWAN:** Next we have Janice Kerr.

20 **CHAIRMAN GIOVANNI:** Ms. Kerr. You're
21 still under oath. Please proceed. Thank you.

22 **MS. KERR:** Yes. Okay. So I just want to
23 pick up real quick on that last comment about the
24 Planning Commission has determined that its
25 appropriate use of the land being urban zoned. It's

1 a flood plain. It's one of very few flood plains on
2 the western side of this island. It's important.
3 It was a flood plain 40 years ago. It will be a
4 flood plain 40 years from now. It will be a flood
5 plain when we're all gone and all the houses that
6 are built on it are gone.

7 So I question how they could determine
8 that was an appropriate -- because I checked with
9 the County Engineering Department, and they didn't
10 think it was appropriate. But anyway, I want to go
11 back just real quick to the affordable housing.

12 I'd like to know what the price is for an
13 affordable house with a view to the ocean from a
14 flood plain? Can I get an answer to that?

15 **CHAIRMAN GIOVANNI:** I think you addressed
16 it in rhetorical terms, and that is a question that
17 would be taken up by the County.

18 **MS. KERR:** Okay. Thank you.

19 I'm glad that you referred to Zendo Kern
20 being walled off because I've seen him at County
21 open -- County Planning Department open houses,
22 engaging with public and chit-chatting about this
23 development and others, so I don't know when he was
24 walled off. I've also seen him at County Council
25 meetings. So hopefully, the -- what he did prior to

1 being walled off isn't still influencing what's
2 going on.

3 And finally, I asked the State earlier if
4 they had done their own work on looking at the
5 traffic situation by actually going to Lako
6 intersection and observing the traffic, and I was
7 told no, they don't. They hire that out. So I
8 assume that the developer did that. And, as one of
9 the prior testifiers noted, it was during the
10 pandemic, and there was no traffic. So they're
11 relying on that without sending their own people
12 out. I think the State should take a look at the
13 intersection of Lako and Queen K.

14 And finally, you know, when somebody buys
15 something, whether it's a developer or -- I go to
16 Macy's and get a pair of shoes, it's buyer beware,
17 you know? So they had a lot to be aware of. There
18 have been a lot of people that have pointed out a
19 lot of things they should have been aware of, and if
20 it doesn't work to their satisfaction, then that's
21 not anybody else's fault but their own. Thank you.

22 **CHAIRMAN GIOVANNI:** Thank you. Please
23 stand by. Please stand by for questions.

24 **MR. ARAI:** Daryn Arai, no questions of
25 this testifier.

1 **CHAIRMAN GIOVANNI:** Thank you.

2 County?

3 **MS. AHN:** Michelle Ahn, no questions.

4 **CHAIRMAN GIOVANNI:** Thank you.

5 State?

6 **MS. KATO:** Alison Kato, no questions.

7 **CHAIRMAN GIOVANNI:** Commissioners?

8 So Ms. Kerr, I have a question. So you
9 heard in the exchange between the State, Ms.
10 Balassiano, and myself about the TIAR, the traffic
11 study that was done by a qualified expert, and I
12 think it was expressed that there are issues that
13 the Department of Transportation found; they have
14 not accepted it as-is. Have you read the TIAR?
15 Have you reviewed it?

16 **MS. KERR:** No, I haven't. I just chatted
17 with her earlier at the break, and she indicated
18 that it was going to be revisited. But I was not
19 clear on that from what she had said during her
20 initial --

21 **CHAIRMAN GIOVANNI:** I'm wondering because
22 you were very critical of it, but you haven't even
23 read it. So just because it was done at a certain
24 year when we had COVID --

25 **MS. KERR:** Right. I also --

1 **CHAIRMAN GIOVANNI:** Typically, that's
2 taken into account in these types of studies.

3 **MS. KERR:** Okay. Good. Well, that's good
4 to know. Thank you.

5 **CHAIRMAN GIOVANNI:** Okay. Thank you.
6 Nothing further.

