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LAND USE COMMISSION

STATE OF HAWAI'I

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_____ )	

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at Conference Room 405, 4th Floor, Leiopapa A Kamehameha, 235 S. Beretania Street, Honolulu, Hawai'i, commencing at 9:45 a.m. on April 8, 2010 pursuant to Notice.

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

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A P P E A R A N C E S

COMMISSIONERS:  
KYLE CHOCK  
THOMAS CONTRADES  
VLADIMIR DEVENS  
LISA M. JUDGE  
DUANE KANUHA  
NORMAND LEZY  
RANSOM PILTZ (Chairman)  
REUBEN WONG

EXECUTIVE OFFICER: ORLANDO DAVIDSON  
PLANNER & ACTING CHIEF CLERK: RILEY HAKODA  
STAFF PLANNER: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. BR09-784 STATE OFFICE OF PLANNING (Ka Iwi)

For the Petitioner: BRYAN YEE, ESQ.  
Deputy Attorney General  
ABBEY MAYER, MARY ALICE EVANS  
Office of Planning

For the County: DON KITAOKA, ESQ.  
Deputy Corporation Counsel  
TIM HATA, DPP

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A P P E A R A N C E S cont'd

Docket No. A10-785 HAWAII HOUSING FINANCE and  
DEVELOPMENT CORPORATION and FOREST CITY HAWAII, KONA,  
LLC.

For the Petitioner: JENNIFER BENCK, ESQ.  
STEVEN LIM, ESQ.

For the Co-Petitioner: CRAIG IHA, ESQ.

For the County: (No attendance)

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
ABBEY MAYER, Director  
Office of Planning

Also present: BENJAMIN KUDO, ESQ. for Lili'uokalani  
Trust

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1           CHAIRMAN PILTZ: Good morning. This is the  
2 meeting of the Land Use Commission April 8th and we're  
3 in the conference room 405. At this time we'd like to  
4 have the adoption of the minutes from March 18th and  
5 19th. Are there any corrections or additions to those  
6 minutes? Go ahead, Commissioner Wong.

7           COMMISSIONER WONG: Mr. Chairman, I move the  
8 adoption of the minutes for March 18th.

9           CHAIRMAN PILTZ: Been moved by Commissioner  
10 Wong. Is there a second?

11          COMMISSIONER DEVENS: Second.

12          CHAIRMAN PILTZ: Second by Vlad. All those  
13 in favor signify by saying aye.

14          VOTING: Aye.

15          CHAIRMAN PILTZ: We'll move on to our  
16 tentative meeting schedule.

17          MR. DAVIDSON: Thank you, Chair. I think my  
18 only comment this morning -- the rest of the schedule  
19 is as you see and it's, frankly, sort of up in the air  
20 pending some of the matters before you. But let me  
21 mention a little bit about tomorrow morning which  
22 we're doing SP87-364 Kahili Adventist School from both  
23 Kaua'i and Kalanimoku via video conference.

24                 So the plan is that Commissioner Contrades,  
25 myself, Riley and Bert are gonna go to the Lihue

1 Airport conference room and everybody else is going to  
2 go to the Kalanimoku basement. You have a map on how  
3 to get there. Hopefully all the technology will work.  
4 And we're set for 9:00 a.m. on that item. Thank you,  
5 Chair.

6 CHAIRMAN PILTZ: We'll go on to the first  
7 item on our agenda.

8 This is a hearing and action meeting on  
9 Docket No. BR09-784 Petition for Land Use District  
10 Boundary Amendment to amend the State Land Use urban  
11 district boundary into the conservation land use  
12 district for approximately 215 acres of lands situated  
13 at Ka Iwi State Park and Queen's Beach, Maunaloa,  
14 Island of O'ahu, state of Hawai'i, identified by tax  
15 map key No. 3-9-011 portion 2.

