

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3

4 ACTION

5 A89-649 LANAI RESORT PARTNERS)

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9 TRANSCRIPT OF PROCEEDINGS

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11 The above-entitled matter came on for a Public Hearing

12 at Hale Kupuna O Lana'i, 1144 Ilima Avenue, Lana'i

13 City, Hawai'i 96743 commencing at 10:30 a.m. on

14 January 8th, 2010.

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REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR

20 Certified Shorthand Reporter

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1 A P P E A R A N C E S

2 COMMISSIONERS:

KYLE CHOCK

3 LISA M. JUDGE

DUANE KANUHA (Chairman)

4 NORMAND LEZY

RANSOM PILTZ

5 REUBEN WONG

6 EXECUTIVE OFFICER: ORLANDO DAVIDSON

ACTING CHIEF CLERK: RILEY HAKODA

7 STAFF PLANNERS: SCOTT DERRICKSON

8 DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

9 AUDIO TECHNICIAN: WALTER MENCHING

10

11 Docket No. A89-649 Lanai Resort Partners

12 For the Petitioner: BRUCE LAMON, ESQ.

GARY YOKOYAMA, ESQ.

13

14 For the County: JANE LOVELL, ESQ.

Deputy Corporation Counsel

15

16 For the State: BRYAN YEE, ESQ.

Deputy Attorney General

17 ABBEY MAYER,

Office of Planning

18

19 For the Intervenor LSG: ALAN MURAKAMI, ESQ.

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1 CHAIRMAN PILTZ: Good morning. Thank you
2 for coming to the meeting of the Land Use Commission
3 today. Today's date is January 8th, 2010. We have
4 one more commissioner coming. We have a quorum.
5 We'll get started. We have some things we have to get
6 started with.

7 We have meeting minutes of December 12. Are
8 there any corrections? All those in favor of
9 accepting?

10 COMMISSIONERS: Aye.

11 CHAIRMAN PILTZ: Any no's? Thank you. We
12 have a tentative meeting schedule. Dan?

13 MR. DAVIDSON: Thank you, Chair. You have
14 the tentative meeting schedule. It's filled for about
15 the next three months. We're going to be really busy.
16 Please contact Riley or me if you have any questions
17 or scheduling conflicts. Thank you.

18 COMMISSIONER KANUHA: Mr. Chairman.

19 CHAIRMAN PILTZ: Yes.

20 COMMISSIONER KANUHA: Dan, I notice on the
21 tentative schedule it's a different format. It has
22 these blocks 'yes' or 'no'. Do you want us to
23 indicate and give it back to you? How you want us to
24 do that?

25 MR. DAVIDSON: I think those are meant for

1 e-mail for return to Riley just for recordkeeping.

2 We're trying a new system. Is that right, Riley?

3 MR. HAKODA: Yes.

4 COMMISSIONER KANUHA: Thank you.

5 CHAIRMAN PILTZ: This is an action meeting
6 on docket No. A89-649 Lanai Resort Partners to
7 consider: Castle & Cooke Resorts, LLC's Motion for
8 Modification of Condition No. 10 and Dissolution of
9 1996 Cease and Desist Order.

10 And the Office of Planning's Motion to Amend
11 Findings of Facts, Conclusions of Law, Decision and
12 Order filed April 16, 1991 as Modified by its Revised
13 Motion to Amend Findings of Facts, Conclusions of Law
14 and Decision and Order filed on that date.

15 Recent filings on this docket are
16 December 15, 2009, the LUC received the Office of
17 Planning's Revised Motion to Amend Findings of Fact,
18 Conclusions of Law, Decision and Order dated April 16,
19 1991.

20 On December 22, 2009 the LUC received
21 Intervenor Lanaians for Sensible Growth Supplemental
22 Memorandum in Opposition to Petitioner Castle & Cooke
23 Resorts, LLC's Motion for Modification of Condition
24 No. 10 and Dissolution of 1996 Cease and Desist Order
25 filed on July 16, 2007.

1 On December 23, 2009 the LUC received
2 Intervenor Lanaians for Sensible Growth's Supplemental
3 Memorandum in Opposition to the State of Hawai'i,
4 Office of Planning's Revised Motion to Amend Findings
5 of Fact, Conclusions of Law, and Decision and Order
6 filed April 16, 1991.

7 Then on January 6, 2010 the LUC received
8 Castle & Cooke Resort, LLC's Supplemental Memorandum
9 in Support of Motion for Modification of No. 10,
10 Dissolution of 1996 Cease and Desist Order; and
11 Memorandum in Support of Motion.

12 Let me briefly describe our procedure for
13 today on this docket.

14 First, we will have the parties identify
15 themselves for the record. I will then call for those
16 individuals desiring to provide public testimony to
17 identify themselves. All such individuals will be
18 called in turn to our witness box where they will be
19 sworn in prior to their testimony. And because we
20 have so many people and our time is short, I'm going
21 to limit the testimony to three minutes.

22 After completion of the public testimony
23 portion of the proceedings the parties will provide
24 the Commission with presentations in the following
25 order:

1 We'll first hear from Lanai Resort Partners,
2 then the Office of Planning, the County of Maui and
3 the Intervenor Lanaians for Sensible Growth. Each
4 party will have 20 minutes to make their
5 presentations. The Commission will then conduct its
6 deliberations.

7 The Chair would also note the Commission
8 will take short breaks from time to time. I will also
9 anticipate that we will quit on the day no later than
10 1:45. In order to allow parties ample time to
11 concludes their presentations, public testifiers are
12 asked to avoid repetitive testimony and to be brief
13 and direct in their presentations.

14 Are there any questions on our procedures
15 for today? Would you identify yourselves, please.

16 MR. LAMON: Yes. Good morning,
17 Mr. Chairman and members of the Commission, Bruce
18 Lamon for Castle & Cooke Resorts, LLC, the successor
19 to the Petitioner in the case and one of the Movants
20 here today. With me at counsel table is Gary
21 Yokoyama, attorney for Castle & Cooke Resorts, LLC.

22 MR. YEE: Good morning. Deputy Attorney
23 General Bryan Yee on behalf of the Office of Planning.
24 With me today is Abbey Mayer from the Office of
25 Planning.

1 MR. MURAKAMI: Good morning, Mr. Chair.

2 Alan Murakami for Intervenor Lanaians for Sensible
3 Growth. I do have a couple concerns about the
4 procedure if this is appropriate to raise now.

5 CHAIRMAN PILTZ: Go ahead.

6 MR. MURAKAMI: Well, first I'm sure there's
7 some logistical problems. But the Office of
8 Planning's filed a revised motion which entails some
9 additional and different terms that they're asking
10 for. As I understand our presentation is limited to
11 20 minutes in response?

12 CHAIRMAN PILTZ: That's it. We have a
13 limited time because of the flight getting back to
14 O'ahu. The flight leaves at 3:30.

15 MR. MURAKAMI: I'd just like to beg leave to
16 be able to present some of the material that I have
17 presented in a PowerPoint.

18 CHAIRMAN PILTZ: We tried to accommodate
19 this meeting, come here because of the public interest
20 here. And we're doing the best that we can in order
21 to hear as many people as we can and hear their
22 concerns. Even with -- normally with public testimony
23 we let them go ahead, but because of the timing we
24 need to cut it short.

25 MR. MURAKAMI: Just for the record I'd like

1 to at least request 30 minutes given the new material
2 that has been made public since September. And the --
3 or October I should say with the Water Use and
4 Development Plan that dominated my submission as well
5 as the revised motion which is different from the
6 previous motion.

7 I think an additional 30 minutes for this
8 time, given the extent of travel that was encountered
9 for the Land Use Commission is warranted for the
10 critical nature of the resource we're talking about.

11 CHAIRMAN PILTZ: Well, let's see how we go.
12 It all depends on how our public testimony goes. And
13 those of you know that County of Maui, their deputy
14 Corp. Counsel is on the way. Like I say we also have
15 one of our Commissioners on her way. But we are
16 starting as soon as we can so that we can get public
17 testimony going.

18 MR. MURAKAMI: I understand, Mr. Chair. And
19 with all due deference I was wondering how many people
20 have signed up to testify.

21 MR. DAVIDSON: Fifteen right now.

22 MR. MURAKAMI: So I think on behalf of the
23 public --

24 CHAIRMAN PILTZ: Let's go ahead. And I'll
25 ask when we get through let's see what we got. Okay?

1 MR. MURAKAMI: All right.

2 CHAIRMAN PILTZ: I'll give you a leeway.
3 Please let's get started.

4 MR. MURAKAMI: Thank you.

5 CHAIRMAN PILTZ: First person signed up
6 Sally Kaye.

7 SALLY KAYE,
8 being first duly sworn to tell the truth, was examined
9 and testified as follows:

10 THE WITNESS: Good morning. My name is
11 Sally Kaye. I'm a resident of Lana'i, 511 Ilima
12 Street. Thank you for joining us this morning. I'm
13 here to speak against granting either of these
14 motions. The Petitioner's Motion to Modify Condition
15 10 filed on 7-10-07 should be denied as outdated and
16 based on inaccurate assertions.

17 In support of the replacement language
18 amending Condition 10 Petitioner contends it will
19 match groundwater restrictions to those imposed by
20 Maui County Code. So much of the code that defined
21 potable using a chloride level has since been
22 repealed.

23 Section 19-7085(c) says that: "No potable
24 water shall be drawn from the high level aquifer" but
25 does not include a chloride level. So the Petitioner

1 can no longer rely on language in the code to support
2 that part of the amendment.

3 The motion states that the Commission on
4 Water Resource Management found the sustainable yield
5 in the high level aquifer is 6 million gallons a day.
6 This needs clarification. The sustainable yield is
7 actually 3 million gallons per day per aquifer sector
8 with a cap of 2.7 million gallons per sector
9 withdrawal permitted.

10 Period 8 of 2009, 27 days, shows that
11 2 million gallons a day was drawn from one sector. As
12 the Water Use and Development Plan demonstrates all
13 but one well is in a single sector, the leeward.

14 Petitioner says it has developed a
15 comprehensive watershed stewardship plan. I would
16 submit this doesn't exist. I would ask them to
17 produce it. The Petitioner says it has planted a
18 thousand trees since 2001 which comes to about 142
19 trees per year.

20 What is the context for this? Are they
21 still alive? Are they healthy? Are they growing? Is
22 this a sufficient number?

23 Petitioner says it has commissioned a study
24 by Dr. James Juvik to conduct the Lanai Watershed Fog
25 Study. This study was completed in May of 2009 and

1 has not been publically released and doesn't address
2 recharge. And two years after the Petitioner relies
3 on seven years' worth of tree planting, Dr. Juvik
4 recommends at page 42 that "aggressive Cook Pine
5 reforestation" with sustained companion efforts for
6 native ecosystem restoration be conducted.

7 Because Petitioner can no longer rely on the
8 county definition I would recommend that the motion be
9 denied.

10 With respect to OP's Motion to Amend filed
11 on December 15 of '09 this motion should be denied on
12 procedural grounds as OP is not a petitioner pursuant
13 to 15-15-94 and can't provide adequate assurance of
14 satisfaction of conditions imposed by petitioner
15 pursuant to 15-15-90(e)(4).

16 Even if you reach the substance of this
17 motion it should be denied as irrelevant since it
18 suggests stalling this proceeding to gather
19 information already available.

20 The motion at 2 acknowledges that Maui
21 County has now deleted any definition of non-potable
22 water based on chloride levels.

23 And after arguing its 2007 motion that this
24 body should defer to reasonable standards established
25 by the county, it proceeds to suggest that the OP

1 somehow now has the authority to supersede the very
2 government body it formerly wanted this body to defer
3 to. It provides no citation to any legislative or
4 statutory authority that grants leave to the OP to
5 state any standards.

6 The memorandum at C suggests that if
7 chloride levels fall far below --

8 CHAIRMAN PILTZ: Can you wrap it up, please.

9 MS. KAYE: Okay. I think the three
10 submissions are already in the Water Use and
11 Development Plan. This would stall this proceeding
12 for two years unnecessarily so. And it should be
13 denied as not supported by any legal authority because
14 it's nothing more than a stalling tactic.

15 This benefits no one but the Petitioner and
16 does nothing to protect our water resources, which is
17 the objective of this body's 1991 Decision and Order.

18 CHAIRMAN PILTZ: Thank you. Just a minute.
19 Any questions?

20 MR. LAMON: No questions, Mr. Chairman.

21 CHAIRMAN PILTZ: Questions, State?

22 MR. YEE: No questions.

23 CHAIRMAN PILTZ: Intervenor?

24 MR. MURAKAMI: None.

25 CHAIRMAN PILTZ: Commissioners, do you have

1 any questions? Okay. Thank you. Winnie Basques.

2 And next up is Butch Gima.

3 WINIFRED BASQUES

4 being first duly sworn to tell the truth, was examined

5 and testified as follows:

6 Would you state your name and address for
7 the record and continue.

8 THE WITNESS: Winifred Basques. My post
9 office box 630521 island of Lana'i. I live 633 Lana'i
10 Avenue. I've been a resident here for the past 27
11 years. And I see a lot of people, brand new people in
12 the audience. Do you folks know what you folks doing?
13 Plenny simple.

14 I'm against the water on the golf course.
15 It's not right. It's wrong. And they talk about
16 affordable homes on the island. We have so much
17 things going on, do we have enough water? Do we have
18 'nough water for everybody? We can use and we cannot
19 go without it plain and simple.

20 The thing is that -- okay, Well 14, Well 9
21 is pumping water like nobody else's business. But the
22 thing is that when you use the regular drinking water
23 for the golf course I don't think so, people. It's
24 wrong. Wrong. All the way wrong.

25 And the thing is that would you like to

1 drink recycled water? I don't think so. That's where
2 it cause bacteria. That's where it cause your health.
3 And whachu gonna do on this island? You ain't got no
4 choice. There is only one landowner on this island.
5 He wanna do whatever he want to do.

6 We are Native Hawaiian people on this
7 island. Think about that. Yeah, progress is
8 important. But remember the man up there He's
9 watching everybody. Not me, not you. He know what
10 you talking. He know what what's inside here. He
11 know what's in your po'o. Remember, what goes around
12 comes around. I hate to say if this goes through,
13 hallelujah for everybody. Thank you very much.

14 CHAIRMAN PILTZ: Any questions?

15

16 MR. LAMON: No questions, Mr. Chairman.

17 CHAIRMAN PILTZ: State?

18 MR. YEE: No questions.

19 MR. MURAKAMI: None.

20 CHAIRMAN PILTZ: Commissioners? Thank you.

21 Butch Gima. And after him is Ron McOmber.

22 BUTCH GIMA,

23 being first duly sworn to tell the truth, was examined
24 and testified as follows:

25 THE WITNESS: Good morning. My name is

1 Butch Gima. I'm a resident of Lana'i. I was born and
2 raised here and returned back in 1990. I'm also a
3 member of Lana'i Water Advisory Committee, have been
4 participating in a number of Land Use Commission
5 hearings and Lana'i Planning Commission proceedings.

6 Of note the Lana'i Water Advisory Committee
7 is made up of seven Lana'i residents and one
8 nonresident Castle & Cooke member, county council
9 member, and staffed by the Department of Water Supply,
10 and Commission on Water Resource Management has ex
11 officio members.

12 The seven residents comprise of residents
13 from the Lana'i Planning Commission, two members for
14 Lanaians for Sensible Growth, LSG, three at large
15 community members, and one resident Castle & Cooke
16 resident. Wanted to point this out because we feel
17 this is community involvement, participation is
18 imperative given Lana'i Water Company is a private
19 water company.

20 The existence of Lana'i Water Advisory
21 Committee helps to provide a checks and balances
22 system since the level of accountability is much less
23 than that of a public water system.

24 More important, community involvement is all
25 the more critical because the Department of Water

1 Supply, Commission on Water Resource Management and
2 the LUC has no on island presence. So without the
3 ears and eyes of the community and LWAC the water
4 system operations would go unnoticed. That's one of
5 the reason why we are moving towards
6 institutionalizing the Lana'i Water Advisory Committee
7 and its procedures.

8 My understanding it's the remand from the
9 Supreme Court was to determine whether or not you have
10 evidence to determine that there was a violation of
11 Condition 10. I feel there has been. And I'm asking
12 that the Land Use Commission uphold the earlier
13 decision.

14 It's important to note that your
15 predecessors, the county and Lanains for Sensible
16 Growth had a lot of foresight into protecting our
17 water as evidenced by the memorandum of agreement in
18 1987 and 1990 and in the county ordinances as noted in
19 the handout I have provided to you.

20 We need to continue to demonstrate this type
21 of foresight and protect the aquifer for a couple of
22 reasons. One, the Challenge at Manele -- the Manele
23 Project District is using up to 67 percent of the
24 water pumped daily on Lana'i. That amounts to about
25 one, close to a million gallons a day.

1 We need to be prudent because we only have
2 one aquifer on our island as opposed to other islands
3 where there are more than one. We have no surface
4 water to capture. And based on the current
5 infrastructure only three to three and-a-half million
6 gallons a day can be pumped based on two-thirds of all
7 the wells operating at 16 hours a day. That's an
8 industry recommendation.

9 We have diminished recharge, as Sally
10 mentioned earlier, because of the diminished watershed
11 leading to a diminished fog drip and elimination of
12 recharge from pineapple irrigation. None of the water
13 that's being used down at the Manele Project District
14 is helping to recharge our aquifer.

15 More importantly the system does not have
16 the redundancy, the number of wells needed nor spacing
17 of configuration of wells that the industry has
18 recommended. As I said I feel the Condition 10 has
19 been violated. And I'll summarize real quickly since
20 I don't have that much time.

21 In your finding of facts Petitioners have
22 said the high-level aquifer/potable water terms were
23 synonymous.

24 2. The Petitioners represented that the
25 upper potable wells leak potable water into the lower

1 wells, Wells 1 and 9.

2 3. Petitioner represented that the salinity
3 in Wells 1 and 9 would drop due to leakage. As you
4 see in what I handed out to you there's a reference to
5 Rae Louie's letter to the Commission. And it
6 basically shows the drop in chloride levels from Wells
7 1 and 9. And you see the raw numbers and the
8 percentage of drop leading to a conclusion that the
9 wells are getting -- Wells 1 and 9 is getting sweeter
10 because of the potable water leaking into those wells.

11 4. They admit to using Wells 1 and 9 to
12 irrigate the Challenge at Manele.

13 5. They represent that the high-level
14 aquifer water is not considered alternative water, yet
15 they use it against Condition 10. And they
16 represented that alternative water sources are outside
17 of the high-level aquifer, but they continue to use
18 water in the high level.