7 Who -- anybody else?

8 **MS. KWAN:** We have up next -- up last we
9 have Doug Cichowicz.

10 **CHAIRMAN GIOVANNI:** Mr. Cichowicz, I'm
11 sure we've mispronounced that. But please state
12 your name again for the record. You're still under
13 oath, and you have a minute and a half.

14 **MR. CICHOWICZ:** Doug Cichowicz.

15 **CHAIRMAN GIOVANNI:** Cichowicz. Thank you.

16 **MR. CICHOWICZ:** Just quick, with the State
17 and the County, when it comes to an environmental
18 and land use impact statement, I was just curious
19 also if they do their own research or if it's
20 outsourced, and if it's on record to where you can
21 find out what company or who has done the research.

22 And then also, a project like this one
23 there's environmental issues, is it mandatory to
24 complete all infrastructure and environmental work
25 before any development is done? Whether that's

1 through the County or the State. I'm not sure who
2 would answer that.

3 And also, I think in the State articles,
4 it showed that this development would be tied into
5 the sewer system, which is -- my understanding is
6 it's inadequate right now for the amount of houses
7 that are tied into the sewer system. So it
8 drastically needs an upgrade.

9 And also, with the downstream flooding
10 that may occur, who would answer to being
11 responsible? Would that be the State, the County,
12 the developers? So you know, just questions for the
13 State and the County. And also, it sounded earlier
14 like the County is ill prepared for any issues that
15 may occur through the Planning Department. It would
16 be nice to know if they -- because a lot of the
17 questions brought up they couldn't exactly address
18 how it would be handled. That's all.

19 **CHAIRMAN GIOVANNI:** So a couple things
20 that I might suggest. So Hawaii Revised Statute 343
21 is the statute that defines what is required for
22 environmental review. I suggest you familiarize
23 yourself with that, and that might answer a lot of
24 your questions. HRS 343.

25 And as far as preexisting environmental

1 studies that have been done, they're all published,
2 and they're available at the OEQC, State website for
3 OEQC. Office of Environmental Quality Control.

4 Katia?

5 **MS. BALASSIANO:** Hello. Katia Balassiano,
6 OPSD. OEQC doesn't exist any longer. It's the
7 Environmental Review Program that is part of OPSD,
8 but you are entirely correct, all environmental
9 assessments are published online and are available,
10 and they do specify the consultant that prepared a
11 particular component.

12 So a traffic consultant prepares a traffic
13 component. A biological person works on, you know,
14 flora and fauna. And all of the names of who
15 prepared what is contained within those documents.
16 I can --

17 **CHAIRMAN GIOVANNI:** State that website
18 again.

19 **MS. BALASSIANO:** Yeah. I can give you my
20 card, and it contains that information on it.

21 **MR. CICHOWICZ:** That when the State hires
22 them or the County hires them, are they from this
23 county?

24 **CHAIRMAN GIOVANNI:** Wait a minute. No.
25 Just follow up independently with that inquiry.

1 This is not the place to do that Q and A.

2 So Mr. Arai, do you have any questions for
3 this witness?

4 **MR. ARAI:** Daryn Arai, no questions.

5 **CHAIRMAN GIOVANNI:** County?

6 **MS. AHN:** Michelle Ahn, no questions.

7 **CHAIRMAN GIOVANNI:** State?

8 **MS. KATO:** No questions, thank you.

9 **CHAIRMAN GIOVANNI:** Commissioners?

10 Okay. Nothing further. Thank you very
11 much.

12 Anybody else? Okay. Good.

13 Okay. That's it. Commissioners, this is
14 a status report. We are not required to take any
15 action at this time. And if no action is taken, the
16 requirement for continual annual status reports will
17 remain in effect; however, if the Commission feels
18 that its concerns or its questions have not been
19 adequately addressed, based on the comments and
20 responses provided by the Petitioner, I will
21 entertain a motion that either the Petitioner's
22 status report has not sufficiently addressed the
23 Commission's concerns and that further meetings or
24 status update are necessary to provide the
25 opportunity to do so at a future date, as determined

1 by the LUC staff.