16 On October 21st, 2009, the Commission  
17 received the Petition for Land Use District Boundary  
18 Amendment.

19 On November 20th, 2009 the Commission  
20 received a copy of a memorandum to OP, Abbey Mayer,  
21 from DLNR Laura Thielen acknowledging the OP had  
22 submitted the petition on behalf of DLNR.

23 On December 22, 2009 and December 30, 2009  
24 the Commission received correspondence from OP, Abbey  
25 Mayer, providing comments regarding BR09-784.

1           On March 17, 2010 the Commission received  
2 the city and county of Honolulu's statement of  
3 position, Exhibit No. 1, testimony, Exhibit No. 2,  
4 list of witnesses, Exhibit E. List of Exhibits,  
5 No. 4, excerpts of the City's General Plan and East  
6 Honolulu Sustainable Communities Plan Exhibits 5, 6, 7  
7 and 8.

8           On March 18, 2010 the Commission received  
9 Petitioner's list of exhibits, list of witnesses, and  
10 Petitioner's Exhibits 13 and 14.

11           On March 30th, 2010 the Commission received  
12 OP's amended list of exhibits and Exhibit 15.

13           On April 6th, 2010 the Commission received  
14 OP's second amended list of exhibits and  
15 Exhibits 16-18.

16           On April 7th, 2010 the Commission also  
17 received written correspondence from Rene Garvin,  
18 Kuliouou/Kalani Iki Neighborhood Board No. 2, Jeannine  
19 Johnson, Don Williams, Senator Fred Hemmings.

20           And on April 8th, 2010 the Commission  
21 received written correspondence from Ursula  
22 Retherford, Representative Gene Ward, Adrienne and Sam  
23 King, Hawai'i's Thousands Friends Donna Wong, Doug  
24 Cole, Miya Tsukazaki, Greg Knudsen, Hawai'i Kai  
25 Neighborhood Board Councilman Charles duJou, Livable

1 Hawai'i Kai Hui, Kaumaka Wong director, Ka Iwi  
2 Coalition, Save Sandy Beach signed by Elizabeth Riley,  
3 Natalie Iwasa, also State Representative Lyla Berg.

4 We have also from O'ahu Land Trust from  
5 Cynthia Rezentes written testimony from Livable  
6 Hawai'i Kai Hui signed by Mardi LaPrade.

7 Let me briefly describe our procedures for  
8 the docket for today. First, we'll have the parties  
9 identify themselves for the record. I will then call  
10 for those individuals desiring to provide public  
11 testimony for this docket to identify themselves. All  
12 such individuals will be called in turn to our witness  
13 box where they will be sworn in prior to their  
14 testimony.

15 After the completion of the public  
16 testimony, staff will provide its map orientation and  
17 report. After our staff has provided its map  
18 orientation and report I will give opportunity for the  
19 parties to admit their exhibits to the record.

20 After admission of the exhibits to the  
21 record the Petitioner will begin its case. Once the  
22 Petitioner has completed its presentation it will be  
23 followed by the city and county of Honolulu. The  
24 parties will then present their closing arguments  
25 starting with the Petitioner.

1           The Chair would also note for the parties  
2 and the public that from time to time I will be  
3 calling for short breaks. Are there any questions on  
4 our procedure for today? State? City?

5           MR. KITAOKA: No questions.

6           CHAIRMAN PILTZ: Parties, please identify  
7 themselves.

8           MR. YEE: Good morning. Deputy Attorney  
9 General Bryan Yee on behalf of the Office of Planning.  
10 With me is Abbey Mayer, director and Mary Alice Evans  
11 planner from the Office of Planning.

12           CHAIRMAN PILTZ: City?

13           MR. KITAOKA: Good morning, Mr. Chair. Don  
14 Kitaoka, deputy corporation counsel on behalf of the  
15 director of the Department of Planning and Permitting.  
16 With me is Tim Hata from the Department of Planning  
17 and Permitting.