19 CHAIRMAN PILTZ: Can you conclude?

20 MR. GIMA: Yes. In a nutshell CCR, Castle &
21 Cooke Homes has failed to counter the findings of
22 facts, conclusions of law. I want to make it real
23 clear that we do not want the Challenge at Manele to
24 fail.

25 I have -- LSG has never made these

1 representations. We want it to succeed for Castle &
2 Cooke's sake, for the employees, for golfers. I and
3 my brothers just golfed there last weekend. We enjoy
4 golfing down there. We don't want it to fail.

5 This is not an either/or issue meaning that
6 if they don't get their way Murdock will shut down the
7 Challenge or pull out of Lana'i or Lana'i will turn
8 into another Molokai. These are the type of
9 representations that they have made for the last 19
10 years.

11 There are ways to irrigate the Challenge at
12 Manele as evidenced by the representation in their
13 Water Use and Development Plan which shows that they
14 plan to develop 2 million gallons a day of alternative
15 sources of water.

16 This is in the Water Use and Development
17 Plan.

18 2. They have done a feasibility study on
19 desal.

20 3. They have developed a feasibility study
21 on increasing the capacity of the current sewage
22 treatment plant in the city and transmitting that
23 water down to Manele. So in summary, the violation
24 has either occurred or not. I say it has.

25 No. 2. (sic) What business decisions Castle

1 & Cooke threatens has no merit in your decision nor
2 does OP and/or the County's listing of tasks in their
3 pleadings. They have no merit in your decision. In
4 fact their recommendations now and in prior settlement
5 agreement discussions are items that are currently
6 being discussed in LWAC.

7 With respect to some of the others LWAC is
8 the appropriate venue for discussions, not here. Only
9 the evidence and in some cases the lack of evidence
10 serve as the basis to uphold the LUC's earlier
11 decision.

12 It seems fairly clear that you have no
13 choice but to uphold your body's earlier decision.
14 Ultimately the stewardship of our water underscores
15 the importance of upholding that decision. Thank you.

16 CHAIRMAN PILTZ: Thank you, Butch.
17 Petitioner?

18 MR. LAMON: No questions, thank you.

19 CHAIRMAN PILTZ: State?

20 MR. YEE: When you refer to alternate water
21 source cited in the Water Use and Development Plan, is
22 that the draft Water Use and Development Plan that's
23 currently being considered by LWAC?

24 MR. GIMA: Yes. And the representations
25 being made based on the July 12th, 2006 allocation

1 table that...

2 MR. YEE: That's contained in the Water Use
3 and Development Plan?

4 MR. GIMA: Yes.

5 MR. YEE: Thanks.

6 CHAIRMAN PILTZ: Intervenor?

7 MR. MURAKAMI: No questions.

8 CHAIRMAN PILTZ: Commissioners, any
9 questions? Thanks. Next person Ron McOmber and
10 person following is Fairfax Reilly.

11 RON MCOMBER

12 being first duly sworn to tell the truth, was examined
13 and testified as follows:

14 THE WITNESS: I do. I hope it's not like a
15 marriage "I do".

16 CHAIRMAN PILTZ: State your name and address
17 for the record.

18 THE WITNESS: My name is Ron McOmber. I've
19 been a 40-year resident of Lana'i, member of LSG. And
20 I live at 486 Akolo Street, Lana'i City. I look
21 around the room, I only see a handful of people that
22 were here 20 years ago. And it's really strange to
23 look at all the new faces. You have a lot to learn.

24 Please take this document very serious. We
25 have been work on the Water Use and Development Plan

1 for a long time.

2 We complained that the county wasn't getting
3 it out fast enough. We bitched and moaned and groaned
4 and cried and asked Alan to make sure it got out. But
5 in a way it helped us because in the last five years
6 we watched the water supply on Lana'i deteriorate
7 immensely. We watched wells go down. We watched
8 wells -- they had to drill another 80 feet. Well 8.
9 Why is that?

10 If there's plenty of water for that golf
11 course and the water that they're taking out for Wells
12 1, 9 and 14, and now they're planning another well,
13 Well 15, the indication that we see on monthly
14 reports -- and we get a water report every month as
15 part of the agreement with this community -- watching
16 those agreements, and watching those numbers, those
17 numbers indicate to us that the water system on this
18 island is failing rapidly.

19 The other question you need to take into
20 consideration is the last six years or so we have had
21 probably five water directors. What does that tell
22 you?

23 That tells you that people come in here with
24 the expectation they're going to take over this water
25 system; Castle & Cooke is going to hand it to them and

1 they're going to make changes.

2 When they find out that they have to deal
3 with the community, with the water working group, with
4 the community that sits there across the table and
5 looks, at them, they cannot lie to us. This is too
6 small of community to have anybody lie to us. And
7 that's what they have been doing. They have been
8 fibbing to us.

9 We have people that work for the company,
10 people that work around the area that tell us when the
11 pipes are leaking, where they're breaking. We had a
12 leak in the city the other day that took five days to
13 fix. Because you know why? 'Cause they didn't have
14 anybody that could do asbestos repair.

15 What kind of a company would let water,
16 hundreds of thousands of gallons run down the road
17 because they couldn't fix it? They don't care about
18 the water. They don't think it's an issue. It is an
19 issue.

20 Please read this Water Use and Development
21 Plan. And our attorney will go over later on with you
22 folks and explain this. But this is a fragile,
23 fragile system, even more fragile than we thought it
24 was in 1990 when we signed that MOA with the company.
25 I don't believe the company thought any of us would

1 still be here. Some of us are still here and we're
2 going to be here for another 20 years.

3 We would like to have you folks -- this
4 Condition 10 has been violated, violated and violated.
5 When 65 to 70 percent of the water being taken off of
6 this aquifer is taken down to Manele and homeowners
7 are using water at a rate of 3,000 gallons a day
8 non-potable, somebody's not doing their job. It's
9 more than what's going up here at the city.

10 So we get these indica -- not all the
11 homeowners are doing it. You're going to get a
12 homeowner come up here say, "I don't do that." Well,
13 he doesn't. But somebody is and that's the numbers
14 we're getting from the company. These numbers are not
15 clear, folks. And we need to know why. And we know
16 why.

17 We see it right here in the Water Use and
18 Development Plan. Please read this understand it.
19 You're going to get a lesson from Alan Murakami what
20 our concerns are when we saw this. This is shocking.
21 This is shocking.

22 And the company does not want us at the
23 table. Time after time the company has challenged
24 this draft copy, the first draft copy and this one
25 saying that we have no right to be at the table.

1 We have at much right at this table as
2 anybody in this state. It's our water system. It
3 doesn't belong to Castle & Cooke. It belongs to the
4 residents of Lana'i. And we need to protect it.

5 We have no surface water. We have no extra
6 water at all. And for this community up here in the
7 city to use 200 gallons a day potable, and the people
8 down at Manele are using 900 in some cases, there's
9 something wrong with this.

10 If we had held this meeting down at Manele,
11 like the last Land Use Commission meeting was held,
12 you can go outside and look at the jungle down there.
13 There was never a jungle down there. It was barren.
14 It was kiae. It was lantana.

15 You go down there now it looks like the
16 Garden of Eden. Where do you think that water comes
17 from? It comes out of our aquifer, folks.

18 Condition No. 10 has been violated, thank
19 you very much. Again, thank you very much for coming
20 up here and lettin' this community -- you'd never get
21 this group down there if it wasn't held up here. I
22 appreciate the staff and everybody else for bringing
23 this up to the community so they could see. Much
24 mahalo.

25 (Ms. Lovell and Commissioner Judge now

1 present)

2 CHAIRMAN PILTZ: Thank you. Petitioner?

3 MR. LAMON: No questions, thank you.

4 CHAIRMAN PILTZ: County?

5 MS. LOVELL: No questions.

6 MR. MCOMBER: Wait a minute. (Addressing

7 Ms. Lovell) You just got here. (Laughing)

8 CHAIRMAN PILTZ: State?

9 MR. YEE: No questions.

10 CHAIRMAN PILTZ: Okay. How about

11 Intervenor?

12 MR. MURAKAMI: No questions.

13 CHAIRMAN PILTZ: Commissioners, any
14 questions? Thank you, Ron.

15 MR. MCOMBER: Thank you very much.

16 CHAIRMAN PILTZ: Fairfax Reilly. The next
17 person is Gloria Maker.

18 FAIRFAX FEILLY

19 being first duly sworn to tell the truth, was examined
20 and testified as follows:

21 THE WITNESS: Yes.

22 CHAIRMAN PILTZ: State your name and address
23 for the record and continue.

24 THE WITNESS: My name is Fairfax Reilly. I
25 live at 468 A'akea Street on Lana'i. And I want to

1 say thank you for coming to Lana'i, I know it's
2 difficult, and for holding the meeting up here. I
3 support Ron. I've lived on Lana'i for 31 years. I
4 own a residence on Lana'i. I just retired from the
5 Department of Education after 31 years. I'm a member
6 of Lanains for Sensible Growth and I do sit on the
7 board.

8 I do appreciate everybody that's here today,
9 members of the community. This is obviously a very
10 serious issue. My best recollection -- and I've sat
11 through many Land Use Commission meetings that were
12 held on Lana'i and attend the Lana'i Water Advisory
13 Committee, is that there was a general agreement for
14 Condition 10 that no water from the high level aquifer
15 would be used to irrigate the golf course.

16 The issue was not potability. No water from
17 the high level aquifer would be used to irrigate the
18 golf course.

19 My latest review of the EPA Safe Water
20 website is that in the glossary chloride is not an
21 issue as a safe water. Potability is not defined.
22 What is defined are contaminants.

23 My conclusion personally is that all of our
24 water is potable under those criteria. Yes, we do
25 have variability in salinity, but that's not an issue

1 because, as you well know, high chloride water can be
2 mixed and we can drink it. The real issue for
3 potability is it dangerous to your health. We have
4 good water on Lana'i.

5 None of that water -- and Mr. Leppert agreed
6 as I recall at the meeting -- no water from the
7 high-level aquifer would be used to irrigate the golf
8 course.

9 I support the previous testifiers that the
10 Lana'i Water Use and Development Plan, we're blessed
11 to have had that done and completed by the county.
12 And I really appreciate Alan and the county for
13 working on that and LWAC for the years of work they
14 put on that.

15 It offers Mr. Murdock and has offered
16 Mr. Murdock for 20 years a way to find water to
17 irrigate that golf course. And my own impression is
18 it's been pushed down the road year after year after
19 year.

20 And I think probably the time has come to
21 find some alternate water, not from the high-level
22 aquifer, to irrigate the golf course. And we will
23 continue to operate the golf course.

24 And I agree with Butch there are other
25 issues that have to be worked out through the Lana'i

1 Water Advisory Committee as to how that water is
2 allocated and what the demands are. Thank you very
3 much. I appreciate it.

4 CHAIRMAN PILTZ: Thank you. Petitioner?

5 MR. LAMON: No questions.

6 MS. LOVELL: No questions, thank you, Chair.

7 CHAIRMAN PILTZ: State?

8 MR. YEE: No questions.

9 CHAIRMAN PILTZ: Intervenor?

10 MR. MURAKAMI: None.

11 CHAIRMAN PILTZ: Commissioners? Thank you.

12 Next person in, is Gloria Maker. And following her
13 will be Jackie Haraguchi.

14 THE WITNESS: Yes I do.

15 CHAIRMAN PILTZ: State your name and
16 address.

17 GLORIA MAKER

18 THE WITNESS: My name is Gloria Maker and my
19 P. O. Box is 631777 Lana'i City. I currently work for
20 Castle & Cooke as a horticulturist at the Manele Bay
21 Hotel. And I've only been here a short while but I
22 wanted to testify because I believe that Castle &
23 Cooke & Cooke is very committed to being a good
24 steward of the land and natural resources.

25 During the interview process with management

1 from both Castle & Cooke and Four Seasons Hotel I was
2 consistently asked about my views on sustainability
3 and conservation.

4 I believe I was hired in part because these
5 are issues that I have strongly advocated and
6 practices over 30 years in the industry. We will
7 continue to reduce water in the future by converting
8 systems to drip, reducing our landscape footprint and
9 using plant materials such as natives that require less
10 water.

11 I would like to ask the Commission to allow
12 the Manele Golf Course to continue using the current
13 brackish water source for irrigation. The golf course
14 is vital to the success of the resort and both are
15 vital to the employment of many of the members of the
16 community.

17 Further delay could hinder future
18 investments and improvements. And for these reasons I
19 would like to encourage this Commission to support
20 Castle & Cooke and move this issue forward. Mahalo.

21 CHAIRMAN PILTZ: Petitioner?

22 MR. LAMON: No questions.

23 CHAIRMAN PILTZ: County?

24 MS. LOVELL: No questions, thank you.

25 CHAIRMAN PILTZ: State?

1 MR. YEE: No questions.

2 CHAIRMAN PILTZ: Intervenor?

3 MR. MURAKAMI: No questions.

4 CHAIRMAN PILTZ: Commissioners? Okay.

5 Thank you. Jackie Haraguchi. The next one is Les

6 Jeremiah. Jackie?

7 JACKIE HARAGUCHI

8 being first duly sworn to tell the truth, was examined

9 and testified as follows:

10 THE WITNESS: Yes.

11 CHAIRMAN PILTZ: State your name and address

12 for the record.

13 THE WITNESS: Jackie Haraguchi, 319 Ano

14 Street in Kahului.

15 CHAIRMAN PILTZ: Proceed.

16 THE WITNESS: I'm here on behalf of the

17 Maui Contractors Association. I'm the executive

18 director. I would like to ask this Commission to

19 allow Castle & Castle & Cooke to continue the use of

20 the brackish wells to irrigate Manele Bay Golf Course.

21 Any mandate to change the current system will erode a

22 mainstay of the Island of Lana'i's economy.

23 Currently the golf course employs over 25

24 Lana'i residents. I believe that any changes to the

25 current system will cause a detriment to the island's

1 economy by having a domino effect.

2 We are in the business of creating jobs, not
3 depleting them. So I ask all of you to do the right
4 thing and not delay this matter anymore. We all need
5 to work together to save jobs for Lana'i residents
6 during this recession.

7 CHAIRMAN PILTZ: Petitioner?

8 MR. LAMON: No questions.

9 MS. LOVELL: No questions, thank you.

10 MR. YEE: No questions.

11 MR. MURAKAMI: Yes. As a representative for
12 the contractors have you read the draft Water Use and
13 Development Plan for Lana'i?

14 THE WITNESS: I have not but --

15 MR. MURAKAMI: Thank you.

16 CHAIRMAN PILTZ: Commissioners? Thank you,
17 Jackie. Next person Les Jeremiah. Following that is
18 Glenn Titcomb.

19 LES JEREMIAH, Jr.

20 being first duly sworn to tell the truth, was examined
21 and testified as follows:

22 THE WITNESS: Yes.

23 CHAIRMAN PILTZ: State your name and address
24 for the record.

25 THE WITNESS: Les Jeremiah, Jr. 165 Frasier

1 Avenue, Apartment 10D. My name is Les Jeremiah, Jr.
2 as I just said, and I'm the superintendent for the two
3 golf courses on Lana'i.

4 Been here on Lana'i for the past eight years
5 and I've been in the golf business for over 20 years.
6 As a person immediately responsible for the golf
7 courses, water uses and efficiency are always one of
8 my top priorities. With daily inspections of the
9 courses we are constantly striving to ensure that
10 water is used properly and efficiently.

11 At Manele there are usually three to five
12 staff members constantly evaluating and making
13 necessary adjudgments and repairs to keep our watering
14 system properly and efficiently working.

15 Advances with the technology of irrigation
16 have allowed us to manage water even more efficiently.
17 Microsoft-based programming with detailed control
18 features help us to control each and every area of the
19 golf course.

20 Advances in sprinklers themselves have
21 allowed us to change trajectories, with adjustments
22 that require minimal efforts to combat being
23 distributed in windy areas and other obstructions.

24 Interchangeable nozzles on the sprinklers
25 themselves and the ability to shut off individual

1 heads also allow us to reduce unnecessary watering of
2 various areas.

3 The Manele's irrigation water having about
4 500 ppm of salinity, we have also had to change the
5 variety of grass that we have used at Manele in the
6 past. And I'm sure you guys have heard it in a lot of
7 meetings on O'ahu or the various islands, the seashore
8 paspalum.

9 So it's a variety that can handle salt.
10 It's a lot more tolerant than the conventional Bermuda
11 grasses that are used.

12 But anyway, we invested the money. And we
13 felt that that grass was better for the water quality
14 that was -- that we use at Manele, anyway.

15 On average the golf courses similar to
16 Manele, particularly in Maui County, they use about
17 800,000 to about 1 million gallons a day. We have
18 steadily kept our average daily use at 650,000 gallons
19 or less at Manele. I'd like to ask the Commission to
20 support Castle & Cooke's position.

21 CHAIRMAN PILTZ: Thank you. Petitioner?

22 MR. LAMON: No questions.

23 CHAIRMAN PILTZ: County?

24 MS. LOVELL: No questions, thank you.

25 MR. YEE: No questions.

1 MR. MURAKAMI: None.

2 CHAIRMAN PILTZ: Commissioners? Okay.

3 Thank you. Glenn Titcomb. The next one is Nestor

4 Riel. Glenn.

5 GLENN TITCOMB

6 being first duly sworn to tell the truth, was examined

7 and testified as follows:

8 THE WITNESS: Aye.

9 CHAIRMAN PILTZ: State your name and
10 address.

11 THE WITNESS: My name's Glenn Titcomb. I
12 live at 1546 McCully Place. I've been a resident of
13 Lana'i for 23 years. I'm currently an employed
14 construction worker. I would like to ask this
15 Commission to allow Castle & Cooke to continue to use
16 the current irrigation system to water the Manele Bay
17 Golf Course.

18 The jobs that would be lost would be
19 devastating to the residents if they were to stop. So
20 please support Castle & Cooke's position. Thank you.

21 CHAIRMAN PILTZ: Let me see if there's some
22 questions for you.

23 MR. LAMON: No questions.

24 MS. LOVELL: No questions, thank you.

25 MR. YEE: No questions.

1 MR. MURAKAMI: None.

2 CHAIRMAN PILTZ: Commissioners? Thank you,
3 Glenn. Nestor. Then the next person will be David
4 Green. Mr. Riel, let me swear you in.

5 NESTOR RIEL
6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: Yes, sir.

9 CHAIRMAN PILTZ: Would you state your name
10 and address and then you can continue with your
11 testimony.

12 THE WITNESS: My name is Nestor Riel. I
13 live at 1400 McCully Street. I've been a resident of
14 Lana'i since 1969. I'm currently employed by Castle &
15 Cooke working for Koele Golf Course. Currently I'm
16 union steward since 1990 for all the workers.