2 Or if there's reason to believe that the
3 Petitioner will not adhere to the conditions set
4 forth in the original Decision and Order, the staff
5 may order, may move forward with a formal order to
6 show cause proceeding. I just want to make sure
7 everybody understands those options.

8 So Commissioners, the Chair will entertain
9 any discussions that you'd like or comments that
10 you'd like to make on the record on this matter at
11 this time.

12 Commissioner Ohigashi?

13 **COMMISSIONER OHIGASHI:** I hate to say
14 this, but I -- since I'm a short-timer, so what I'm
15 going to say is this. I think that -- we've got as
16 much information as we can get from the Petitioner.
17 And I think that these documents seem to provide at
18 least an understanding of what's going on. I'm not
19 saying that it's -- these are good things or bad
20 things. I'm saying that I think they've met their
21 burden to provide us the status.

22 And I believe that if we -- that if they
23 appear before the Leeward Planning Commission soon
24 and they get a result from that, I believe that the
25 Commission should take a look at whether or not they

1 would provide us a decent update on that status if
2 it doesn't fall within the year review.

3 That being said, I agree with everybody
4 here that there is a problem with this project, and
5 that it's too long in the making. And for whatever
6 reason it is, we're here now. I think that given
7 the fact that we have limited jurisdiction in this
8 matter, the Land Use Commission is not the available
9 venue for the public's concern and may not even be
10 the venue that the Petitioner is really looking at.

11 This project seems to be a County concern
12 and that the County will have to chart its course
13 and be responsible for its own constituents. I am
14 of the position that I think that a limited request
15 to keep us informed of any new facts concerning the
16 Planning Commission as well as the Council as well
17 as a yearly update should suffice, because I think
18 the County has heard what laymen, people who never
19 made the decision 40 years ago are concerned with
20 now. And that's the best I think that this Land Use
21 Commission can do.

22 So Mr. Chairman, to respond, I would -- I
23 would request on the record, rather than file a
24 motion, that the Petitioner agree to provide
25 information concerning the results of any kind of

1 Planning Commission activity as well as the Council
2 activity, if it occurs prior to the year-end report.

3 And if that is okay, I'm going to ask that the --

4 I'm going to suggest to the body that we --

5 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi,
6 express your request directly to the Petitioner.

7 What would you like them to do?

8 **COMMISSIONER OHIGASHI:** I would like you
9 to provide, within one week of the decisions of the
10 Planning Commission and the Council, an updated
11 report as to what the status is on that.

12 **MR. ARAI:** Daryn Arai. Petitioner has no
13 objection to that request.

14 **COMMISSIONER OHIGASHI:** In addition to the
15 yearly report, annual report.

16 **MR. ARAI:** Understood. Thank you.

17 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi,
18 may I amend that slightly?

19 **COMMISSIONER OHIGASHI:** You can ask them
20 whatever you want.

21 **CHAIRMAN GIOVANNI:** Yeah. And so I do
22 think that the primary body that has jurisdiction
23 here for settling a lot of the issues is the County
24 and the Leeward Planning Commission, and it looks
25 like everything's headed that way, and that's good.

1 But there are also issues that the State brought
2 forward that are still, in my mind, unresolved. For
3 example, the DOT's position on the traffic and
4 whether or not there's still concerns or maybe even
5 renewed concerns about the historical aspects of the
6 property, whatever the State feels there.

7 So let me amend that request to be that as
8 those things are worked out between the Petitioner
9 and the State, that we also be informed within a
10 week of any significant agreements or decisions that
11 are made between those entities. Is that agreeable
12 to the Petitioner as well?

13 **MR. ARAI:** Daryn Arai for the Petitioner.
14 No objections. One question was the best way of
15 communicating that it --

16 **CHAIRMAN GIOVANNI:** Directly to staff, by
17 letter, in writing.

18 **MR. ARAI:** Understood. Thank you.