18           CHAIRMAN PILTZ: Thank you. At this time  
19 we'll have public testimony. Our first person is Lyla  
20 B. Berg representative.

21                           LYLA B. BERG,  
22 being first duly sworn to tell the truth, was examined  
23 and testified as follows:..

24           THE WITNESS: I do.

25           CHAIRMAN PILTZ: Please state your name and

1 address for the record.

2 THE WITNESS: Thank you. My name is Lyla  
3 Berg. I'm state representative for the 18th district  
4 in East O'ahu. And home address is 5535 Kawaikui  
5 Street in Niu Valley. And my office address is room  
6 324 at the state capitol.

7 CHAIRMAN PILTZ: Thank you. Go ahead.

8 THE WITNESS: Thank you very much. Thank  
9 you for the opportunity to testify. It's unusual for  
10 me to be on this side of the table. But I certainly  
11 do understand now a little bit better empathetically  
12 when people come and talk with us at the capitol how  
13 nerve racking it can be because when we want to speak  
14 our truth we also want people to hear us.

15 You have before you my formal testimony in  
16 support of this petition. I did want to take a few  
17 moments, and I appreciate being first on the agenda so  
18 I can go back to a hearing at the capitol.

19 I did want to speak with you personally  
20 about some of the concerns that I have statewide that  
21 perhaps might influence your decision in this  
22 reclassification and the necessity for this.

23 At the State Legislature at this time there  
24 are significant number of bills to sell public lands.  
25 Fortunately we deferred one of them the other day.

1 But they keep coming up. And the conversation in our  
2 caucus certainly about ceded lands or non-ceded lands  
3 is one that's problematic because we do not have a  
4 comprehensive inventory of ceded lands.

5           So at this particular time the role that you  
6 play as the Land Use Commission is so important. And  
7 I know you realize that. I wanted to emphasize the  
8 value you play, especially in guiding the Legislature  
9 with regards to reclassification of lands.

10           Equally at the Legislature are problematic  
11 bills that expedite the permitting process all in the  
12 name of creating jobs and for construction as one of  
13 the major industries.

14           I think what's really important is for all  
15 of us to be again to recognize that if tourism is  
16 indeed considered one of the three substantive  
17 industries in Hawai'i, that the decision that you're  
18 about to make regarding land use has direct  
19 implications for tourism.

20           I sit on the tourism committee and it is a  
21 little bit troubling to hear their marketing plan as  
22 proposing Hawai'i as an economical destination. We  
23 are a beach place.

24           If we just look at the evolution of Waikiki  
25 we can see that there are many more places on O'ahu in

1 particular where visitors might want to experience.

2           And this Ka Iwi coast certainly would be one  
3 of them that contributes now. And if we protect that  
4 in perpetuity we might stand a chance of O'ahu being a  
5 little more attractive for the visitor industry.

6           I also wanted to share with you from the  
7 state perspective that the Department of Land and  
8 Natural Resources, in particular the state Historic  
9 Preservation Division, is considered a high risk  
10 grantee by the federal government because of their  
11 transgressions.

12           Recently there was a move to put in an audit  
13 for SHPD. Unfortunately it was curtailed by one of  
14 the committees.

15           We're still pursuing that because if  
16 Director Thielen's assessment of complying with the  
17 federal guidelines is correct -- and her statement was  
18 that complying with federal guidelines would  
19 significantly compromise the State's mission, we need  
20 to find out in reality what is the State's mission and  
21 what is this division -- what are they responsible for  
22 and how are they doing it and what's missing so that  
23 at the state level we know how to accommodate them  
24 with laws or at least with funding.

25           So there are many areas from the state

1 perspective that jeopardize not only land and land use  
2 but also the quality of life of our residents and  
3 visitors.

4 I grew up in East O'ahu. I paddled with Hui  
5 Nalu as a child. So this whole part of the island  
6 it's not just a place I represent. It's a place that  
7 is part of me.