17 I would like to ask the Commission to work
18 for these people of Castle & Cooke using water from
19 the Manele Golf Course since they have employed 30
20 workers. Among that they have lots of multiple family
21 relying on there. That workers include irrigators,
22 salespeople, car attendant, and all golf course
23 workers.

24 Losing their jobs that will affect not only
25 our workers but also businesses of Lana'i. So I would

1 ask to please support the Castle & Cooke position.

2 CHAIRMAN PILTZ: Thank you. Petitioner?

3 MR. LAMON: No questions.

4 MS. LOVELL: No questions, thank you.

5 MR. YEE: No questions.

6 MR. MURAKAMI: None.

7 CHAIRMAN PILTZ: Okay. Commissioners?

8 Thank you. The next person is David Green. Following

9 is Stephen Cheikes. David.

10 DAVID GREEN

11 being first duly sworn to tell the truth, was examined

12 and testified as follows:

13 CHAIRMAN PILTZ: Let me swear you in please.

14 THE WITNESS: I do.

15 CHAIRMAN PILTZ: Would you state your name

16 and address for the record and continue with your

17 testimony.

18 THE WITNESS: My name is David Green. I'm a

19 permanent resident of Manele on Lana'i. I live at 35

20 Lapaiki Place. I am the president of the Manele Bay

21 Homeowners Association. And I'm also a member of the

22 Lana'i Planning Commission.

23 I'd like to speak in favor of the Castle &

24 Cooke resolution. First of all, I think I should say

25 that I wish the parties to this proceeding had been

1 able to settle this whole issue in 2006 when I believe
2 you asked the parties to get together and come up with
3 a settlement among themselves. I think we have a lot
4 of time to doing important things in moving forward
5 the right way. And I think there's probably been a
6 lot of money spent on attorney's fees that could have
7 been used more wisely.

8 I also note that despite the fact that the
9 majority of water, as Butch and other members have
10 stated, is used at Manele, there's no Manele residents
11 on the Lana'i Water Advisory Committee which I think
12 is unusual, probably inappropriate.

13 Residents of Manele strongly support
14 conservation. I think this is probably not the
15 impression that people have of the residents of
16 Manele. As I'm sure you're aware the Lana'i Company
17 recently -- the Lana'i Water Company has recently
18 started charging for non-potable water. I actually
19 testified at the PUC hearing when the rate case was
20 being discussed and I supported charging for
21 non-potable water because it's obvious that when
22 people have to pay for something they take it a little
23 bit more seriously than when it's free. That charging
24 has already started on the single-family homeowner and
25 I expect to get my first bill in a few weeks.

1 I have also -- we had our annual meeting of
2 the Manele Bay Homeowners Association yesterday. John
3 Stubart (phonetic) from the Lana'i Water Company came
4 and talked about the efforts that have been made to
5 improve the metering down at Manele and to improve the
6 controller of the water and shared with us a number of
7 resources that are available to improve conservation
8 of water. So that is underway.

9 Many of the residents in what we call the
10 AOAOs, or the condo associations have hired irrigation
11 consultants to work on the effectiveness of their
12 irrigation systems and to further conserve water. And
13 we're all open to other ideas and ways to conserve
14 water.

15 So I think the bottom line is Manele is a
16 huge economic generator for this island. If you start
17 with the hotel, the hotel is dependent to a certain
18 extent on the golf course. The residents of Manele
19 they're very generous people, give generously to
20 support activities and charities on the island.

21 I would be surprised -- I'm not an
22 economist -- but I would be surprised if Manele was
23 not responsible for 70 to 80 percent of the economic
24 activity on the island.

25 So I don't think shutting down Manele is a

1 viable option that does anyone any good whatsoever. I
2 would argue for a win/win solution rather the
3 adversarial approach that sometimes happens in these
4 long-term court cases where people have forgotten what
5 they're really here for and all they want to do is
6 win.

7 I think it's important that we all move
8 forward and look at conservation very, very actively.
9 And the residents at Manele are ready to do their part
10 to make that happen. So I'd like to see the water --
11 non-potable water continue to be used in accordance
12 with the limits that have already been set.

13 And I would like to see a much more active
14 focus on conservation all across the island and in
15 particular at Manele. And I'd like to see the
16 community step up and get more active on restoring the
17 watershed on the hale. Thank you.

18 CHAIRMAN PILTZ: Thank you. Questions?

19 MR. LAMON: No questions, Mr. Chairman.

20 CHAIRMAN PILTZ: County?

21 MS. LOVELL: The county has one question.
22 Good morning. Are you aware of how much the average
23 water use is by residents of your homeowners'
24 association?

25 THE WITNESS: No, I'm not.

1 MS. LOVELL: Are you aware of how much
2 average use your property has?

3 THE WITNESS: Yes, I am, very aware.

4 MS. LOVELL: Could you tell us about how
5 much you use on a daily or monthly basis?

6 THE WITNESS: Right now I'm using about
7 1500 gallons a day of non-potable water.

8 MS. LOVELL: So you have dual system?

9 THE WITNESS: Yes. Everyone at Manele has a
10 freshwater and a non-potable water system.

11 MS. LOVELL: Do you know how much freshwater
12 you're using a day?

13 THE WITNESS: Actually, I don't, but my bill
14 is minimal. That's all I can tell you.

15 MS. LOVELL: Are you aware how that usage
16 stacks up against residents of Lana'i City?

17 THE WITNESS: My guess, this is -- you want
18 a guess?

19 MS. LOVELL: If it's an educated one that
20 will be fine. But if it's just a wild guess that
21 probably wouldn't be helpful.

22 THE WITNESS: Well, first of all there are
23 103 members of the Manele Bay Homeowners Association.
24 Of that total probably ten to 12 are full-time
25 residents. So most of the condos and units are empty.

1 So I think freshwater use would be minimal. I can't
2 tell you what freshwater use is at the hotel. I have
3 no idea whatsoever.

4 MS. LOVELL: Thank you. No further
5 questions.

6 MR. YEE: No questions.

7 CHAIRMAN PILTZ: Intervenor?

8 MR. MURAKAMI: Mr. Green -- yes, I have a
9 couple questions. My name is Alan Murakami. I
10 represent the Lanaians for Sensible Growth with whom
11 you are, I guess, seeking to have an accommodation.

12 Are you aware that the Lana'i Water Use and
13 Development Plan reports that Manele Project District,
14 your district, which I think is inclusive of the
15 hotel, uses about three-quarters of the island's water
16 supply that's being pumped?

17 THE WITNESS: I have read that.

18 MR. MURAKAMI: And you have right now 12
19 full-time residents, is that it?

20 THE WITNESS: Roughly.

21 MR. MURAKAMI: Are you aware that the
22 average --

23 THE WITNESS: That's just in the residences.

24 MR. MURAKAMI: Yes. Let me ask you. Isn't
25 there a CC&R requirement that you be limited to a

1 thousand gallons per day per month?

2 THE WITNESS: Yes, there is.

3 MR. MURAKAMI: Per day. Sorry.

4 THE WITNESS: There is.

5 MR. MURAKAMI: And you're exceeding that
6 limit?

7 THE WITNESS: I am.

8 MR. MURAKAMI: So you're violating your own
9 CC&R's?

10 THE WITNESS: I am.

11 MR. MURAKAMI: And you're aware --

12 THE WITNESS: Would you like to know why?

13 MR. MURAKAMI: No. I think that's fine. I
14 have limited to time to question you. Isn't it true
15 that the average household use in the Manele Project
16 District is reported in the Water Use and Development
17 Plan to be 3700 gallons per day per household?

18 THE WITNESS: I just heard that in the
19 earlier testimony. I find that incomprehensible.

20 MR. MURAKAMI: If you're using three
21 quarters of the water pumped on the island would you
22 be surprised that that is true?

23 THE WITNESS: Yes, because the majority of
24 the water is used on the golf course.

25 MR. MURAKAMI: Okay. But if it's averaged

1 over all those residents is what I'm saying.

2 THE WITNESS: No. I find that
3 incomprehensible. I would question the accuracy of
4 the data.

5 MR. MURAKAMI: Thank you.

6 CHAIRMAN PILTZ: Commissioners, any
7 questions? Go ahead.

8 COMMISSIONER JUDGE: Thank you, Mr. Green,
9 for your testimony. In the beginning of your
10 testimony you have named all of the associations like
11 the Manele Bay Homeowners Association and the Maui
12 Planning Commission. I just wanted to clarify are you
13 speaking here on behalf of those agencies?

14 THE WITNESS: No.

15 COMMISSIONER JUDGE: Or are you speaking as
16 an individual?

17 THE WITNESS: I'm speaking as an individual
18 but also in my capacity as the president of the Manele
19 Bay Homeowners Association.

20 COMMISSIONER JUDGE: Thank you.

21 CHAIRMAN PILTZ: Thank you. Next person is
22 Stephen Cheikes. Following him is Tom Roelens. Let
23 me swear you in.

24 STEPHEN CHEIKES
25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: Yes, I do.

3 CHAIRMAN PILTZ: Would you state your name
4 and address for the record and you can continue.

5 THE WITNESS: Yes. My name is Stephen
6 Cheikes. I reside at the Palms units at Manele Bay.
7 My address 10A Uholoa Place, Lana'i City.

8 Interestingly what I'm intending to speak
9 about is really the issue of the numbers and the
10 correctness of the numbers with respect to use of
11 water by homeowners in Manele Bay.

12 I attended the meeting of the Lanains for
13 Sensible Growth, the last one that was held I believe.
14 And it was then that I heard that the numbers of the
15 use supposedly of water by the homeowners in Manele
16 Bay were compared to the numbers of residents in the
17 city.

18 I heard that the numbers were something like
19 225 gallons of potable water that were used by
20 residents in Lana'i City. Supposedly the average use
21 by homeowners in Manele Bay was something in the area
22 of 3700 gallons per day.

23 Now, I raised my hand at that point and
24 said, "Hang on a second." I am probably one of the
25 longest term per year residents in Manele Bay. I've

1 been in this last year here about ten months out of
2 the 12. I'm one of the very, very rare long-term
3 residents of the units. I and my financé live in this
4 residence. We have guests from time to time but we
5 have two people that live in this particular
6 residence. But yet I would say that our use compared
7 to any of the other residents in the Palms has to be
8 at least as high and probably greater because we're
9 there more often than anybody else.

10 I went back and did some checking with the
11 Lana'i Water Company. I found out our use of potable
12 water in our residence, 2400 square foot residence at
13 Manele Bay, is on average over the course of the last
14 12 months 110 gallons of potable water per month. The
15 metering for the landscaping, 110 gallons per month.

16 Again, I'm told that in town, which makes
17 sense, the average use of a family in the residences
18 up here is 225 to 250 gallons per month. That made
19 sense. We have two of us, as I say, at our residence
20 and for what we use for washing machines, and
21 dishwashers and showers and everything else couldn't
22 have been what I was told that adds up to 3750 gallons
23 per day.

24 But in any case, then the thought was what
25 about non-potable water. Non-potable water is only

1 used at the Palms and I presume at the other
2 residences at Manele Bay for the landscaping.

3 Now, the landscaping at Manele Bay obviously
4 is different from any use of landscaping water up here
5 because first we're a dessert down there. We have
6 grass and different things that are watered. Up here
7 we get rain that we don't get down at Manele Bay so
8 there's going to be a difference.

9 Nevertheless what I was then told is the
10 metering is not final but the expectation for the unit
11 by unit of the 16 units in the Palms is approximately
12 800 gallons per day. That would make the usage of
13 water of the units of the Palms something like 900 to
14 950 gallons per day. We were told at the meeting the
15 average use is 3750 gallons per day.

16 Now, when I raised my hand and asked the
17 question at the meeting -- first of all, I identified
18 myself as a homeowner in the Manele Bay area I was
19 surprised, I guess, by the reaction immediately was
20 fingers started to get pointed at me, "It's you. You
21 guys are using the water. Stop using the water." I
22 would like to suggest that the facts have to be
23 understood and be correct.

24 We are not monsters who live down there.
25 And the use of water except for landscaping, which is

1 often out of our control, is certainly no more than
2 anybody who uses potable water in town. Any
3 questions?

4 CHAIRMAN PILTZ: Questions?

5 MR. LAMON: No, Mr. Chairman, thank you.

6 MS. LOVELL: I had just one clarifying
7 question. I thought I heard you say that you use
8 110 gallons per month.

9 THE WITNESS: Per day.

10 MS. LOVELL: Unit per day. Thank you.

11 THE WITNESS: Compared to 225 in town.

12 MS. LOVELL: Thank you.

13 MR. YEE: No questions.

14 CHAIRMAN PILTZ: Intervenor?

15 MR. MURAKAMI: Yes. Mr. Cheikes, you're
16 aware that the weather at Manele is a lot drier than
17 Lana'i City?

18 THE WITNESS: I'm very aware of that.

19 MR. MURAKAMI: So landscaping of course
20 would demand more water.

21 THE WITNESS: Yes, absolutely.

22 CHAIRMAN PILTZ: Commissioners, any
23 questions? Okay. Thank you. Before we go to Tom
24 Roelens, we are going to take a break. And following
25 Tom will be Joe Felipe. So let's take a five minute

1 break.

2 (Recess was held. 11:35)

3 CHAIRMAN PILTZ: We are going to have Tom
4 Roelens. Tom, can I swear you in?

5 TOM ROELENES,
6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: I do. I swear.

9 CHAIRMAN PILTZ: Would you state your name
10 and address for the record and then continue with your
11 testimony.

12 THE WITNESS: Absolutely. My name is Tom
13 Roelens, P. O. Box 631380, 624 Pu'ulani Place in
14 Lanai. The Challenge at Manele Golf Course is vital
15 to the Four Seasons Resort here on Lana'i. I'm the
16 general manager of the two resorts. And the economy
17 of the island is very, very important. We need a
18 viable and sustainable economy on this island to keep
19 our residents employed.

20 Four Seasons Resorts Lana'i currently
21 employs over 600 Lana'i residents on this island.
22 Castle & Cooke Resorts, LLC Castle & Cooke, Inc. have
23 invested hundreds of millions of dollars in the golf
24 course, the resorts and in the Manele Bay Project.

25 Further delays in the decision-making may

1 prevent investments in infrastructure to improve
2 conservation programs, the growths of the economy and
3 future investments in the sustainability of the island
4 of Lana'i. This issue has been prolonged and is in
5 need of justice to the company that's highly invested
6 in Lana'i and its people.

7 I'm asking the Commission to allow the
8 current irrigation system to be used for the Challenge
9 at Manele Golf Course. Thank you.

10 CHAIRMAN PILTZ: Petitioner, any questions?

11 MR. LAMON: No questions.

12 CHAIRMAN PILTZ: County?

13 MS. LOVELL: No questions.

14 MR. YEE: No questions?

15 MR. MURAKAMI: None.

16 CHAIRMAN PILTZ: Anything from the
17 Commissioners? Thank you. Next person up is Joe
18 Felipe and following him is Phoenix Dupree. Joe?

19 JOE FELIPE
20 being first duly sworn to tell the truth, was examined
21 and testified as follows:

22 THE WITNESS: I do.

23 CHAIRMAN PILTZ: Would you state your name
24 and address for the record.

25 THE WITNESS: My name is Joe Felipe. My

1 address is 615 Akahi Place. I've lived there for, oh,
2 what is it, since 1970. Okay. I worked for Dole
3 Company Pineapple Plantation for 33 years. I've been
4 working for Koele Lodge as a bartender for the past 20
5 years. I think I qualify as a senior citizen which
6 gives me a right to testify. (Laughter). And if I
7 stutter a little bit, please be patient with me.

8 I'm here to testify for the petition by
9 Castle & Cooke. Would like to share also in 1987 I
10 did sit on the Maui County Planning Commission that
11 approved the Projects of both Koele and Manele. It
12 was through a lot of hard work, testimony and public
13 hearings that we came about with our decisions.

14 I am surprised that all those that have
15 testified against the petition stated that they
16 represent the Lana'i community and the workers.
17 However, everyone that has testified against the
18 petition are non-Castle & Cooke employees. I don't
19 believe any of them have ever worked for Castle &
20 Cooke. So when they talk and say they represent the
21 workers of Koele and Manele I think this has to be
22 corrected.

23 I serve on -- well, I worked for the --
24 well, let me put it this way. I represent also all
25 the workers of the hotels. And I will not speak as a

1 union official, but I am the chairman of the union
2 here on Lana'i. One of the main reason that I'm
3 testifying today, the workers, if they could have been
4 here would be here by numbers to express that they are
5 very, very concerned about the future of our island.
6 We have just gone through one of the worst economic
7 years that we have been on Lana'i. It has taken both
8 efforts from the workers and Castle & Cooke. We have
9 given concessions. We have taken cuts.

10 In the past seven months we froze our
11 contracts so that we wouldn't take the raise so that
12 we could continue to operate. Along with that we have
13 given up benefits, holidays, and taken wage cuts so
14 that we as workers support the efforts and position of
15 Castle & Cooke.

16 Now, we ask that the Commission recognize
17 the workers, the people that have made these
18 concessions so that we can build a foundation so that
19 we can again, hopefully, within this year or the next
20 year see economic changes that will help us to raise
21 our living standards.

22 Every day I go to work I have workers that
23 approach me and say, "Joe, what can we do? I got only
24 two, three days scheduled today. My hours are not
25 even 8 hours per day." Our benefits are being

1 affected because within the contract your benefits are
2 determined by the hours that you work.

3 So we have worked and unfortunately have
4 seen some layoffs, some furloughs, but we have -- the
5 workers -- when I say we, the workers have taken the
6 position that we will share the hardship. We will
7 share the loss so that we will reduce as much as
8 possible layoffs and continue to allow as many
9 employees as possible to work.

10 Now, again, to restrict Castle & Cooke for
11 their use of water would definitely cause a domino
12 effect. Today we are one of the premier destinations.
13 We have been recognized in Golf Digest as one of the
14 top golfing destinations.

15 And the golfing world has come to Lana'i to
16 enjoy the golf courses both at Koele and Manele. If
17 the golf courses weren't there the appeal would be
18 different, the package would be different --

19 CHAIRMAN PILTZ: Could you wrap it up
20 please?

21 THE WITNESS: Wrap it up?

22 CHAIRMAN PILTZ: Yes.

23 THE WITNESS: (Laughter). Ah, I have just
24 begun but... (laughter)

25 CHAIRMAN PILTZ: I know you're getting ready

1 to go.

2 THE WITNESS: But members of the Land Use
3 Commission, your decision today will have a direct
4 impact of the future of Lana'i. There is no way that
5 we will be able to improve, sustain and build our
6 future if there are these restrictions. We need to
7 work together, yes. We need to allow that the Castle
8 & Cooke continue to be able to operate at 100 percent
9 that we are today.