19 **CHAIRMAN GIOVANNI:** Okay. Any further
20 discussion, Commissioners, on the adequacy of
21 today's status report?

22 Commissioner Okuda?

23 **COMMISSIONER OKUDA:** Chair, is there a
24 motion?

25 **CHAIRMAN GIOVANNI:** It's not a motion. It

1 was a statement by Commissioner Ohigashi that he
2 felt it was sufficient in what we heard today. You
3 can concur with that or you can make a motion.

4 **COMMISSIONER OKUDA:** Yeah. If a motion is
5 necessary, I would make a motion, you know, to do
6 exactly what you and Commissioner Ohigashi stated.
7 If no motion is necessary, then I agree with the
8 request. I think it's a way forward. And if
9 certain things are brought before us -- well, let me
10 first say, I agree with the Chair and Commissioner
11 Ohigashi. Because of the DW Aina Le'a versus Bridge
12 Aina Le'a case, we have no real enforcement powers
13 at this point in time.

14 But if for some reason the Petitioner
15 brings a motion to amend, for whatever reason, the
16 existing D and O, at that point in time, we would be
17 duty bound to look at the adequacy of the 343
18 environmental impact statements or environmental
19 assessments. We'd be required by the Hawaii Supreme
20 Court to look at whether or not an adequate Ka
21 Pa'akai versus Land Use Commission analysis has been
22 done, and anything else that might be relevant at
23 that point in time.

24 But at this point in time, for us to
25 engage in those items would be premature and

1 probably a waste of -- well, it wouldn't be the best
2 use of everyone's time, including the public's time.

3 **CHAIRMAN GIOVANNI:** Thank you,
4 Commissioner Okuda.

5 A motion is not required. We have
6 informally requested and received the assurance of
7 the parties, the Petitioner that they would so
8 respond to the interest of Commissioner Ohigashi in
9 their dealings with the County and my interest in
10 your dealings with the State. So we will take that
11 on the record as face value representations, and
12 that's fine. We don't need to put a motion in
13 place.

14 Commissioner Carr Smith?

15 **COMMISSIONER CARR SMITH:** Yeah, just
16 briefly. I wanted to go on the record and state
17 that I do feel that the Petitioner has met providing
18 us with the status in progress report as outlined in
19 the agenda and trying to keep it simple. I support
20 that.

21 **CHAIRMAN GIOVANNI:** Thank you.

22 Anybody else?

23 Commissioner Okuda?

24 **COMMISSIONER OKUDA:** I'm sorry. If I
25 could add one more thing. I would encourage anyone

1 who has participated in this process, if anyone here
2 believes there should be additional items placed in
3 the record, I would encourage everyone to submit it
4 to the Land Use Commission so that there can be a
5 complete record, because as a practical matter, you
6 know, an issue regarding a project may come up five
7 years from now and nobody is going to have real
8 clarity of memory as far as what took place, but
9 things in writing are really important. So points
10 -- you know, we listen to all the points, and we
11 would encourage everyone to submit things in writing
12 so the record is really clear about what is really
13 the evidence that is being presented.

14 Thank you, Chair.

15 **CHAIRMAN GIOVANNI:** Thank you. I'll echo
16 that.

17 You know, there were a number of things
18 brought to the attention today, many of which came
19 from the community in their public testimony and in
20 their written testimony. And we do take that stuff
21 seriously, but this is not the time and place to get
22 into arguments or to get issues such as those
23 resolved.

24 It is a complicated process. Take it in a
25 positive way that your concerns have been heard and

1 they are on the record. And as the case goes
2 forward, that record is -- will always be there.

3 Any further business here, Commissioners?
4 Any further discussion? Going once. Thank you to
5 all the parties who have participated today. A
6 special thanks for the community members who chose
7 to come forward and speak.

8 This meeting is adjourned.

9 **(WHEREUPON, the meeting concluded.)**

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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 29th day of February, 2024.

A handwritten signature in black ink, appearing to be 'Jodi Dean', is written over a horizontal line.

Jodi Dean