8 And if we look at the decades in which so  
9 many people in this room have participated to preserve  
10 the -- not only the natural beauty but the sanctity of  
11 this place for our history but also for our children  
12 and certainly for our visitors.

13 Your decision today would not only represent  
14 a bird's eye view or an eagle's view of how important  
15 this particular piece of land or this area is to O'ahu  
16 and Hawai'i, it would also demonstrate that you have  
17 been listening -- you've been listening to the people  
18 and the citizens and that the process really works.

19 One of the things that troubles me and  
20 distresses me actually the most at the State  
21 Legislature is that people have decided that we don't  
22 listen there. They're not coming anymore.

23 The mothers who are currently doing the  
24 sit-in in the governor's office, a handful of them are  
25 being ridiculed almost because there's only a handful.

1 It only takes one person as we know to make a  
2 difference.

3           And collectively your voices would  
4 demonstrate to the public that the process works. It  
5 may take a while, but if people can believe again in  
6 all of us in our capacity as elected people, as  
7 servants in the content areas that we're in, if they  
8 can believe, maybe the younger generation will have  
9 hope and they'll stay here.

10           I'm an educator. My assessment of why  
11 children leave, it's not the brain drain because we  
12 don't have jobs for them. Our public schools, every  
13 place are struggling to keep our children engaged. I  
14 think we need to rethink who we are as a state.

15           And your decision here would definitely  
16 reflect a deeper understanding and a more authentic  
17 vision that as a state we offer the world places and  
18 people who really care about the well-being of people.

19           So I could go on and on but I think that's  
20 enough for my testimony. Thank you very much for your  
21 leadership and vigilance. You have my continued  
22 support for the existence of the Land Use Commission.  
23 You have many issues on all islands.

24           And I encourage you to be as articulate and  
25 as vocal as you can be regarding the vision for land

1 use in Hawai'i so that you can guide the state  
2 Legislature and certainly the counties to the proper  
3 decisions. Thank you very much.

4 CHAIRMAN PILTZ: Thank you. Let me ask the  
5 Petitioner and the County if they have any questions.

6 MR. YEE: No questions.

7 MR. KITAOKA: No questions.

8 CHAIRMAN PILTZ: Commissioners, do you have  
9 any questions? Thank you.

10 THE WITNESS: Thank you, Chair.

11 CHAIRMAN PILTZ: Next person is Gene Ward,  
12 representative, followed by Mardi LaPrade.

13 GENE WARD

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

16 THE WITNESS: So help me God.

17 CHAIRMAN PILTZ: Thank you. Would you state  
18 your name and address for the record and proceed with  
19 your testimony.

20 THE WITNESS: Gene Ward, 875 Pu'uomau,  
21 Honolulu 96825. That's Hahaione Valley. I represent  
22 the great people of district 17 which has Ka Iwi  
23 fortunately situated right within it.

24 CHAIRMAN PILTZ: Go ahead.

25 THE WITNESS: Thank you all for being here.

1 This is a full house. It's very encouraging. And to  
2 see how seriously you take it you swear us in. When  
3 we're at the capitol we just have people sit down and  
4 speak. They don't actually have to be sworn in.

5 That's why it's such an honor to be here  
6 representing that area and to say that this is a great  
7 day for East Honolulu, for all of Hawai'i that we've  
8 come this far.

9 I want to know being under oath I can say as  
10 the representative of district 17, to the person I  
11 don't know of anyone who would be against this to do  
12 the reclassification from the urban to conservation.

13 Rarely can I say that because there's always  
14 different opinions about who feels about what issue  
15 particularly when you're under oath. I take it very  
16 seriously when I say no one is against this probably  
17 to the person. But there may be some outliers. I'm  
18 fudging a little bit here.

19 But generally speaking the people of Hawai'i  
20 have been waiting for this. Today is the day it's  
21 going to happen. And I want to thank Abbey for taking  
22 the ball and running with it on behalf of OP, DLNR,  
23 Lingle Administration and the support which they have  
24 perceived within the community. And you will be  
25 hearing from many shortly how strongly people feel the

1 act that you're taking today means so much.