10 To restrict Castle & Cooke would then cause
11 a domino effect again. And I really have, as I say,
12 represent the workers at the hotel. And I ask that
13 you bear that in mind that your decision today will
14 affect the lifestyle of Lana'i and the community and
15 either the success or the failure of our island.

16 CHAIRMAN PILTZ: Thank you.

17 THE WITNESS: But please don't let us be
18 another Molokai. Thank you.

19 CHAIRMAN PILTZ: Thank you. Questions?

20 MR. LAMON: No questions.

21 CHAIRMAN PILTZ: Maui County?

22 MS. LOVELL: No questions.

23 CHAIRMAN PILTZ: State?

24 MR. YEE: No questions.

25 CHAIRMAN PILTZ: Intervenor?

1 MR. MURAKAMI: No questions.

2 CHAIRMAN PILTZ: Commissioners? Okay.

3 Thank you very much. Phoenix Dupree followed by
4 Donovan Kealoha.

5 MICHAEL PHOENIX DUPREE,
6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: I do.

9 CHAIRMAN PILTZ: Would you state your name
10 and address for the record and continue.

11 THE WITNESS: My name is Michael Phoenix
12 Duupree. I live at 421 Lama Street. I've been a
13 resident of Lana'i for 20 years. And I'm very
14 grateful to have the opportunity to live here and
15 appreciate the opportunity to speak to you today and
16 to offer my testimony.

17 I know this is a very serious issue. And
18 although I am manager of the Blue Ginger Cafe here on
19 Lana'i I would like to tell you that my views in no
20 way express the views of the ownership of the Blue
21 Ginger Cafe, my parents.

22 They're hard working people and they don't
23 come to community meetings and open their mouth.
24 They're smart business people, not like me. I want to
25 let the members of the community of Lana'i know that I

1 respect the Native Hawaiian community here. I
2 express -- I respect their concerns. And that their
3 fear that we could run out of water on this island,
4 that is a real concern. And I appreciate their
5 concern.

6 I also have a lot of respect for the members
7 of Lanains for Sensible Growth and the work, the
8 important work that they have done on this island:
9 Butch, Pat and Ron that have spoken here today, I
10 respect them for what they do here.

11 You know I think in many ways the Lanains
12 for Sensible Growth has been a successful organization
13 because I think that, I think that Lana'i has grown
14 sensibly in the 20 years I've resided here.

15 I lived on Maui for about ten years in the
16 '80s. And in the ten years that I lived there it
17 changed drastically. Although the island has changed
18 in 20 years we still don't have a traffic light.
19 People still wave to each other as they drive around
20 town. I don't believe that the island has changed
21 radically. So in many ways I believe that Lanains for
22 Sensible Growth has helped to -- has really helped to
23 accomplish their mission on the island.

24 But I look at this and check and think we
25 have to look at the bigger picture. Unlike Butch I

1 don't agree that this case should be considered only
2 on the merits alone. I believe it has to be taken
3 into perspective.

4 I don't downplay the issue or the
5 disagreements that Lanains for Sensible Growth has
6 with Castle & Cooke, but I just think it has to be
7 weighed against other economic and social factors.

8 I agree with the previous speaker that I
9 believe that there are many people here today -- there
10 are many people here on the island that are not here
11 today, many young families who work for the resort.
12 Why are they not here? Because they don't respect you
13 or what you're doing here but because they're working
14 and the hotels are not going to let them off.

15 My concern is how do -- how will young
16 people support their families? How will they make
17 their car payments? How will they be able to afford a
18 home on the island or to be able to pay for a
19 mortgage? How will they be able to pay for their
20 child's education?

21 I know that the company would make an
22 argument that if the golf course -- if the water is
23 not used for the golf course it would close. I don't
24 know that that would happen. But I think there's a
25 possibility that could happen, that it could be a

1 trigger. I'm not saying it would. But it could
2 trigger that. And if it did it would be catastrophic
3 for the island.

4 I know as manager of the restaurant I
5 receive more applications for work in one month that I
6 received in 12 months. And it hurts me because we are
7 a small business and we cannot employ the people on
8 this island. And people need jobs here.

9 Most of you come from O'ahu. You have so
10 many economic engines that drive your island:
11 Military, federal, state, county, law, education,
12 technology. Look what we have? We have very little.
13 And so that's something that is scary to me that if we
14 lost that many people would leave the island.

15 I don't think that that's -- I think that's
16 a fair concern in light of the fact that at one point
17 this last year there were 57 homes that were for sale
18 on this island.

19 When I first came you didn't see a for sale
20 sign on this island. I heard that realtors would keep
21 their sales in their pocket.

22 So there are many people that are leaving
23 the island. Tom Burke, who runs the exercise center,
24 told me in October he lost 50 customers who moved off
25 the island. If there's no jobs here people are going

1 to be leaving the island.

2 I love the water here and I love this
3 island, but I love the people here also. I want the
4 people to be able to have the opportunity to make a
5 living here. And although Castle & Cooke is not a
6 perfect company, it's like the old saying of democracy
7 is the worst form of government until you've tried
8 every other form of government. Castle & Cooke has
9 been my employer for 10 years. They've been my
10 landlord. So it's certainly a love/hate relationship.

11 But overall I agree with Mr. Green, one of
12 the previous speakers, that we need to be less
13 contentious and find a way to work together in support
14 of this island and all work to try to achieve
15 conservation. I know from -- I'm not an economist,
16 but I know that --

17 CHAIRMAN PILTZ: Can you wrap it up?

18 THE WITNESS: -- that economics are down on
19 this island; that we're in the second and third year
20 of a hotel downturn, the second and third year of a
21 construction downturn, a second and third year of a
22 real estate downturn.

23 I think if we stopped watering the golf
24 course right now that if it were to trigger the
25 closure of the hotel and people think that couldn't

1 happen.

2 But to be honest with you we live on Fantasy
3 Island with Mr. Murdock here. How many of you would
4 operate a business for 20 years and lose money and
5 still keep doing what you're doing? There's no way.
6 I don't think there's anybody that would do that.

7 In conclusion, keep in mind that, you know,
8 Bill Gates got married here on this island, the
9 wealthiest man in the world. Why would he get married
10 on a golf course? You have to wonder. He chose what
11 he thought at the time was the most beautiful spot in
12 the whole world to get married. And that's here on
13 our island.

14 In a way that golf course is the trigger.
15 It represents our island for the rest of the world.
16 And so I hope that we can work things out together.
17 And I ask you to support the company and their
18 continuing use of the irrigation system on this
19 island. Thank you.

20 CHAIRMAN PILTZ: Thank you. Petitioner?

21 MR. LAMON: I have no questions.

22 CHAIRMAN PILTZ: County?

23 MS. LOVELL: No questions.

24 CHAIRMAN PILTZ: State?

25 MR. YEE: No questions.

1 CHAIRMAN PILTZ: Intervenor?

2 MR. MURAKAMI: No questions.

3 CHAIRMAN PILTZ: Anything from the
4 Commissioners? Thank you. Donavan Kealoha followed
5 by Kainoa Kanno. (Not sworn in)

6 THE WITNESS: Aloha. My name is Donovan
7 Kealoha. I live at 98-1344 Ho'ohonua Street which is
8 on the island of O'ahu. That said, I am from Lana'i,
9 I was raised on Lana'i, I am the current president of
10 Lanains for Sensible Growth. But I'm not here
11 representing them in that capacity.

12 Who I am representing is all those guys over
13 there wearing the red shirts and their kids and their
14 kids' future. With that said, I grew up about a block
15 down from this building right here raised by my
16 grandparents Charles Kealoha and Mable Kealoha. They
17 taught me one thing that is real important that I
18 carry to this day. The idea of accountability and
19 responsibility in things that I have tried to do in my
20 life. I tried to live up to their mantra.

21 Now it seems to me LSG's position is to just
22 make sure the company accepts responsibility for the
23 words and actions that they had done. Seems to me that
24 they're trying to shirk that responsibility focusing
25 on the short-term which is sort of a misguided

1 attempt.

2 It speaks to the corporate nature of America
3 nowadays. Focus on the short term without a view to
4 the long term. That's the perspective that I want to
5 bring.

6 Sure, jobs are important. What about the
7 future? What about all those guys' kids? No more
8 water, water runs out, then what about that, you know?
9 So that's what I want to bring up.

10 Now, again, as I understand it this is not
11 about shutting down the golf course but developing
12 alternatives. As Butch said, and I echo that
13 sentiment, we're not about shutting the golf course --
14 Nestor's my friend. I know Nestor. I know, have
15 relationships with a lot of people in this room. It's
16 not about kicking them out of their job. It's about
17 making the company accept responsibility for what they
18 have done.

19 So with that said I want to ask you guys to
20 do the right thing. Do the pono thing. Take a
21 long-term view of this situation and what this means
22 for our island, given what Alan is going to show you
23 and what's in that Water Development Plan. Mahalo.

24 CHAIRMAN PILTZ: Thank you.

25 MR. LAMON: No questions.

1 MS. LOVELL: No questions.

2 MR. YEE: No questions.

3 MR. MURAKAMI: None.

4 CHAIRMAN PILTZ: Commissioners? Donavan,
5 thank you. Kainoa Kanno.

6 KAINOA KANNO

7 being first duly sworn to tell the truth, was examined
8 and testified as follows:

9 THE WITNESS: I do.

10 CHAIRMAN PILTZ: Please state your name and
11 address.

12 THE WITNESS: Kainoa Kanno. 181 Lana'i Ave.
13 Iwiole Hale. First of all, I'd like to say mahalo for
14 coming, sharing, listening to what we got to say. To
15 me it's bottom line the water, yeah, the water. It is
16 about the water. You know, people talk about jobs.
17 But we had the opportunity, the handful of people out
18 there never had jobs. It's still about the jobs.

19 It's about the water. It's the kuleana, the
20 responsibility between the company and the community
21 for take care our own watershed, take care of the
22 water issue. Bottom line we had one agreement. We
23 had one agreements, you know. So you take away the
24 wai, everybody going have to move anyway.

25 Company going to have to shut down, not

1 going have water anyway because we took away the
2 water, misused the water. That's all I get to say.
3 Mahalo.

4 CHAIRMAN PILTZ: Thank you. Just a minute,
5 let's see if there's questions.

6 MR. LAMON: No questions, Mr. Chair.

7 MS. LOVELL: No questions.

8 MR. YEE: No questions.

9 MR. MURAKAMI: No questions.

10 CHAIRMAN PILTZ: Commissioners? Thank you.
11 Is there anyone else in the audience that would like
12 to speak? Sir, would you come up.

13 Let me swear you in.

14 GARY SUZUKI

15 being first duly sworn to tell the truth, was examined
16 and testified as follows:

17 THE WITNESS: Yes, I do.

18 CHAIRMAN PILTZ: Would you state your name
19 and address for the record.

20 THE WITNESS: My name is Gary Suzuki. I
21 live at 503 Lana'i Avenue, Lana'i City, Hawai'i,
22 96763.

23 CHAIRMAN PILTZ: Go ahead.

24 THE WITNESS: First of all, I'd like to
25 thank everybody, the Commission, the Board, everybody

1 showing up. Um, the last meeting that was held I
2 attended. And then you guys all, everybody, the facts
3 and this and that, kinda learned, like, a few things
4 about it like the potable, non-potable, the pumps, the
5 wells how, you know. Okay. Then the fact that 250
6 something parts per non-potable; Lahaina 400 potable.
7 Okay. We all know that.

8 Then, like you guys all familiar with what's
9 going on on Maui. The kala, taro, no more water. So
10 are we headed towards that? We no more kalo but we
11 all need the water. It's life. Like they're saying
12 the children.

13 Then Mr. Green was saying something about
14 oh, this, that, you know, the community, you guys
15 making decision, the company, um, if we can all work
16 together to solve this or do something pono for the
17 future of Lana'i. And, like, he was saying, oh, we,
18 like, work together, all you guys communicated involve
19 maybe do this. Maybe that can happen one day. Maybe
20 get funding from those guys or the company, grant
21 money. Everybody need job. That's one job.

22 We can all work together, try help the 'aina
23 and then for the long term of Lana'i. How we going
24 keep building it if no more water? So we all gotta
25 play one part and try preserve what we get, try

1 utilize it correctly, try something like that. Sorry
2 for the language.

3 Thank you very much for letting me share.
4 And I hopefully you guys sitting on the seat with the
5 da kine can make a difference, do the right thing,
6 yeah, so we no end up like no more kalo. "Oh, no more
7 water the kalo. Auwe." And guys like fight and this
8 and 'dat and blah, blah, blah. We no like end up
9 la'dat? You know what I mean? Thank you very much.

10 CHAIRMAN PILTZ: Any questions.

11 MR. LAMON: No questions.

12 MS. LOVELL: No questions.

13 MR. YEE: No questions.

14 MR. MURAKAMI: No questions.

15 CHAIRMAN PILTZ: We have somebody else?

16 Okay. Go ahead.

17 KELSEY TSUCHIYAMA,

18 THE WITNESS: Aye.

19 CHAIRMAN PILTZ: Would you state your name
20 and address for the Commission.

21 THE WITNESS: Aloha. Kelsey Uka Tuschiyama.
22 Originally from Hawai'i 'aina, Big Island, but I live
23 165 Fraser Avenue now. Mahalo for the shirts,
24 bruddah, right on. The boys come out.

25 I not going to come here pretend like I'm

1 from Lana'i. You know what I mean? I'm a Big Island
2 boy but I appreciate everybody's aloha la'dat, but I
3 come here fo' work the 'aina fo' malama 'aina.

4 I get this one but we actually came with the
5 Native Species Recovery Project. I don't know if you
6 guys know the Owau, one endangered bird we get up on
7 the hale.

8 You know, I'm not one real politicaller. I
9 go school and stuff but you know, all the attorneys,
10 but all I says, you guys get plenny money and you guys
11 like talk about conservation.

12 Me and a couple of the bruddahs outside
13 Monday through Friday we cutting waivi cause waivi
14 doesn't hold the water that Ohi'a Lehua holds or
15 doesn't return the water that Ohi'a Lehua does to the
16 watershed.

17 You guys talking about the watershed. We
18 got one bench out there. You guys can come, volunteer
19 with us. My boss is Aunty Cristo Stallis. She's
20 sitting in the back. She get the lavender shirt. You
21 guys like come talk about conservation, come check us
22 out. We get the office we share with the Quonset hut
23 by the Jehovah church. You can see her if you like
24 volunteer.

25 If you no like volunteer, you like just give

1 us money, that's good because-- (audience laughing) --
2 no, it's true, though. Because we get one small crew
3 and we doing the waiwi eradication that the native
4 ones can come back.

5 But Castle & Cooke they been giving us some
6 monies. I not from Lana'i so I don't know the whole
7 situation. But from what I see they going take back
8 the chipper we using for bus' up all the waiwi and
9 they going take back the excavator.

10 If you know some -- you get plenny money, we
11 could use one new chipper. We could use one
12 excavator. Even if you no more money, just come out
13 and we can use some extra hands any time. We up there
14 every day except Saturday and Sunday. But if you like
15 come Saturday, Sunday, hey, if you get couple guys we
16 go come, you know. Maybe the boss give us overtime
17 but we be there Saturday/Sunday if that's when you
18 guys can come and volunteer.

19 If you not going make the water, go come up
20 there, go talk to Aunty Chris and then we can go and
21 save the water la'dat, if you guys like.

22 But I think the dirty water, they can use
23 dirty water for the grass. We need the drinking water
24 for us for all the bruddahs who going raise their
25 keiki over there. That's who need the drinking water,

1 not the guys who go, "I stay here ten months out of
2 the year."

3 The guys go who stay here from generations,
4 from generations from generations, ten generations,
5 not ten months. Hey, mahalo and right on for the
6 community coming out. That's what we need. Mahalo.

7 CHAIRMAN PILTZ: Just a minute. Any
8 questions?

9 MR. LAMON: I have no questions.

10 CHAIRMAN PILTZ: County?

11 MS. LOVELL: No questions.

12 MR. YEE: No questions.

13 CHAIRMAN PILTZ: How about you, Alan?

14 MR. MURAKAMI: No questions. But I want to
15 thank Kelsey because he's doing the most important
16 work on the island.

17 CHAIRMAN PILTZ: Okay. Great.
18 Commissioners? Okay. Thank you.

19 COMMISSIONER WONG: Mr. Chairman, if there's
20 no more witnesses I'd like to make a motion.
21 Mr. Chairman, be that this matter --

22 (Mr. Kahooalahala approaching the witness
23 chair)

24 CHAIRMAN PILTZ: Okay.

25 SOL KAHOOHALAHALA,

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:

3 THE WITNESS: Yes, I do.

4 CHAIRMAN PILTZ: Go ahead.

5 THE WITNESS: Aloha, Commissioners. My name
6 is Sol Kahooalahala. I reside at 444 Fraser Avenue
7 Lana'i City, Lana'i. I'm a seventh generation
8 Lahainan. I just wanted to be sure that in light of
9 all of the testimony that's been given today that I
10 wanted to just set it all in a perspective.

11 I don't think that this hearing was intended
12 to bring the issue of whether or not you're a Castle &
13 Cooke employee versus a non-Castle & Cooke employee
14 giving weight more to one or less than the other
15 branch.

16 I don't think that today's hearing is
17 something that should weigh whether or not you are a
18 resident of the Manele Project District and that
19 resort development community versus being a resident
20 here of Lana'i City.

21 I don't think that this hearing today is
22 simply a petition between Castle & Cooke versus
23 Lanains for Sensible Growth.

24 I don't think that why we're here is to
25 raise the issue of whether or not we will have jobs

1 versus having no jobs.

2 I don't think that we're here to talk about
3 whether or not development should continue or that
4 conservation should be the highest concern.

5 And I don't think that we're here to pit our
6 community as those who are for this issue and those
7 who are against the issue.

8 But what I would like to talk about is --
9 you know, the bruddah that just left here? He's
10 probably the one that's more on key here today. He's
11 talking about really what we should be doing and what
12 I think the underlying issue is here.

13 Many years ago I wrote a chant for this
14 island: "Eo mai ke kaunoa o lana imua." It says, "At
15 last the flower of Lana'i comes forth." And in that
16 chant I would like to share with you is that there are
17 two plants on this island, the pōhuehue, which you may
18 be familiar with, is the beach morning Glory. And
19 other is kaunaoa which is our island flower. They
20 have a real interesting relationship. And I think
21 that's what we are here today to come to acknowledge.

22 They are symbiotic. The pohuehue will
23 always start with the first rains of Lana'i to cover
24 the shorelines. And only after the pohuehue has
25 flowered and then beginning to seed will the kaunaoa,

1 whose seeds are already in the sand, will sprout and
2 attach herself to the poehuehue from which the kaunaoa
3 gets her own nourishment.