2 Thank you for your consideration of this.

3 But I want you to know that even though this is  
4 pushing for the permanent preservation of Ka Iwi, the  
5 job is not over yet. This is only the makai side. We  
6 still got a mauka side.

7 There's still a lot of concerns about  
8 cabins, whether it's a golf academy or something like  
9 that. So the battle is not over today, but you can  
10 really push the ball down the field considerably.

11 So on behalf of the community thank you for  
12 what you're doing today. I'll be very brief because I  
13 have to go back to a hearing. But what you're  
14 doing -- and I hope you will do -- rest assured that  
15 the people of this area and the people of all O'ahu  
16 and everybody who enjoys the pristine view of Ka Iwi  
17 are very, very grateful. Thank you. Aloha.

18 CHAIRMAN PILTZ: State?

19 MR. YEE: No questions.

20 MR. KITAOKA: No questions.

21 CHAIRMAN PILTZ: Commissioners? Thank you.

22 Mardi LaPrade followed by Cynthia Rezentes.

23 MARDI LaPRADE

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

1 THE WITNESS: I do.

2 CHAIRMAN PILTZ: State your name and address  
3 for the record and proceed.

4 THE WITNESS: My name is Mardi LaPrade. And  
5 I live at 857 Kealahou Street, Honolulu, Hawai'i in  
6 Kalama Valley, Hawai'i Kai.

7 I'm here representing Livable Hawai'i Kai  
8 Hui. And I'd like to read from my letter if I may and  
9 I have some other points. As a member of the Livable  
10 Hawai'i Kai Hui I serve on the natural resource  
11 committee.

12 Ka Iwi is a natural scenic resource. It is  
13 important for the health and enjoyment for both the  
14 resident and visitor alike.

15 I'm here today to represent those that  
16 cannot be here because they are in school or have yet  
17 to be born. Today I speak for the future generations  
18 through the words and pictures of the students at Pua  
19 Hala Elementary in the Kaneohe.

20 "In 2006 under the guidance of elementary  
21 teacher Tera McGraw, (phonetic) the Pua Hala student  
22 government, which was first through sixth graders,  
23 took up the issue to stop cabins from being built on  
24 the mountainside of the Ka Iwi coast.

25 "Between 2006 and 2007 the student body met

1 with members of city council, DLNR, senators, the Ka  
2 Iwi Coalition as well as wrote letters asking to  
3 oppose development on the Ka Iwi coast and keep it as  
4 beautiful as it is right now.

5 "Kalena Camera Rasimos, (phonetic) 5th  
6 grade."

7 On behalf of Pua Hala student government  
8 2006-2007, their advisor Tera McGraw, and those that  
9 do not have a voice here today, those that are yet to  
10 be born thank you for considering today's petition to  
11 reclassify the 241 acres on the makai side of Ka Iwi  
12 from urban to conservation.

13 Livable Hawai'i Kai Hui is a nonprofit,  
14 non-partisan community action group. And we strive to  
15 promote sensible growth and respect for the land as  
16 well as uphold the integrity of the East Honolulu  
17 Sustainable Communities Plan.

18 Then I would like to share not the whole,  
19 one example -- and I did submit one copy of this  
20 beautiful project the students put together, their  
21 letters, their artwork, their photographs and just a  
22 couple of key ideas from one boy's letter.

23 It's written by Kaleko Elkington. (phonetic)  
24 He's in 5th grade. And a couple of his sentences. He  
25 says, "I'm writing to you. I'm a student at Pua Hala

1 Elementary. And I'd like to tell you why it's wrong  
2 to build on the Ka Iwi coast.

3 "The land at Ka Iwi coast is sacred for us  
4 Native Hawaiians because it is said that Kamehameha I  
5 came to O'ahu and Sandy Beach."

6 And he goes on to express that he hopes that  
7 Ka Iwi coast will stay the way it is today, natural  
8 and with no buildings so it will stay beautiful  
9 forever.

10 And I myself am a science teacher at a  
11 different school. But I would like to share that the  
12 area mauka of this makai land is also very important.

13 And whatever happens up there is going to  
14 affect the parcel that we're hopefully saving today.  
15 It goes back generations to the whole Hawaiian idea of  
16 taking care of the land mountains to makai.

17 So this is a really good step forward but we  
18 have more to do just like Representative Ward shared.  
19 And I thank you so much for this opportunity.

20 CHAIRMAN PILTZ: Thank you. Questions from  
21 the State?

22 MR. YEE: No questions.

23 MR. KITAOKA: No questions.

24 CHAIRMAN PILTZ: Commissioners? Thank you  
25 for your testimony.

1 THE WITNESS: Thank you.

2 CHAIRMAN PILTZ: Next person is Cynthia  
3 Rezentes followed by Jeannine Johnson.

4 CYNTHIA REZENTES  
5 being first duly sworn to tell the truth, was examined  
6 and testified as follows:

7 THE WITNESS: I do.

8 CHAIRMAN PILTZ: State your name and address  
9 for the record.

10 THE WITNESS: Cynthia Rezentes, 87-1419  
11 Maipela Street, Wai'anae 96792. I'm here today in a  
12 different capacity than you normally see me. I'm here  
13 today as the executive director of the O'ahu Land  
14 Trust. It's a land trust that has members from all  
15 corners of the Island of O'ahu.

16 And we're interested in the conservation,  
17 preservation especially of our treasured lands on  
18 O'ahu. We're here in very strong support of the  
19 amendment petition to change the land district use  
20 from urban to conservation.

21 The Ka Iwi coastline is one of probably,  
22 maybe, three or four coastlines left on O'ahu that's  
23 undeveloped. It is as near to its natural state as  
24 you will find on the Island of O'ahu. It would be  
25 very tragic for us if this land were not protected and

1 saved.

2           It is crucial to us to be able to provide  
3 these natural lands not only for the residents that  
4 are here today but also for our future generations and  
5 also, as was mentioned prior to this, to be able to  
6 accommodate our tourist industry so that they also  
7 have a deep appreciation of what we ourselves treasure  
8 as far as our lands are concerned.

9           So the O'ahu Land Trust with  
10 representatives, again, from every corner of the  
11 island, is in very strong support of this amendment  
12 petition. Thank you.

13           CHAIRMAN PILTZ: State, any questions?

14           MR. YEE: No questions.

15           MR. KITAOKA: No questions.

16           CHAIRMAN PILTZ: Commissioners? Thank you.

17 Jeannine Johnson followed by Miya Tsukazaki.

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

21           THE WITNESS: I do.

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

24           THE WITNESS: Jeannine Johnson, 5648 Pia  
25 Street. I live in Niu Valley, just one block over

1 from Representative Berg. I'm here today representing  
2 Kuliouou Kalani Iki Neighborhood Board No. 2.

3 As committee chair of the legislative  
4 subcommittee I'm pleased to inform you that  
5 Neighborhood Board No. 2 strongly supports the Office  
6 of State planning's petition to reclassify state owned  
7 land on Ka Iwi scenic shoreline from urban to  
8 conservation.

9 Neighborhood Board No. 2 represents over  
10 6,000 households with a population of almost 20,000  
11 people. I know you got my testimony because you said  
12 you got it yesterday.

13 I would just like to say on a personal note  
14 that -- and remind you of what legacy you're going to  
15 be leaving, everyone that lives here and will live  
16 here.

17 The last century has done terrible things to  
18 this island. We have filled in salt lakes and built  
19 condominiums galore. We filled in fishponds and built  
20 houses. We filled in wetlands and built hotels.