4 And in the process the morning glory dies
5 back only after giving all of her nourishment to the
6 kaunaoa, allowing the kaunaoa to now flower and seed.
7 After the kaunaoa's has flowered and seeded they both
8 die back.

9 For a time the ocean shorelines will be
10 covered with neither of these plants until the rains
11 come back again and the pohuehue sprouts first.

12 It reminds me of the fact that we all live
13 on an island that's very, very challenging. We live
14 on an island that's very, very sensitive to the things
15 that we conduct here on land.

16 If we don't malama Lana'i like the kaunaoa
17 will malama the pohuehue, if we reverse that process
18 just imagine if the kaunaoa sprouted before the
19 pohuehue blossomed, there would be no continuum.

20 So I think the lesson for us today and for
21 you as Commissioners is to be reminded of the fact
22 that Lana'i has always been a real critical place in
23 terms of water. Even the ancient Hawaiians on this
24 island acknowledged that. That to live on Lana'i
25 meant you had to understand the secrets of this

1 island.

2 And few people understand the secrets of
3 this island. So let's learn from the fact that if we
4 are truly wanting to have an island that's
5 sustainable, then we must begin to take a look at the
6 most critical things of Lanaians and that's whether or
7 not we also sustain the ability to live on this
8 island. That should be the underlying foundation.

9 From that practice perhaps all things are
10 possible. But unless we acknowledge that and unless
11 we pay attention to that, then we're bickering about
12 all these sidebars. That's what I would like to put
13 before you in your consideration.

14 Let's think about what's most important.
15 And the balance of this island is most important. Our
16 sustainability is most important. And perhaps
17 allowing the kaunaoa to flower after the pohuehue is
18 important. Thank you.

19 CHAIRMAN PILTZ: Thank you. Questions?

20 MR. LAMON: No questions, Mr. Chairman.

21 CHAIRMAN PILTZ: County?

22 MS. LOVELL: No questions, thank you.

23 MR. YEE: No questions.

24 MR. MURAKAMI: None, thank you.

25 CHAIRMAN PILTZ: Commissioners? Sol, thank

1 you very much. You have a motion?

2 COMMISSIONER WONG: Yes. Mr. Chairman, I
3 think this matter before us is primarily because of
4 the reversal of the Supreme Court's decision on a
5 previous Cease and Desist Order. That together with a
6 number of the other issues which have been raised in
7 this hearing and prior hearings, I'd like to move that
8 this body go into executive session so that we may
9 consult with our counsel on our duties and obligations
10 as Commissioners.

11 CHAIRMAN PILTZ: We have a motion on the
12 floor for executive session.

13 COMMISSIONER JUDGE: Second.

14 CHAIRMAN PILTZ: We have a second. All
15 those in favor show by hands. Okay. It's unanimous
16 that we will go into executive session. We will just
17 go nextdoor. You can stay here.

18 (Executive session held 12:15 to 12:40)

19 CHAIRMAN PILTZ: We're back on the record.
20 Petitioner.

21 MR. LAMON: Thank you very much,
22 Mr. Chairman. My name is Bruce Lamon representing
23 Castle & Cooke Resorts as you know, actually
24 Petitioner, yes, but in this particular instance
25 Movant. I do like to make the distinction because I

1 think part of the challenge here is for us to really
2 focus on exactly what it is that we are doing at this
3 particular hearing and what the procedural posture
4 that we're in is.

5 But before I talk about that I just wanted
6 to make sort of a general comment with respect to
7 some of the testimony this morning because I think
8 that there may be an impression left from it that we
9 have on the one side doing something that makes
10 economic sense for the island as opposed to, but maybe
11 having the drawback of having some kind of negative
12 environmental effect. That's the dichotomy I think
13 you guys probably deal with all the time.

14 I want to say that's not the dichotomy in
15 this case. That's not a choice that has to be made in
16 this case. The reason I say that is although it's
17 plain that the Lana'i economy is fragile, the evidence
18 before you is that the Lana'i aquifer is not fragile.

19 And the reason that I say that -- and this
20 is not a -- this is not me talking, Castle & Cooke
21 talking, this is the CWRM, the Water Commission
22 talking. I wanted to particularly point out the
23 CWRM's December 4th, 2009 letter which is included in
24 the materials that we submitted recently as
25 Exhibit 10.

1 And the significance of this is that CWRM
2 found that after reviewing the record of CWRM's
3 decisions -- and, by the way, let me back up because
4 the significance on the CWRM to this if you look at
5 the poster of Condition 10 that is over there, in
6 addition to the meaty part that we're here to talk
7 about today, there is the reference to the
8 Petitioner's requirement to comply with the
9 requirements of the re-submittal petition of the Water
10 Commission.

11 The Water Commission in its December 4th,
12 2009 letter, now that I'm just referring to, had under
13 consideration a request to essentially reconsider the
14 prior conditions that they laid down that we have been
15 complying with since 1981. They declined to do so.

16 What they said was: After reviewing the
17 record of CWRM decisions, the previous findings of
18 fact on the criteria for designation of current data
19 plans and studies, CWRM did not see a justification
20 for reopening designation proceedings at this time.
21 Why?

22 "Potable wells of the high-level aquifer
23 compartments are not showing any long-term negative
24 trends. There is a very gradual," and I'm continuing
25 to quote here, "there is a very gradual downward trend

1 in the brackish wells and in one or two of the potable
2 wells but these do not precipitate serious concern."

3 So I have no doubt that Mr. Murakami, after
4 I have sat down, is going to talk to you about the
5 information in the Water Use and Development Plan, the
6 draft that came out in October. But the bottom line
7 from all of this is the analysis that CWRM has done
8 and the conclusions that they have drawn.

9 And to the extent that after I have sat down
10 you hear Mr. Murakami arguing that to the contrary,
11 that actually that there is a negative long-term trend
12 in the potable wells or that there is a concern as a
13 result of the very gradual downward trend in the
14 brackish wells, that that is not an argument that has
15 passed muster with the agency that has primary
16 jurisdiction for the monitoring of the Lana'i water
17 resource.

18 But let me get back to the precise question
19 that we're here for today. And what I want to do is
20 talk about why we filed the motion, what the reasons
21 are that the motion should be granted, and then
22 finally why what we have proposed is better than the
23 alternatives that have been proposed by Office of
24 Planning and Lanaians for Sensible Growth.

25 Right now we are at a -- procedurally we're

1 at a stage in a piece of pending litigation. I think
2 there's a chronology here up on the board. In 2004
3 the Supreme Court remanded ongoing litigation with
4 respect to the Cease and Desist Order to the Land Use
5 Commission so that the Commission could make -- could
6 clarify in its findings whether Castle & Cooke had
7 used potable water from the high-level aquifer in
8 order to irrigate the Manele Golf Course.

9 And I emphasize potable water because the
10 Hawai'i Supreme Court specifically rejected the
11 arguments that are made by LSG in its memoranda and
12 have been repeated by some of the LSG's witnesses
13 today to the effect that there was a prohibition
14 against using any water from the high-level aquifer;
15 that Castle & Cooke promised or represented that it
16 wouldn't use any water from the high-level aquifer.
17 Those were specifically rejected by the Hawai'i
18 Supreme Court in its decision.

19 So, once again, after I sit down I expect
20 you're going to hear that. But we have attached the
21 Hawai'i Supreme Court's decision. We have cited the
22 pertinent provisions. And it's something that can
23 be -- you folks can verify without taking my word for
24 it.

25 Now, the remand decision was that the Land

1 Use Commission needed to clarify whether Castle &
2 Cooke was using potable water from the high-level
3 aquifer. Then once the Commission answers that
4 question then the Hawai'i Supreme Court will proceed
5 on to resolve the rest of the appeal.

6 There's some issues that they have
7 identified they didn't resolve in their prior opinion
8 such as, for example, does the Water Commission have
9 exclusive jurisdiction over this dispute.

10 And such as, for example when the Land Use
11 Commission issued the Cease and Desist Order and
12 essentially called for or required that the Manele Bay
13 Golf Course be shut down for lack of irrigation,
14 whether that had the affect of destroying what the
15 Commission had found was a vital amenity to the Manele
16 Bay Hotel and thereby violate the Hawai'i State Plan.

17 Those are the issues that remain to be
18 resolved by the Hawai'i Supreme Court after the
19 Commission decides this remand question.

20 So as you can see from the timeline we had
21 hearings, and I go over this -- I know that some of
22 you were on the Commission then, but some not, so I
23 just want to recap it briefly.

24 We had hearings in 2006 and 2007 going to
25 that question -- going to the question of having the

1 Commission clarify its findings as to whether it was
2 finding that Castle & Cooke was using potable water
3 from the high-level aquifer. Those hearings dragged
4 on inconclusively.

5 Eventually the Commission appointed a
6 hearings officer to conduct further hearings in that
7 respect. But then after that the Commission decided
8 to give us all an opportunity to see if there were
9 motions that we could file that could bring the matter
10 to a head in a fair and equitable way, and avoid the
11 need for further hearings and resolve the issues that
12 were in the litigation. That's why we filed the
13 motion that we have filed before you. Okay. That's
14 why we filed it.

15 Now, what are the reasons it should be
16 granted? Our motion is in two parts. The first part
17 of it asks for Condition No. 10 to be modified to
18 incorporate a definition of potability which is
19 200 million grams per liter which is same as 250 parts
20 per million of chlorides in water.

21 The second part of the motion is to dissolve
22 the Cease and Desist Order. The purpose of both parts
23 of the motion is to essentially moot out this
24 litigation. The reason that defining potability in
25 that way would moot the litigation that there is no

1 controversy.

2 There's no dispute that all of the brackish
3 wells that are being used to irrigate the Manele Golf
4 Course have chlorides in excess of 250 parts per
5 million, 150 milligrams per liter. So the entire
6 dispute in that sense goes away once the Commission
7 adopts that definition.

8 The second reason is once the Cease and
9 Desist Order is dissolved the dispute goes away. The
10 reason is the Cease and Desist Order is what started
11 the litigation in the first place. When that was
12 imposed we went to the Second Court.

13 We showed the Second Circuit Court the
14 effect of it would have been to destroy the Manele Bay
15 Golf Course because there was no other source of
16 irrigation water for it other than the brackish water
17 from the high-level aquifer.

18 That is what eventually got appealed up and
19 down with the Hawai'i Supreme Court twice and is now
20 back before you folks.

21 But, if the Cease in Desist Order is
22 dissolved our appeal becomes moot and there's no
23 longer any question that needs to be resolved by the
24 Hawai'i Supreme Court.

25 So why is it a good idea to set that

1 definition of potability? Well, there are several
2 reasons. And the last one I'm going to mention is the
3 most important one. The first one is that 250
4 milligrams per liter is an accepted standard. It's
5 actually higher than the standards used for potability
6 of other golf courses around the state.

7 And in our memorandum we talk about some of
8 those other levels which are in the 150 to 250
9 milligram range. But for 15 years from 1995 -- excuse
10 me, 14 years from 1995 until just September of 2009,
11 250 milligrams per liter was the specific definition
12 of potability that was used by the county of Maui by
13 ordinance.

14 It is a secondary standard for water under
15 the EPA's Code of Federal Regulations for Drinking
16 Water. That's something that the EPA deems
17 significant for the aesthetic quality of the water
18 that's being drunk.

19 So we have these various objective frames of
20 reference for it. But even that is not the most, the
21 most significant reason that it should be adopted.

22 The Hawai'i Supreme Court has instructed in
23 its remand motion, in its remand decision that the
24 Land Use Commission has the obligation to make clear
25 to Castle & Cooke what specifically it is that we are

1 required to comply with when a condition is imposed
2 like this.

3 They're saying that a word like "potable"
4 which has caused us the last three years of dispute
5 and argument is insufficient. If you are going to try
6 to -- if you're going to try to enforce a condition
7 against a petitioner you have the obligation to make
8 it reasonably clear what it is that's being said.

9 Now, on the LSG side, I haven't heard -- I
10 don't think I've seen anything from the county, but at
11 least in terms of what the county previously filed in
12 terms of what the Office of Planning had previously
13 submitted, all of us are in agreement that potability
14 should be defined in terms of 250 milligrams per
15 liter.

16 LSG, I can't figure out what their
17 definition is. It seems as though their definition of
18 potability goes clear back to the very beginning of
19 the case, clear back to before when the Hawai'i
20 Supreme Court rejected the argument that any, any
21 water from the high-level aquifer is potable.

22 And then, finally, with respect to why this
23 should be done in terms of adopting this definition.
24 When you take a look at the prior decisions of the LUC
25 it is apparent, and the Hawai'i Supreme Court even

1 remarked on it, that the basis for the decision, the
2 basis for the Cease and Desist Order was that the Land
3 Use Commission interpreted Condition No. 10 to
4 prohibit any use of water from the high-level aquifer.
5 That was the part that was specifically reversed.

6 The Land Use Commission findings, and we
7 have cited them all in our papers, set up a clear, a
8 clear distinction in terms of distinguishing potable
9 water from brackish. The findings of fact refer to
10 brackish as non-potable water.

11 And they specifically contemplate,
12 specifically approve, I would say, the use of brackish
13 Wells 1, 9, and 14 that are currently being used to
14 irrigate the golf course for the irrigation of the
15 golf course.

16 So putting a bright line on it: Discharges
17 the Commission's obligation, and it is consistent with
18 what the Commission understood was going to happen
19 both in 1991 and in 1996.

20 Now, why is what we had proposed better than
21 what the Office of Planning proposed on better than
22 what LSG has proposed? I would say the key to the
23 answer of that question lies in the continued
24 existence of the Cease and Desist Order.

25 That's why all of the -- that's why all of

1 the discussion that you heard this morning about the
2 fragile economy here, the difficulties -- I think all
3 the neighbor islands are suffering even worse than we
4 are on O'ahu -- is that right now there is still a
5 chance that on account of the Commission having issued
6 a Cease and Desist Order that golf course could be
7 shut down. That's what the ongoing litigation is all
8 about with the Hawai'i Supreme Court.

9 The Cease and Desist Order needs to be
10 dissolved. That's one thing that the Office of
11 Planning does not do. And that's something that in
12 our view has to be done.

13 Second. With respect to the Office of
14 Planning's motion ours is better because the Office of
15 Planning proposes a procedure where we have two years
16 of further studies with respect to auditing the
17 transmission system and redoing or updating, rather,
18 the water model that was done in 1994, and analyzing
19 the efficiency of the wells.

20 And then when that is done to come back
21 before you and then see if the parties have any
22 further modifications to Condition No. 10 to propose.

23 Our feeling is that we have had 16 years, 16
24 years of hearings to discuss this issue and it has not
25 been productively resolved yet by this Commission.

1 Now, we've got the County of Maui. We have the Water
2 Use Development Protection Plan in which the parties
3 are in good faith wrestling with all of these issues
4 and wrestling with the details that I'm sure
5 Mr. Murakami will try to focus on.

6 But in terms of this Commission being able
7 to micro-manage the details of how much potable water
8 should they be allowed to use in Manele or how
9 efficiently is Well No. 9 operating, should they be
10 working on having a more aggressive plan to repair
11 leaks in the system? This is not something that the
12 Commission can productively address.

13 I think the last 16 years have demonstrated
14 that. And OP's invitation to continue that after two
15 years of more studies is not, is not something that
16 the Commission should adopt.

17 Now, with respect to LSG, LSG basically
18 says, "Let's just have more hearings on this question
19 of what the Commission's findings meant in 1991 and
20 1996 when they issued Condition 10."

21 And in our view, to repeat, 16 years of
22 hearings have not led to any kind of productive
23 resolution of the matter. But I guess, more
24 importantly, this is something that you can all tell
25 from looking at the decisions of the Land Use

1 Commission itself previously how they talk about the
2 permission for us to use brackish water, how they talk
3 about non-potable water being the equivalent of
4 brackish water, how the brackish wells are
5 particularly identified that we are planning to use
6 and we're still using to irrigate it.

7 This Commission has everything it needs in
8 order to be able to decide right now without any
9 further hearings whether, as we argue, that the whole
10 basis for the prior Cease and Desist Order was the
11 idea that Condition 10 prevented any use of high-level
12 aquifer water or whether the intent of it was only to
13 prohibit the use of potable water from the high-level
14 aquifer.

15 So to repeat and sum up, we have a situation
16 where we have the county is all over this. CWRM just
17 recently is all over this. The Commission in 16 years
18 has not been able to get to the bottom of it.

19 But we have a situation where we know from
20 the people who are in charge of the situation who are
21 working on the problem that there are no negative
22 long-term trends and that there are no serious
23 concerns.

24 So we basically ask for relief from the
25 Commission. Dissolve the Cease and Desist Order at

1 least so that we don't have a situation hanging over
2 the company where it may be that at any point in time
3 this vital amenity goes away as a result of something
4 this Commission I can't believe actually intends to
5 have happen. Thank you.

6 CHAIRMAN PILTZ: Thank you. Commissioners,
7 questions? Commissioner Wong.

8 COMMISSIONER WONG: Mr. Lamon, since the
9 Supreme Court reversed the Order of the Land Use
10 Commission to revert the land based upon its
11 violation, isn't it in effect that that Order has been
12 set aside and vacated so that Condition No. 10 is
13 still the same Condition No. 10 without modification
14 as interpreted by the Land Use Commission?

15 MR. LAMON: Well, if I could just first,
16 before I answer the question, comment on the point
17 about reverting. The Commission didn't order the
18 classification revert. It ordered that we cease
19 using.

20 COMMISSIONER WONG: Right.

21 MR. LAMON: Then the answer to your
22 question, Commissioner, is that if this Commission
23 goes ahead and finds, say it adopts the LSG definition
24 of potability, basically anything in the high-level
25 aquifer is potable water. And as a result of that

1 being convinced by that it goes ahead and finds that,
2 yes, Castle & Cooke is using potable water from the
3 high-level aquifer, then we go back to the Hawai'i
4 Supreme Court.

5 The Hawai'i Supreme Court may look at that
6 and they may say -- I'll be arguing against it, of
7 course -- they may say, "Oh, well, they found that you
8 were using potable water. That's the end of the
9 story. Cease and Desist Order is affirmed."

10 So I, I don't agree that we are out of the
11 woods on the Cease and Desist Order. That's the
12 reason we wanted to have it dissolved.

13 COMMISSIONER WONG: So it'll just make it
14 clear with respect to the fact that no Cease and
15 Desist Order is on the books, so to speak.

16 MR. LAMON: Well, no, I don't -- it also
17 eliminates the potential for the Hawai'i Supreme Court
18 affirming the requirement that we stop using brackish
19 water to irrigate the golf course.