21 This is your chance to leave something that  
22 has not been touched. And leave it in a way that  
23 generations to come will know what you did today.  
24 Thank you.

25 CHAIRMAN PILTZ: State?

1 MR. YEE: No questions.

2 MR. KITAOKA: No questions.

3 CHAIRMAN PILTZ: Commissioners? Thank you  
4 Jeannine. Miya Tsukazaki followed by Greg Knudsen.

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

8 THE WITNESS: I do.

9 CHAIRMAN PILTZ: State your name and address  
10 for the record.

11 THE WITNESS: My name is Miya Tsukazaki. I  
12 live at 3944 Sierra Drive, Wilhelmina Rise, Honolulu,  
13 Hawai'i 96816. I'd like to stand on my written  
14 testimony in support and emphasize that I'd like to  
15 represent some of the students at the law school. We  
16 are all in support of conservation of this area.  
17 Thank you.

18 CHAIRMAN PILTZ: Okay. Questions?

19 MR. YEE: No questions.

20 MR. KITAOKA: No questions.

21 CHAIRMAN PILTZ: Thank you. Greg Knudsen  
22 followed by Elizabeth Reilly.

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

1 THE WITNESS: I do.

2 CHAIRMAN PILTZ: State your name and address  
3 for the record.

4 THE WITNESS: I'm Greg Knudsen, 1205 Kaeleku  
5 Street in Kalama Valley. I'm here representing the  
6 Hawai'i Kai Neighborhood Board. I'm the chairperson  
7 of that group. And I would like to express the  
8 board's strong support of this petition for  
9 reclassification.

10 The board has been working with the State  
11 Office of Planning and we really, deeply appreciate  
12 their efforts to bring this petition forward to the  
13 Land Use Commission.

14 On February 24th, more than a year ago in  
15 2009, the board did unanimously approve a motion of  
16 support for the State's effort to reclassify this  
17 land.

18 The board has also been in partnership with  
19 a number of community organizations and individuals  
20 including the Ka Iwi Coalition to -- you know, it's  
21 been working for decades to preserve and protect this  
22 land and make it available to everyone.

23 The reclassification of this Ka Iwi land  
24 from urban to conservation will ensure that Hawai'i  
25 residents and visitors will enjoy continued access to

1 one of the last unspoiled portions, shoreline regions  
2 on O'ahu.

3 I was -- while sitting over there I also  
4 noticed that this area, if you take a look at it it  
5 looks like a monk seal with its head raised. One of  
6 my best memories of walking in the area is to see monk  
7 seals in this area and along the shoreline.

8 So do it for them as well as the people to  
9 continue to enjoy this unspoiled area. So I thank you  
10 for your support of the petition to reclassify.

11 CHAIRMAN PILTZ: Thank you. Questions by  
12 the State?

13 MR. YEE: No questions.

14 MR. KITAOKA: No questions.

15 CHAIRMAN PILTZ: Commissioners? Thank you.  
16 Elizabeth Reilly followed by Kaumaka Wong.

17 ELIZABETH REILLY,  
18 being first duly sworn to tell the truth, was examined  
19 and testified as follows:

20 THE WITNESS: Yes.

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

23 THE WITNESS: Elizabeth Reilly. Address  
24 7177 Kamilo Street, Honolulu 96825.

25 CHAIRMAN PILTZ: Go ahead.

1           THE WITNESS: Thank you. This testimony is  
2 submitted in honor of the late Dave Matthews. Aloha,  
3 Commissioners. My name is Elizabeth Reilly. I  
4 represent Ka Iwi Coalition whose mission is to ensure  
5 that Ka Iwi coastal area from Hanauma Bay to Makapu'u  
6 is protected forever as a scenic natural resource as a  
7 wild landscape of land and sea.

8           Long-time Coalition leader and spokesman  
9 Phil Esterman is currently on the mainland. So today  
10 Ka Iwi Coalition also represents the voices of Save  
11 Queen's Beach, Sandy Beach Initiative Coalition, Ka  
12 Iwi Action Council or as I refer to them as my heros.