20 Because if you do find that we're using
21 potable water, then that would be the next question
22 the Hawai'i Supreme Court would have to address
23 because that would then be a violation of Condition
24 10.

25 COMMISSIONER WONG: Thank you.

1 CHAIRMAN PILTZ: Okay. Movant No. 2.

2 MR. YEE: Yes. Good afternoon. Deputy
3 Attorney General Bryan Yee on behalf of the Office of
4 Planning. Before I get into my argument let me just
5 briefly respond to the issue of the Cease and Desist
6 Order while it's on all of our minds.

7 Petitioner suggested that the problem with
8 OP's motion is that it didn't address the Cease and
9 Desist Order. Let me just be clear the Office of
10 Planning is not opposed to the request to dissolve the
11 Cease and Desist Order filed by Petitioner.

12 Commissioner Wong also asked: Well, didn't
13 the Cease and Desist Order get dissolved pursuant to
14 the reversal by the Supreme Court. While I think that
15 could be argued to be the effect, I think normally
16 when the appellate courts make a decision and then
17 remand it back, there still needs to be some decision
18 from the lower court that initially made the decision
19 that effectuates the appellate court Order.

20 So I think we'd be entirely consistent with
21 the Hawai'i Supreme Court remand to dissolve it. But
22 that Order has never been issued by the LUC that
23 actually effectuates that dissolution.

24 Let me go into our argument. The Office of
25 Planning is proposing that the Land Use Commission

1 essentially look forward, not back and that you try as
2 best we can to balance the valid interest of all the
3 parties. That was the point and the purpose of our
4 motion.

5 And in trying to figure out how to present
6 this mass of information to you the best way I could
7 come up with was to try to go through the highlights
8 of this case chronologically. Because I think as we
9 go through each step as it came out I think that's the
10 best way to look at it.

11 Let me start -- and we do have a timeline of
12 some of these important events. I won't go through
13 all of them, but I will go through some of the ones
14 that we consider to be most important.

15 At the beginning in 1989 there was a request
16 to redistrict 138 acres. And of this 110 acres was
17 rural, about 28 acres was ag. That's important
18 because if you revert it, if you actually move
19 forward, came to the final end the only power you
20 really have to enforce is to revert property.

21 And if you actually do go to that final
22 step, from the Office of Planning's viewpoint that
23 really doesn't solve anything, really doesn't result
24 in any better condition for anybody because the
25 Petitioner is allowed to operate a golf course on

1 rural land. It might impact, as we've demonstrated in
2 our motion, a couple of holes. They may have to
3 reconfigure, if that's what they're required to do.

4 I don't know whether they would be
5 grandfathered in because golf courses that were on
6 agricultural lands that existed prior to the law
7 change are allowed to continue.

8 And perhaps even worse if you revert it to
9 rural, technically with county approvals the
10 Petitioner would be allowed to put on half-acre homes
11 which is not, in our minds, a better use of this
12 property.

13 And you would basically remove any of the
14 protections, any of the constraints or restrictions
15 that were put on this property. For example, one of
16 the requirements in the 1991 Order is that the only
17 use of this property may be for golf course and golf
18 course-related activities including the clubhouse.

19 Consequently, this is particularly important
20 to us that a way has to be found through the LUC
21 process to accommodate the needs of the golf course
22 while ensuring the protection of the aquifer and the
23 concerns of the community.

24 We note that in 1990 the Water Commission
25 found no basis for recommending Lana'i as a Water

1 Management Area. But they set forth a particular --
2 they required, for example, measurements for water
3 pumpage and chloride levels to be made and reported.
4 They also said that if water use on Lana'i ever
5 reached 4.3 that this would trigger a new review and
6 investigation to determine whether or not Lana'i
7 should be a Water Management Area. So in addition to
8 the Land Use Commission there's an existing trigger
9 for further review when water usage increases.

10 In 1991 Dole Plantation closes. That's
11 important from the water perspective because the
12 pineapple plantation used a lot of water. It may have
13 impacted recharge as well but they also used a lot of
14 water.

15 So usage of water on the island fell from
16 around 3 million gallons a day to around 2 million
17 gallons per day. My latest review currently it's
18 around 2.2. So water usage actually fell when Dole
19 Pineapple closed.

20 Then in 1990-1991 the Land Use Commission
21 held a series of hearings. And the record of those,
22 of that hearing, as I've reviewed the transcripts,
23 indicate the participants used the term "non-potable"
24 and the term "brackish" interchangeably. For example,
25 Tom Leppert -- and we cite this in our original

1 motion -- Tom Leppert of Lana'i Resort Partners, said
2 it was their intention to utilize brackish water and
3 not potable water. He made the distinction between
4 brackish on the one hand and potable on the other.

5 The LUC Chair stated, "With respect to the
6 potential for using non-potable sources or brackish
7 water, easier put, where else do they use brackish
8 water and to what success?" So he's using the term
9 brackish water as if that meant non-potable water.

10 And counsel for LSG at the time repeated the
11 term as if they were interchangeable when he asked the
12 statement that in response to his question was
13 something to the effect, statement by Dr. Kumugai,
14 "That with extraordinary effort it would be possible
15 to obtain a non-potable or brackish water source for
16 the golf course in time to use that water for the golf
17 course when it's built."

18 So, again, he's using the term non-potable
19 and brackish as if they mean the same thing.

20 And in 1991 the Land Use Commission issued
21 its Order. We put a copy of the Order up there. We
22 often focus on that first statement, "Petitioner shall
23 not utilize the potable water from the high-level
24 aquifer."

25 That was important because it was at the

1 Supreme Court level. It's not just any water from the
2 high-level aquifer. It's the potable water from the
3 high-level aquifer.

4 But you really need to go down to the next
5 line. "And shall instead develop and utilize only
6 alternative non-potable sources of water. Example,
7 brackish water, and reclaimed sewage effluent for golf
8 course requirements."

9 So your Condition 10 in 1991 says that your
10 alternate non-potable source -- an example of an
11 alternate non-potable source is brackish water. I
12 understand that LSG has come and said: Here are all
13 the reasons why brackish water does not mean it's
14 non-potable that you could have potable brackish
15 water. But the point is in 1991 with the testimony
16 that was given and with the condition that you
17 adopted, the term "brackish water" and the term
18 "non-potable water" appeared to mean the same thing.

19 In fact, if you look further at your
20 findings of fact in 1991 in paragraph 46 it talks
21 about the proposed golf course is to be irrigated with
22 non-potable water.

23 Then paragraph 48 of the findings of fact it
24 talks about how the Petitioner proposes to use
25 alternate sources of water for golf course irrigation

1 by developing the brackish water supply. And it goes
2 on to talk about Wells 1, 9, 10, 12 that these are the
3 wells that are going to be developed.

4 Paragraph 89 says, "The Petitioner is now in
5 the process of developing the brackish water supply
6 for irrigation of the proposed golf course." And
7 again refers to Wells 1, 9, 10, and 12 and then in
8 Paragraph 91 it says "Petitioner intends to irrigate
9 the golf course with non-potable water leaving only
10 the clubhouse which will use potable water, the
11 requirement of which should be insignificant."

12 In 1991 the Petitioner came and told you,
13 "We're using Wells 1, 9, 10 and 12. and these are
14 brackish water sources." Everyone knew where the
15 location of those wells were, that they were within
16 the high-level aquifer. And yet they also made a
17 finding that they're going to be using non-potable
18 water to irrigate the golf course.

19 So, in other words, I guess I'm just saying
20 all of this leads to the conclusion that brackish
21 water and non-potable water, while maybe if you had to
22 look a dictionary you might come to a different
23 conclusion, if you look at your record and if you look
24 at your Order they were intended to be the same.

25 In 1993 the LUC issued the Order to Show

1 Cause and that began this whole process. And in 1996
2 the LUC issued the finding that Petitioner had
3 violated Condition 10 and had denied the motions to
4 modify.

5 And let me just briefly mention that in the
6 1996 Order, quite frankly, it's unclear about what
7 they did with this term. On the one hand they had
8 finding of fact 16 in the 1996 Order which said,
9 "Petitioner's completed an extended pump test of Wells
10 1 and 9 which are within the high-level aquifer and
11 provide non-potable brackish water." So they said
12 Wells 1 and 9 provides non-potable brackish water.

13 On the other hand, on paragraph 28 it then
14 says, "The potability of any water source does not
15 depend on any particular level of chloride
16 concentration."

17 So the LUC then, after saying that Wells 1
18 and 9 provide non-potable brackish water, said well,
19 chloride concentrations don't determine potability and
20 don't address all the findings that were set out in
21 1991.

22 I won't go through the whole process. But
23 basically it went to the courts and it came back to
24 you in 2004. We held a series of hearings as
25 described by Mr. Lamon and all those things we have

1 discussed on the sheet on the side.

2 Let me just briefly touch on 2009 because
3 that is of some relevance to our current revised
4 motion. In September 21, 2009 the County of Maui
5 repealed Chapter 20.24 of the County of Maui
6 Ordinances. That's important because, quite frankly,
7 our prior motion relied on Chapter 20.24. Because in
8 that situation the County of Maui set forth a specific
9 definition of potable water. The current requirements
10 by the County of Maui wouldn't apply to the Manele
11 Golf Course.

12 So if we had used our old prior proposed
13 language, there'd be no restriction on the kind of
14 water that the Manele Golf Course could use. And that
15 was not -- and that would have happened where the
16 County of Maui was not aware or wouldn't necessarily
17 have been aware that it would have impacted the LUC
18 decision.

19 So it's not as if the County of Maui knew
20 that their decision would impact the requirements set
21 forth by the LUC 'cause that matter was still pending.

22 So we don't think we can ascribe a motive to
23 the County of Maui as having deliberately done to -- I
24 don't think the Manele Golf Course had anything to do
25 with that repeal.

1 Consequently -- we didn't discover this
2 until December 2nd, 2009. So on December 15, 2009 we
3 filed a revised Motion to Amend in which we set forth
4 a chloride standard as well as a process what do you
5 do if the chloride levels change, if they temporarily
6 fall below 250 milligrams per liter. Let me just stop
7 here. Again, the justification for this is that, one,
8 reversion provides no relief.

9 So putting in a requirement that would
10 effectively cause the Petitioner to ask for a
11 reversion because they couldn't operate the golf
12 course under the conditions is not going to be useful.

13 We also think it's important to look
14 forward, not back. We think that particular standard,
15 it's a reasonable one. As mentioned before, the EPA
16 has a standard. It's not purely picked from the
17 number of the air. There's still a volume restriction
18 which is perhaps even more important than the chloride
19 restriction. And this is probably of primary
20 importance.

21 The Office of Planning does not believe that
22 this, based upon the current information we have, that
23 this will harm the aquifer. Current usage is 2.2
24 roughly. The sustainable level is 6.0.

25 We have had the Water Use and Development

1 Plan Draft reviewed. We believe that the information,
2 the current information available from all the wells
3 do not necessarily ascribe any impacts to the Manele
4 Golf Course which could not be explained away by
5 pumpage levels generally or drought conditions.

6 So we don't believe that there is sufficient
7 information in the record to conclude that the
8 use of 650,000 gallons per day for the Manele Golf
9 Course is harming the aquifer today or that it is
10 preventing domestic use by anyone on Lana'i, whether
11 it's Lana'i City or Manele.

12 So because we don't think there's currently
13 any harm we don't think that this condition is a
14 problem. That's just a basic disagreement, I think,
15 between Intervenors and the Office of Planning. And
16 it is justified, I think, if you had read the letter
17 from CWRM.

18 We also note that there are other, as we had
19 mentioned, other triggers by CWRM which measures well
20 head levels and chloride levels. And we also think
21 that a brackish -- I'm sorry, that a chloride-specific
22 numerical limit provides the fair notice required by
23 the Supreme Court.

24 One of the concerns we had when we looked at
25 this if you define potable water as brackish you still

1 don't know how salty is too salty. You still don't
2 know what brackish means. So a chloride limit is
3 really a numerical way to measure that characteristic.
4 And as we said it's consistent with the prior LUC
5 findings.

6 Let me briefly touch on the issue of -- I'm
7 sorry. The other issue is that it's consistent with
8 the Hawai'i Supreme Court which specifically found
9 that you don't -- you are not prohibiting all water
10 from the high-level aquifer from being used to water
11 the golf course.

12 We also included to the objection of the
13 Petitioner a requirement to analyze the efficiency of
14 each well, to conduct an audit of the transmission
15 system efficiency to determine groundwater loss, and
16 to update the Roy Hardy study.

17 We did this because -- well, first the Roy
18 Hardy study was relied upon in the 1991 decision. And
19 the Roy Hardy study specifically found that there
20 would be some reduction in well head levels but said
21 that the change wouldn't be significant.

22 It would be within the normal range of
23 seasonable variations that you will find. So they
24 didn't consider the use of wells, I think, at the time
25 Wells 1 and 9, to be of significant problem to the

1 aquifer.

2 But if there's going to be -- if there's
3 some concern that the Roy Hardy study or the CWRM
4 conclusion is incorrect, update the study. Let's find
5 out, let's make sure the aquifer is being protected.

6 And if there are other ways to resolve the
7 problem whether by being more efficient with the wells
8 or by reducing the water transmission losses, then
9 there may be some provisions other than the closure of
10 the golf course or the elimination of Wells 1 and 9
11 that could be done.

12 We, frankly, based on the record before you
13 we could not make that conclusion. So the additional
14 request for information is intended to ensure that any
15 decision by this body balances out the needs of the
16 environment, balances out the concerns of the
17 community and provides a result that we think is one
18 which is fair and equitable considering all parties.

19 Finally, there are two other particular
20 legal issues that I just wanted -- I'm sorry, before I
21 go there we also specifically stated that any party
22 may move to amend the condition.

23 We understand that Petitioner's desire for
24 finality. But from the Office of Planning's viewpoint
25 we think we could move to amend the condition anyway,

1 as we have today. Whether you include the condition
2 or not we think that any party may move to modify the
3 decision under the appropriate circumstances.

4 For example, if a condition is deemed to be
5 unclear and fails to give fair warning, I think any
6 party should be allowed to ask that the condition be
7 modified.

8 And if a condition is interim, and more
9 information will determine whether the health of the
10 aquifer is being threatened, we again think the
11 parties should be allowed to modify that condition as
12 well.

13 We have set forth in our prior documents
14 some of our legal arguments. We certainly acknowledge
15 that Section 15-15-94 does not specifically include
16 OP, but it doesn't specifically exclude OP as well.
17 And Section 15-15-70 allows any party to file any
18 motion and does not list what motions are allowed or
19 what motions are not allowed.

20 So there's no specific provision in your
21 rules that says OP -- that say any party's restricted
22 to certain types of motions. Even if that's not true,
23 however, the Land Use Commission can clearly amend the
24 Order on its own.

25 And that counsel's motion, now that it's --

1 counsel's motion can be granted in part with the
2 Office of Planning's language inserted instead.

3 From a procedural standpoint these arguments
4 really have no impact. There was the issue of the law
5 of the case. But that really applies to appeals and
6 doesn't prevent the same body from changing its Order.
7 OP never filed a Motion to Modify. And the LUC has
8 never considered a motion from the Office of Planning.

9 In fact if the law in this case applies to
10 anyone, quite frankly, it should apply to the
11 Intervenor's argument that any water from the
12 high-level aquifer is banned. That position was
13 considered and rejected by the Hawai'i Supreme Court.

14 Let me deal with the issue of whether this
15 is consistent with the Hawai'i Supreme Court remand
16 and I will finish with that last issue. In our minds
17 this is not an injunctive Order issued by a court
18 telling some state agency: You must provide health
19 benefits, for example. This is an appeal from an
20 administrative hearing.

21 So when it came back to you on remand you
22 still have the full power and authority of the Land
23 Use Commission. At the time you originally considered
24 the motion -- still considered the Cease and Desist
25 Motion.

1 So whether you decide to change your mind or
2 whether you decide to amend the Order, all these
3 authorities still exist because you are the body that
4 makes that decision initially.

5 Putting it differently, if you were to, for
6 example, to go through the entire process, hold a
7 series of hearings, make a decision about what the
8 definition of potable is, do the full nine yards of
9 whether or not Petitioner has or has not violated --
10 or has or has not used potable water for the golf
11 course, how much and when and what's the appropriate
12 sanction, if any, that should be imposed, you could
13 then, pursuant to your general authority, amend the
14 Decision and Order to impose a chloride standard and
15 say: This is the new condition. And therefore all the
16 other findings that I have made are now moot.

17 Well, why do that? You cannot -- I think at
18 some point a certain level of common sense has to come
19 in. That if you know that it's appropriate to change
20 its Order now, do it now and declare the rest of that
21 process moot. There's no requirement to waste
22 government time and energy.

23 So essentially we are hoping that the Office
24 of Planning's proposal provides a balanced approach,
25 will accommodate the needs of both parties. We hope

1 you see fit to grant our motion. And we have no
2 opposition to the Cease and Desist Order. Thank you.

3 CHAIRMAN PILTZ: Thank you, Mr. Yee.
4 Questions for Mr. Yee?

5 COMMISSIONER WONG: Mr. Chairman, I would
6 like to ask Mr. Yee: In your proposed motion you
7 suggest that we mandate the Petitioner to submit
8 certain documents to the Water Commission. Is that
9 what you're saying as part of the audit?

10 MR. YEE: That, it's not that the LUC has to
11 submit, but that before the Petitioner completes the
12 study and the audit that that's been reviewed by CWRM
13 to determine that they did it correctly.

14 COMMISSIONER WONG: And suppose CWRM is not
15 interested in reviewing it? Is that the function of
16 the Land Use Commission to say to CWRM, "I'm going to
17 ask a party to submit documents to you for your
18 review"? CWRM says, "Why are you imposing that burden
19 upon me?" So all I'm saying is that this does not
20 appear to me to be a reasonable mandate to be imposed
21 upon the Land Use Commission to force you to go to
22 CWRM and ask them to approve certain documents.

23 MR. YEE: This is not a model that's unknown
24 to other Land Use Commission orders. So for example,
25 TIARs are all approved by DOT. And the DOE

1 conditions, you know, for schools we look for an
2 agreement with DOE. If it's concern for the
3 Commission I suppose you could eliminate CWRM, but
4 it's not unusual for a state agency with technical
5 expertise review a document and give their approval
6 before coming to you.

7 COMMISSIONER WONG: Then, Mr. Chairman, if
8 that's so it appears that this is a special area of
9 water that should be reserved for the Water Commission
10 to decide and look at and audit and analyze rather
11 than being a function on the part of the Land Use
12 Commission to micromanage and analyze water.

13 What do we know about all aspects of water?
14 So in that sense using your argument it appears to me,
15 Mr. Chairman, that's beyond the scope of our
16 jurisdiction.

17 MR. YEE: Could I briefly respond to the
18 concern?

19 CHAIRMAN PILTZ: We really need to move on.
20 We have a couple of others that need to testify.
21 County, sorry to cut you off.

22 MS. LOVELL: Thank you. For the record my
23 name is Jane Lovell. I'm a deputy corporation
24 counsel. I'm here today representing the County's
25 Planning Department. I'll try to be very brief.

1 Generally speaking the county supports the Office of
2 Planning's proposal that this Commission adopt its own
3 definition of the word "potable". We believe that if
4 the Commission does that you will be complying with
5 the mandate from the Supreme Court.

6 The suggestion has been to take the
7 definition from the former county ordinance which
8 defined the word potable as it applies to golf courses
9 in terms of chlorides, namely 250 milligrams per liter
10 of chlorides or more. So that in a nutshell is the
11 County's position.

12 I would like to say, however, three things.
13 One. The county did not intend when it amended its
14 definition of potable to remove any restrictions from
15 the Manele Golf Course. Those restrictions are still
16 there. They're found in our zoning ordinance which is
17 Chapter 19.70.085 of the Maui County Code which
18 provides that, "No potable water drawn from the high
19 level aquifer may be used for irrigation of the golf
20 course."

21 It goes on to say that, "In terms of
22 non-potable water no more than 650,000 gallons per day
23 on an annual moving average may be used on the Manele
24 Golf Course." So there's still restrictions.

25 However, because of the way that the state

1 is reading our new ordinance, I have asked our water
2 resources committee to look at potential technical
3 amendments to the new definition to make sure that the
4 way that OP is reading our ordinance is corrected if
5 correction is needed. There was no intent whatsoever
6 to remove any restrictions from the County's point of
7 view on this golf course.

8 Next I would like to respond to Mr. Lehman's
9 statement that the Lana'i aquifer is not fragile. That
10 is certainly not the County's view. And I don't
11 believe that is a fair reading of the Commission on
12 Water Resource Management's letter dated December 10,
13 2009 which is attached to the Petitioner's filing of
14 January 6th as Exhibit 10.

15 The Water Commission indicated in that
16 letter that it is prepared to reopen the designation
17 process, if warranted, once the Water Use and
18 Development Plan is adopted by ordinance.

19 The Water Commission notes in that letter
20 that water levels in Wells 16, 9, 14 are approaching
21 quote, unquote "action levels." The letter from the
22 Commission recognized high levels of system loss and
23 indicated that a number of these issues continue to be
24 of concern to the Water Commission.

25 Neither, however, does the county agree that

1 the situation is quite as dire as the Intervenor
2 paints it to be. In any event we believe that the
3 people who should be managing the aquifer at the end
4 of the day are the people with the specific expertise
5 and jurisdiction to do that. And that is the Water
6 Commission.

7 There's a mechanism for that. It's a
8 petition to designate the aquifer as a groundwater
9 Management Area. The commission has indicated it
10 would reconsider its earlier decision not to
11 designate. I think for this Commission staying within
12 this Commission's kuleana and jurisdiction what you
13 should be doing is focusing on the mandate from the
14 Supreme Court.

15 I think that by revising or coming up with a
16 definition of potable you can do that. Take the
17 definition that OP has proposed or some other
18 definition that has some rational basis. Use that.
19 And if the aquifer -- if any of the other conditions
20 change, then any part, can come in and ask you to make
21 further changes.

22 CHAIRMAN PILTZ: Thank you. Commissioner
23 Lezy.

24 COMMISSIONER LEZY: Thank you, Chair.
25 Ms. Lovell, if possible I'd just like to have you

1 emphasize something principally if I'm understanding
2 you correctly, principally for the benefit of quite a
3 few of the folks that testified here today from the
4 public. Clearly there's a concern amongst the
5 citizens of Lana'i regarding usage and allocation of
6 the water resources on this island.

7 If I can get you just to agree with me that
8 the closing comments that you just made are that the
9 County of Maui, I assume in coordination with the
10 state Commission on Water Resource Management, the
11 county sees as their obligation to govern the
12 allocation and usage of water on the island of Lana'i.
13 Is that correct?

14 MS. LOVELL: I'm not sure I would phrase it
15 quite that broadly. But the county does have, just as
16 the state does, has a public trust duty when it comes
17 to public trust resources such as water. The county
18 certainly has a duty with respect to its own
19 ordinances.

20 And there is a very specific ordinance that
21 governs the use of both potable and non-potable water
22 for the Manele Golf Course. So certainly the county
23 has that duty.

24 And the county also has the duty to consider
25 water use and allocation through the process known as

1 the Water Use and Development plan. After many years
2 of struggling with that we now have a draft that's
3 out, it's published. It's on our county website.
4 That will be taken up first by the Board of Water
5 Supply and thereafter by the county council and will
6 be adopted possibly with changes as an ordinance.

7 And we're looking at a timeline from today
8 of about a year to get those two reviews done. We are
9 hopeful that our county council will adopt it as an
10 ordinance.

11 The Water Use and Development Plan has an
12 allocation scheme. It has limitations on uses of
13 water and so forth. So I think if you put it in that
14 framework those are the county's duties and
15 responsibilities.

16 COMMISSIONER LEZY: And I think to take it a
17 step further the suggestion of the county is that
18 concerns concerning usage and allocation should be
19 brought to the appropriate county agencies to be
20 addressed.

21 And I think your final comment to us was the
22 county does not believe that those are issues that
23 should be taken up and decided by this Commission. Is
24 that accurate?

25 MS. LOVELL: Not quite. I think this

1 Commission also has to keep its eye on water and does
2 so in every district boundary amendment that you
3 consider. It's certainly an important issue. But I
4 think it's important that this Commission not try to
5 micromanage the aquifer because I don't think you have
6 the appropriate expertise.

7 I think that if there were a petition to
8 designate the aquifer there certainly would be support
9 from within the county for that petition to put the
10 management of the aquifer in the hands of the state
11 but through the Water Commission and not this
12 Commission.

13 COMMISSIONER LEZY: Thank you.

14 CHAIRMAN PILTZ: Thank you. Go ahead.

15 COMMISSIONER WONG: Mr. Chair, my question
16 is you indicated there is the zoning ordinance which
17 provides in substance that no groundwater, no potable
18 groundwater may be used for the irrigation of the golf
19 course, right?

20 MS. LOVELL: (Nodding)

21 COMMISSIONER WONG: Now, in that same
22 ordinance or any other ordinance of Maui is there a
23 definition of what is potable and not potable?

24 MS. LOVELL: Yes. The current definition is
25 found in Chapter 14.08 of the Maui County Code. And I

1 can't quote it for you precisely. I believe it's in
2 the amended motion of State OP. But it's basically
3 that "potable" means water that is considered
4 drinkable by the State Department of Health.

5 However, when it comes to the Manele Golf
6 Course it's the County's position that our old
7 definition of potability applies. And that is because
8 that was the definition that was in effect at the time
9 that the golf course was approved.

10 And there is a savings clause in the county
11 ordinance which indicates that if a law changes it
12 doesn't go back and undue previous permits or previous
13 approvals. It would apply.

14 But because there's some controversy on this
15 I'm going to ask our water resources committee of the
16 county council to take a look and see if any technical
17 amendments to the new definition are required.

18 COMMISSIONER WONG: Mr. Chairman, the reason
19 for the question is that counsel is urging us to adopt
20 a standard for potable water. But if there is already
21 a definition, why would we adopt a different
22 definition? In other words, could we not use the
23 definition as you've indicated, Chapter 14.04?

24 MS. LOVELL: I think actually.

25 COMMISSIONER WONG: Zero eight.

1 MS. LOVELL: Actually, Commissioner Wong, it
2 would make more sense to use the previous definition
3 which was in terms of a chloride standard because the
4 new definition talks generally in terms of the
5 Department of Health contaminant levels and so forth.
6 But the old definition had a specific chloride
7 standard.

8 And I believe, first of all, that is the
9 definition that applies to this particular golf
10 course. Secondly, I believe that it is more in line
11 with the Commission's original Condition 10.

12 COMMISSIONER WONG: Okay. One more
13 question, Mr. Chairman. Counsel is urging that we
14 adopt the amended motion, modified motion by State
15 Office of Planning. My question is that Office of
16 Planning is also suggesting a certain amount of usage
17 in terms of the amount of water. I think he's talking
18 about 650 gallons per day.

19 Now, you earlier indicated that that kind of
20 thing dealing with usage would be a matter for the
21 Water Commission in that the Land Use Commission
22 should not be micromanaging the aquifer.

23 So would you think that the motion should
24 not refer to the amount of water?

25 MS. LOVELL: No, Commissioner Wong, that's

1 not what I believe. I believe that the
2 650,000 gallons is a very useful term to put in there
3 because that is the amount of water that is allowed
4 under the county zoning ordinance. Our zoning
5 ordinance 19.70.085 specifically says 650,000. So
6 that I do not believe is micromanaging or stepping
7 into what the Water Commission's jurisdiction is.

8 I'm think more in terms of studies, action
9 levels, trying to figure out whether certain wells are
10 declining rapidly or things of that nature. Those are
11 the technical things that I think should be left to
12 the Water Commission. But the county itself has a
13 650,000 gallon restriction on the Manele Golf Course.

14 COMMISSIONER WONG: Thank you.

15 CHAIRMAN PILTZ: Thank you. Yeah, go ahead,
16 Mr. Murakami. You know we're approaching time. And
17 we have to go. But go ahead. You've got 20 minutes.

18 MR. MURAKAMI: First, I didn't imagine --
19 that's kind of unfair to the Intervenor.

20 CHAIRMAN PILTZ: Would you use the mic,
21 please.

22 MR. MURAKAMI: First of all, I want to
23 hopefully dispel some notions about what is going on
24 with respect to some of the questions raised by
25 Commissioner Wong. The cease and desist is vacated.

1 It's clear. You can read it in their Supreme Court
2 decision. It says so: "Vacated in all other
3 respects."

4 As to jurisdictional questions that seems to
5 be arising now, it was LSG that petitioned for
6 designation over ten years ago. The Commission in all
7 its wisdom decided not to at that time. Now, many of
8 the issues that seem to be raised today which were
9 relevant then, relevant now, appear to be in the
10 forefront now that the company has been found to
11 violate this condition.

12 Secondly, we ask for a summary affirmance at
13 the time of the remand because we believe the record
14 was replete with a basis for your Order to be revised
15 according to the remand and affirmed.

16 The Order that your predecessor body, the
17 LUC adopted, is 99 percent in agreement with LSG's
18 position. It agrees that, there not a potability
19 standard alone for -- chloride standard alone for
20 potability.

21 It agrees that's there's leakage from the
22 upper level wells to the lower level wells. It agrees
23 that there was a contribution of potable water to the
24 water taken out of Wells 1, 9, 14. It agrees with all
25 of that.

1 What the court said wasn't done is that
2 there wasn't a specific sentence that says: Therefore
3 potable water was used in violation of this condition.
4 That's all. So despite all that's been said about the
5 viability of a chloride-only standard, or whether or
6 not there should be a Water Commission issue or any of
7 these secondary concerns now being raised ten years
8 later, it is very clear that this Commission should be
9 razor focused on the remand Order and get back to the
10 central issue of whether or not there's been a
11 violation of Condition 10.

12 And to be very, very clear the company back
13 then, way back in 1990 according to this Lana'i Times
14 article that they published, we attached as Exhibit C
15 to our Response to the Office of Planning's Revised
16 Motion, let me read that. This is Mr. Leppert
17 answering this question:

18 "Water has been raised as an issue related
19 to Manele. How will the golf course at Manele affect
20 water supply?

21 "Answer: We have very specifically stated
22 in all of our applications and in public testimony
23 that water irrigation for the Manele Golf Course will
24 not be from the high-level aquifer."

25 I mean that's in black and white, potability

1 standards aside, everything aside. They were going to
2 stay out of the high-level aquifer. Now, they're
3 raising argument now, oh, he didn't know what he was
4 talking about. We didn't know where the high-level
5 aquifer was. Well, their own expert says that Wells
6 1, 9, 14 were in the high-level aquifer. You can
7 check the records. And I think we have cited to those
8 records. So it's very clear.

9 And the county on top of that understood
10 what we understood. Mr. Miske in a letter that I
11 attached as Exhibit E says here in his letter to
12 Mr. Leppert, after they reacted to the initial opening
13 of the golf course, "It has been our understanding
14 from early representations of the company that the
15 golf course and resort residential irrigation would
16 not draw from the island's limited high-level
17 aquifer." So even the county agreed with us.

18 Now because the Commission unfortunately
19 used the word "potable" in its condition, they're
20 banking on that issue, which is really a side issue,
21 with respect to their representations to you and the
22 county and to LSG which withdrew its intervention
23 requested under the reliance on these specific
24 statements that they would not use the high-level
25 aquifer, withdrew its intervention and allowed that

1 approval to go through.

2 And there's a written agreement of that
3 form. The county, in fact, in 1992 passed Ordinance
4 2132, and I'll cover that, that specifically adopts
5 this specific standard: No use of the high-level
6 aquifer. The county was in agreement back then.

7 One last preliminary point before I get to
8 this presentation. There seems to be a notion that
9 somehow we have changed standards, applicable
10 standards over the years that where the potability
11 standard was different before. And that's not true.
12 The potability standards in effect at the time of the,
13 I believe it was, April 1991 approval of the Manele
14 Golf Course, was the EPA standard.

15 The very first change to the potability
16 standard occurred seven or eight months later in
17 December of that same year with the adoption of now
18 repealed Maui County Code 2024.020. That changed the
19 potability standards to a chloride-only standard.

20 So at the time of the approval of this
21 decision there was no dispute as to what potability
22 was. It was the EPA standard which has both primary
23 and secondary standards of which chloride is only a
24 secondary standard, an aesthetic standard. It does
25 not compel a finding of non-potability simply because

1 chlorides are above 250 parts per million. And the
2 Land Use Commission, your predecessor, agreed with
3 that.

4 So it is going to be incredible if this
5 Commission now sitting does a 180 degree turnaround on
6 all these points on the simple remand Order to ask you
7 to find whether or not under the potability standards
8 at the time of your Order, which was very clear,
9 fairly little dispute if you look at it legally,
10 there's probably three dozen contaminant levels any
11 one of which, if exceeded, could possibly threaten the
12 potability of this water none of which has been shown
13 in, what is it, eighteen years having occurred.
14 Never, not one finding that potability standard under
15 the EPA then in existence at the time of your approval
16 of the Manele Golf Course has been violated.

17 The only thing we have been talking about is
18 brackish water which is a secondary non-binding
19 standard for potability. That's where all this
20 confusion is about. I want to make it very clear.

21 First of all, I'm going to make sure that we
22 talk about the right wells here. We're really talking
23 about Well 6 and 8 being the primary potable wells
24 that are in the upper level, and 2 and 4 serving
25 Manele. The brackish wells are Well, 1, 9, 14

1 primarily now, although there is some suggestion there
2 might be a 15.

3 The aquifers are located basically in the
4 upper level are of Lana'i, the Lana'i Hale. This
5 colored area you see. It's been split between
6 windward and leeward. And that's very critical
7 because there's been 6 million MGD being tossed
8 around -- I think Mr. Yee mentioned that -- as being
9 the sustainable yield.

10 The current Water Commission view of this is
11 there is a 3 million sustainable yield, million
12 gallons sustainable yield for both aquifers.
13 Therefore six. But you cannot equate the two together
14 because there is a geographical separation that causes
15 concentration of wells particularly in the leeward
16 sector to cause some real problems as you'll see later
17 on. If you start approaching the three, in other
18 words, then you're in trouble.

19 Now, the wells, as I said, Well 6 is just
20 beyond the aquifer at the very crest of this line of
21 separation. And the rest of the wells, Well 6 and 8
22 which are the potable sources for wells, Lana'i City.
23 Potable sources 2 and 4 for Manele District and the
24 brackish sources 1, 9 and 14 are all in the leeward
25 aquifer.

1 There's the city wells. Here's the Manele
2 potable wells. And here's the irrigation wells.
3 Okay. Basically what you see is that the potable
4 wells are on the upper levels.

5 CHAIRMAN PILTZ: Take your mic with you,
6 would you please?

7 MR. MURAKAMI: Sorry. 6 and 8 are at the
8 top, at a very high level. Little lower are Wells 2
9 and 4. Then 1, 9, 14 are in the Palawai Basin. So
10 what you see here basically water follows gravity and
11 flows down and out towards the sea. That's what this
12 Commission agreed was happening that causes leakage
13 from the upper level Wells 6 and 8 wells, for example
14 to be flowing in as water is displaced from Wells 1, 9
15 and 14. And they found under their own standards that
16 their potable water was infiltrating the lower level
17 1, 9, 14 wells. That's in your decision in 1996.

18 This is the current usage. And I'm trying
19 to use as much facts as I can because that's all we
20 got to fight this issue. This is the Water Use and
21 Development Plan's depiction of the water use on the
22 island. As you can see here the city level is at that
23 level. Manele Project district is here. The total is
24 here.

25 Collectively Manele is using three quarters

1 of the water of the island being pumped. That's very
2 important to understand because No. 1 there's very few
3 residents down there. No. 2 we believe that's
4 excessive waste. Even the president has admitted he's
5 violating his own CC&R's by using more than a thousand
6 gallons per day.

7 And if you just go down there you can see
8 the lush vegetation there that is benefiting from this
9 excessive usage in a dry area.

10 Here's month by month. The green is the
11 Manele Project District, the blue the next lower level
12 about half to -- well, sometimes a third of that usage
13 is Lana'i City. There is excessive use in these, in
14 the Manele Project Districts collectively. And worse,
15 if you try to account for that water the islandwide
16 pumpage you'll see in the bars the line represents
17 what they can account for by billing. So that gap
18 above the line they can't account for. It's waste or
19 some other leakage or whatever it might be. And they
20 don't know enough about that.

21 The Manele district in particular is
22 using -- has a 29 percent unaccountability percentage
23 while Lana'i City is less than half of that at about
24 13.52. All that I'm quoting here is in the Water Use
25 and Development Plan which I provided the Commission

1 full with the CD's you should have.

2 Here is a comparison that's very
3 interesting. This is the Lana'i City accountability.
4 The line represents, again, the accountable billing.
5 You can see the level there. In contrast the Manele
6 potable loss is 44 percent, almost 45. Almost half of
7 the water being used down there is not accounted for.
8 And this is the representation on the graph.

9 In general you can see the difference
10 between Manele before and Lana'i City here. There's a
11 huge gap in accountability between the two areas.
12 These are the two graphs that represent that.

13 The brackish water loss is unaccounted for,
14 18 percent, almost 19 percent. This is the
15 landscaping and the golf course. This is the
16 depiction of their use month by month last year. If
17 you take the comparative use, and this is where
18 Mr. Chiekes took some exception to this, it is clear
19 that while individual homeowners are not potentially
20 using all this water, if you basically do the
21 division, total water use in this district, total
22 numbers of subscribers, this is what you get, 221 in
23 Lana'i City/3,700 in Manele district.

24 The important thing about this is not that
25 any individual homeowner might be using excessive

1 water, but because you're including the hotel, the
2 landscape, irrigation of the roadways and the golf
3 course you get this high figure, 2800 of which is
4 irrigation, 900 of which is potable wherever they're
5 using it.

6 But the three quarters of this island's use
7 is broken down this way. This is the graphic
8 representation of the difference between the lowest in
9 Lana'i City, the 900 that's the potable water use in
10 Manele District and the 2800 in the same district.
11 It's a huge disparity.

12 The county standard is 600 gallons per day
13 per household. So whether it's the potable water use
14 by 50 percent or the brackish water use by five times
15 that amount it is excessive. Some of the conclusions
16 are very alarming.

17 They say here, for example, "Absent measures
18 to mitigate withdrawals, existing partial entitlements
19 in the form of project district approvals could cause
20 demands to meet or exceed the sustainable yield of one
21 or both aquifers."

22 They're talking about exceeding 3.0 in each
23 aquifer possibly. And this is what they're projecting
24 out. So while there may not be some -- some people
25 are characterizing this as not meaning this to be

1 concerned about, I'm just going to leave you with the
2 conclusions of this Water Use and Development Plan and
3 you can make your own minds up.

4 "At the current islandwide accounted for
5 water rates buildout of the Phase II entitled portions
6 of the Project districts without additional
7 development in the windward aquifer could lead to
8 exceedence of sustainable yield."

9 In other words, the 3.0 is in jeopardy of
10 being exceeded. Again, buildout approvals could
11 create demands exceeding sustainable yields. You can
12 find this in three places in the Water Use and
13 Development Plan. Here are some of the numbers. The
14 2006 proposal that was issued by the company 2009 I
15 believe were in the range of 4.1 to 4.2 MGD. And this
16 is beyond the 3.0. You cannot look upon this as a 6.0
17 sustainable yield. You must view this as separate
18 aquifers.

19 Basically the model that they relied upon to
20 project some of the potential changes to the water
21 levels that the Water Commission did, had assumed that
22 they were going to spread wells over 13 sources.
23 There are only six in effect being pumped right now.

24 That's bad because you're focusing the
25 pumping in a concentrated area which affects your

1 viability of your pumping. And 85 percent of the
2 withdrawals came from the leeward sector.

3 As I said Well 6 is up in the very cusp of
4 the boundary but the rest are all in the leeward
5 sector. So there's an overdrawing of the leeward
6 sector relative to the whole.

7 Then the problem there is that it is
8 unlikely Well 6 can pump more because water levels are
9 declining as they are in Wells 8, 1, 9 and 14. Those
10 are the levels that are being affected at 2008 pumpage
11 rates.

12 In the Well 9 alone there's been a 442-foot
13 decline since 2003 in the last six years. These are
14 not our conclusions. These are the county's
15 conclusions. Well 8 went down by 80 feet, I don't
16 know since when. By that lowering occurred in
17 September of this year. So I must assume that this
18 occurred over at least the last two to six years.
19 Maybe somebody can actually inform me on that.

20 There were some graphs in there that shows
21 declines. The yellow as you can see there is the
22 action level set by the Water Commission to start
23 looking at this issue again.

24 There's been basically drops in the water
25 level, 200-foot decline from the green to the current

1 where the graph is. The green is the top dark line in
2 this screen.

3 There's been a 230-foot decline from what I
4 can tell interpreting this Well 9 graph.

5 Well 6 has shown a hundred foot decline.

6 Well 8 about a hundred foot decline. If you
7 use the green level as the original water level in the
8 wells as the Water Use and Development Plan depicts.

9 So, again, this thing about the sustainable
10 yield, nobody, not even the developer's hydrologists
11 have said that it is, that they can theoretically -- I
12 mean they can achieve the theoretical 6 MGD figure
13 because of this separation between leeward and
14 windward and because of the concentration of wells in
15 windward.

16 Unless massive infrastructure improvement is
17 done to tap the windward sources and to lay all the
18 pipelines to the leeward side, the 6 MGD is really a
19 phantom number.

20 And the modeling that would predict some of
21 the changes that might occur is assuming basically
22 that the conditions for recharge that were in
23 existence at the time the model was done in the 1990s
24 remain the same. But, in fact, what they found, for
25 example, is that the fog drip even if the reduction of

1 forest cover up in the Mahaolu Hale could drastically
2 affect recharge. Fog drip accounts for over
3 65 percent of the recharge. The forest cover that
4 captures that recharge is very critical. The loss of
5 fog drip even with zero pumpage, if all wells stop,
6 would still result in a drop of water levels of 25 to
7 30 percent if there was no fog drip.

8 If you start pumping at the 6 MGD
9 theoretical sustainable yield, the water levels would
10 drop to 50 percent. However, the mauka watershed
11 forest is exceedingly compromised. These are not my
12 words. This is in the Water Use and Development Plan,
13 a very critical source of water to recharge the
14 aquifer.

15 If that recharge changes, then all
16 assumptions about what is safe in terms of declining
17 water levels are completely changed. And that's why
18 we are so concerned about this because we know that
19 the watershed is compromised. There seems to be a
20 very half-hearted attempt to restore it.

21 There's a declining level of water in the
22 wells that seems to indicate that the recharge is not
23 occurring as it has historically. So the plan says
24 that they urge new source development before you reach
25 3 MGD in leeward aquifer. But at the current pumping

1 rates at Well 6, the potable water level up in Lana'i
2 City, you achieve a 2.7 MGD in the leeward aquifer
3 alone very shortly. So you're getting very close to
4 the 3. And this is a national level that the
5 Commission has set as being one they'll come back and
6 relook at things. And you already know that we're at
7 about 2.2, as Bryan has said.

8 Project buildout could take place at a pace
9 that enables continued monitoring, the status of the
10 aquifer and the watershed. So they're urging the
11 County's using continuing monitoring of the aquifer
12 and the watershed because these are very critical
13 elements of what happens to the aquifer.

14 There's a vital need for continued official
15 community involvement. The community wants to see a
16 half million gallon per day agriculture reserve out of
17 the 3 million, so that's a very important thing to
18 keep in mind. That lowers it already to 2.5 million.
19 You're already at 2.2.

20 There's only 300,000 gallons per day margin
21 there between now and what could possibly lead to a
22 point where you might be in trouble if you account for
23 that reserve.

24 One of the recommendations that the
25 development -- recognizes that the development of

1 windward well sources is recommended but considered
2 expensive. You can tell that from just the distances
3 involved.

4 They ask that you consider Native Hawaiian
5 rights. They leave you with this extreme caution that
6 despite whatever the petitioner has said or the
7 movant -- this is the language of the County Water Use
8 and Development Plan, "Lana'i is uniquely vulnerable
9 to negative impacts from climate change due to the
10 position in the rain shadow of Maui, its low
11 elevation, the potential rise of the inversion layer
12 due to climate change. These factors argue in favor
13 of a cautious allocation policy for Lana'i." And
14 that's how we're urging you to approach this motion.

15 CHAIRMAN PILTZ: You have five more minutes.

16 MR. MURAKAMI: Okay. Already we know that
17 this is becoming a real problem because of the decline
18 of the recharge area in the Lana'i Hale. So in
19 summary, Manele is using the Project District, is
20 using most of the island's water supply, by three
21 quarters. It's accounted for the highest percentage
22 of unaccounted for water, 29 percent for the entire
23 Project District, 44 for just potable water alone.
24 Lana'i City is just at 13.52. Which is even
25 excessive.

1 And it has the highest average household
2 water use just doing the division, not to point
3 fingers at any particular resident: 3700 gallons per
4 day versus 221 gallons per day in Lana'i City whereas
5 the county averages 600.

6 Again, warnings about exceeding sustainable
7 yield. Remember it's a 3.0 not the 6.0. The declines
8 in the water wells are very troublesome, given the
9 pace of decline. And the very fact that this is the
10 premise that even the Petitioner said is what should
11 be happening in a statement where they say there
12 should be no concern about the aquifer so long as
13 there's no decline in the water wells.

14 Well, there have been declines in the water
15 wells. I think that's unrefuted. Even with the
16 increased distribution infrastructure you can't
17 achieve the 6.0 MGD. So that, again, you got to
18 remember is kind of a fictional figure to use for
19 planning.

20 There have been -- all the planning is
21 assuming recharge is going to stay the same at Lana'i
22 Hale and they haven't. It's been extremely
23 compromised, continues to decline.

24 Reminder again about the 2.70 that they
25 project will happen at the current pumping rates for

1 Well 6 and that these buildouts will, it should
2 mandate continued monitoring on the status of the
3 aquifer and the watershed.

4 We think that as a result -- I'm going to
5 try to rush through this -- that the Castle & Cooke's
6 motion is really unwarranted. It does not exercise
7 caution. It basically throws it to the wind and says,
8 "Okay, despite all of this give us all the water we
9 need for the golf course because of economics."

10 And I heard the general manager say he's in
11 support of sustainable economics for the island.
12 Well, this is not sustainable if this continued
13 deterioration proceeds. Until that is short circuited
14 we all have to face the prospect that the lack of
15 recharge is going to affect us all.

16 I don't care what station of life we come
17 from, in favor of this motion, against this motion.
18 If the recharge, which fog drips accounts for
19 65 percent, does not yet sustain, all bets are off on
20 all of these projections.

21 The State's Motion to Amend the Findings of
22 Fact really asks for going back to old standards. And
23 there's no basis for that from all I've said. You
24 have agreed that chloride is not, should not be the
25 standard for potability. You have agreed that there's

1 leakage from the upper level through the lower level
2 that is contributing potable water to the removal of
3 water from Wells 1, 9 and 14.

4 You have agreed that we should be using the
5 EPA standard which was in effect at the time of
6 approval of the condition, not MCC 20.24.020 which is
7 what everybody seems to be injecting as the
8 chloride-only potability standard that was in effect.

9 It was not in effect. It came seven or
10 eight months later. We have no dispute, really, to
11 any of these other information gathering except that
12 they should be monitored more closely by the
13 Department of Water Supply, not the Planning
14 Department so much because they have more expertise as
15 I say here.

16 I'm going to skip over most of this because
17 that's pretty much the theme of what we have, our
18 position is with respect to this continued agreement.
19 In short it should be -- I'm sorry.

20 What I meant to leave up there is the
21 caution about continued need for caution and planning
22 for the future of Lana'i. I think with that it's
23 important that you understand that it's been a long
24 drawn out process.

25 LSG has not been responsible for a lot of

1 it. This proceeding alone just for this motion
2 there's been a two-year hiatus. It wasn't our fault.
3 The Commission just didn't put it on its agenda.
4 Hopefully the public as well as you will not hold that
5 against LSG.

6 Sixteen years, a lot of that was because of
7 a lot of delay in the proceedings, yes, but very
8 little of it because -- none of it was really because
9 of LSG trying to delay the proceedings. If anything
10 we have tried to accelerate it.

11 We moved for affirmance earlier so that you
12 wouldn't have to go through these hearings. We moved
13 for water designation 10 years ago. And that was
14 denied.

15 The standards that the Water Commission
16 wants to use for designation are extremely high. But
17 because of the cautionary note that is important to be
18 exercised here, this Land Use Commission has a public
19 trust duty to step in, especially since Lana'i is only
20 about 1/30th -- I'm sorry, 1/20th of the size of the
21 O'ahu aquifer.

22 So it is even more important to be cautious
23 and careful now because you're dealing with a much
24 smaller water supply. There's really very little room
25 for error in terms of what's happening right now.

1 So for that reason I believe unless there's
2 a question I'm going to close. I think I made my time
3 limit. And I wish I could answer any of your
4 questions, I'll be here.

5 CHAIRMAN PILTZ: Thank you. Commissioners,
6 any questions? Thank you, Mr. Murakami.

7 At this juncture, Commissioners, let me
8 again confirm that each of you have been provided and
9 reviewed the copies of the Supreme Court's decisions,
10 all pleadings filed by all the parties relating to the
11 hearing on remand and Motion to Amend the Record and
12 the copies and the transcripts of these proceedings
13 and you're prepared to deliberate on this subject.

14 After I call your name would you please
15 signify by either an aye or nay that you are prepared
16 to deliberate on this matter. Commissioner Chock?

17 COMMISSIONER CHOCK: Aye.

18 CHAIRMAN PILTZ: Commissioner Judge?

19 COMMISSIONER JUDGE: Aye.

20 CHAIRMAN PILTZ: Commissioner Kanuha?

21 COMMISSIONER KANUHA: Aye.

22 CHAIRMAN PILTZ: Commissioner Lezy?

23 COMMISSIONER LEZY: Aye.

24 CHAIRMAN PILTZ: Commissioner Wong?

25 COMMISSIONER WONG: Aye.

1 CHAIRMAN PILTZ: And the Chair has
2 deliberated and has been prepared for this matter.
3 Commissioners, what is your pleasure? Commissioner
4 Judge.

5 COMMISSIONER JUDGE: Thank you, Chair Piltz.
6 I know this water issue is a very important issue.
7 And I thank the community for coming out today and
8 sharing its views with us.

9 I'd like to encourage you all to continue to
10 discuss your concerns and perhaps bring them to the
11 agency that has the jurisdiction over the groundwater
12 and the groundwater disputes which the County of Maui,
13 Jane Lovell, explained which is really the Commission
14 on Water Resources Management.

15 And our issue today is really a very narrow
16 one. We're here because of, as Mr. Lamon explained,
17 the remand from the Hawai'i Supreme Court and really
18 this Condition No. 10.

19 That said, based upon the record and the
20 prior hearings that we have had on this docket since
21 the remand from the Hawai'i Supreme Court, I believe
22 it's impossible for this Commission to determine what
23 the Land Use Commission 19 years ago intended in 1991
24 in Condition No. 10.

25 As the Hawai'i Supreme Court noted the

1 record is not clear and it contains many
2 discrepancies. For example, in some places Well No.
3 9, and Well No. 1 are identified as being outside the
4 high-level aquifer. And in other places in the record
5 they're identified as being part of the high level
6 aquifer.

7 I also believe that the record is
8 inconclusive as to what the Commission considered to
9 be potable water. Therefore, there's no basis to
10 conclude that there was a violation of Condition No.
11 10.

12 However, the new information and the new
13 evidence provided at the hearings conducted pursuant
14 to the remand showed that more precise standards for
15 water quality have been developed and will more
16 accurately establish the parameters for an appropriate
17 groundwater use condition for this petition.

18 In addition, the changes in the
19 circumstances at the county regulatory level also
20 indicate that Condition No. 10 can and should be
21 clarified.

22 Based upon the pleadings from the Office of
23 Planning, the Petitioner and the County of Maui they
24 all appear to agree that prohibiting use of water
25 containing 250 milligrams per liter of chlorids for

1 golf course irrigation is reasonable.

2 Therefore, I would like to offer a two-part
3 motion to my fellow commissioners. Firstly, I move
4 that the Commission find that there was insufficient
5 evidence to support the Commission's 1996 Order
6 finding of violation of Condition No. 10 and that the
7 1996 Order should be vacated.

8 Secondly, I move to deny OP's Motion to
9 Amend Condition No. 10 and its revised Motion to Amend
10 Condition No. 10. Further move to grant Petitioner's
11 Motion to Amend Condition No. 10 with Condition No. 10
12 to read with the following modifications:

13 A. "The Petitioner shall not use
14 groundwater to irrigate the Manele Golf Course driving
15 range and other associated landscaping if the chloride
16 concentration measured at the wellhead is
17 250 milligrams per liter or less."

18 B. "In the event the chloride concentration
19 measurement of groundwater to irrigate the Manele Golf
20 Cour driving range and associated landscaping falls
21 below 250 milligrams per liter, the Petitioner shall
22 cease use of the affected well or wells producing such
23 groundwater for irrigation purposes until such time as
24 the chloride concentrations of the water drawn from
25 such well rises above the 200 milligrams per liter."

1 C. "The total amount of groundwater used to
2 irrigate the Manele Golf Course driving range and
3 other associated landscaping shall be consistent with
4 Maui County Code Chapter 19.70.85C Manele Project
5 District 1. I believe that is irrigation is what the
6 county said."

7 And D. "As used herein the term
8 'groundwater' shall have the meaning as set forth in
9 section 17 -- I'm sorry 174C-3 Hawai'i Revised
10 Statutes which is the State Water Code."

11 Then E. "Nothing in this condition shall
12 limit the imposition of other restrictions by
13 appropriate governmental agencies having jurisdiction
14 or affect the interpretation or enforcement of any
15 private agreements between Petitioner and Intervenor
16 Lanains for Sensible Growth."

17 CHAIRMAN PILTZ: Commissioners, we have a
18 motion on the floor. Do we have a second?

19 COMMISSIONER WONG: Second.

20 CHAIRMAN PILTZ: Second by Commissioner
21 Wong. Any other comments? Executive director, could
22 you call the roll.

23 MR. DAVIDSON: Motion as just stated by
24 Commissioner Judge, seconded by Commissioner Wong.

25 Commissioner Judge?

1 COMMISSIONER JUDGE: Yes.

2 MR. DAVIDSON: Commissioner Wong?

3 COMMISSIONER WONG: Yes.

4 MR. DAVIDSON: Commissioner Chock?

5 COMMISSIONER CHOCK: Yes.

6 MR. DAVIDSON: Commissioner Kanuha?

7 COMMISSIONER KANUHA: Yes.

8 MR. DAVIDSON: Commissioner Lezy?

9 COMMISSIONER LEZY: Yes.

10 MR. DAVIDSON: Chair Piltz?

11 CHAIRMAN PILTZ: Yes.

12 MR. DAVIDSON: Motion passes six/zero,

13 Chair.

14 CHAIRMAN PILTZ: Okay. We're adjourned.

15 Thank you for coming.

16 (The proceedings were adjourned at 2:15 p.m.)

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C E R T I F I C A T E

5

6 I, HOLLY HACKETT, CSR, RPR, in and for the State
7 of Hawai'i, do hereby certify;

8

9 That I was acting as court reporter in the
10 foregoing LUC matter on the 8th day of January 2010;

11

12 That the proceedings were taken down in
13 computerized machine shorthand by me and were
14 thereafter reduced to print by me;

15

16 That the foregoing represents, to the best
17 of my ability, a true and correct transcript of the
18 proceedings had in the foregoing matter.

19

20 DATED: This _____ day of _____ 2010

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HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

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