13           Since 1981 Oahu's citizens have continually  
14 organized to defend the wild natural character and  
15 scenic splendor of the southern eastern tip of Oahu.

16           The first threat was a resort hotel and golf  
17 course planned at Queen's Beach. Then in 1987 the  
18 threat was residential development directly opposite  
19 Sandy Beach Park.

20           Now 29 years later the state is about to  
21 formalize the protected status of 215 acres of the Ka  
22 Iwi Scenic Shoreline State Park by reclassifying it on  
23 the land use maps from state urban district to state  
24 conservation district.

25           There's no doubt that today's petition for

1 reclassification guarantees the integrity of the  
2 entire Koko Head to Makapu'u coast, and as Phil  
3 Esterman said reflects the will of the people and the  
4 spirit of aloha 'aina.

5           Ka Iwi Coalition stands in strong support of  
6 the Office of Planning's petition for reclassification  
7 of Ka Iwi Scenic Shoreline State Park Docket No.  
8 BR09-784?

9           I thank you very much for your consideration  
10 of our testimony. And I'd like to leave you with a  
11 quote often said by the late Dave Matthews, though the  
12 originator was Phil Esterman, "If we lose the beauty  
13 of our coastline we lose what it means to live in  
14 Hawai'i." Mahalo.

15           CHAIRMAN PILTZ: Thank you. State,  
16 questions?

17           MR. YEE: No questions.

18           MR. KITAOKA: No questions.

19           CHAIRMAN PILTZ: Commissioners? Kaumaka  
20 Wong followed by Natalie Iwasa.

21                           KAUMAKA WONG

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

24           THE WITNESS: I do.

25           CHAIRMAN PILTZ: State your name and address

1 for the record.

2 THE WITNESS: Aloha. My name is Kaumaka  
3 Wong. My address is 6053 Summer Street in Kulio'o.

4 Aloha, Commissioners. I'm Kaumaka Wong.  
5 I'm a board member of the Livable Hawai'i Kai Hui.  
6 And I'll just read to you my letter.

7 First, mahalo to Senator Hemmings for  
8 responding to our call over a year ago when we asked:  
9 Why is Ka Iwi designated urban and how can we change  
10 it to conservation.

11 Second, mahalo to Phil Esterman, Shirley  
12 Lum, Ursula Retherford and the late Dave Matthews and  
13 the 44,000 petition signers of the '70s, '80s and '90s  
14 grassroots movements to Save Sandy Beach and  
15 surrounding makai and select mauka land.

16 Second -- third, April 22nd, 2010 marks the  
17 sixth year Livable Hawai'i Kai Hui. Five of those  
18 years have been spent in active participation and  
19 partnership with the Ka Iwi Coalition under the  
20 mentorship of Phil Esterman and the late Dave  
21 Matthews.

22 We have and will continue to work towards  
23 protecting the entire stretch of the Ka Iwi coast  
24 mauka and makai lands from any intrusion such as  
25 vacation cabins.

1           Hence, Livable Hawai'i Kai Hui strongly  
2 supports the petition to reclassify Ka Iwi Scenic  
3 Shoreline State Park Land from state urban district to  
4 state conservation district.

5           We thank Mr. Abbey Seth Mayer of the Office  
6 of Planning for working with members of the community  
7 on this request. And we invite you to join us in this  
8 nearly three-decade movement to protect the lands from  
9 Hanauma Bay to Makapu'u to protect the Ka Iwi Coast.

10           Liveable Hawai'i Kai Hui is a nonprofit,  
11 nonpartisan community action group. We strive to  
12 promote sensible growth and respect for the land as  
13 well as uphold integrity of the East Honolulu  
14 Sustainability Communities Plan. Mahalo, Kaumaka  
15 Wong.

16           CHAIRMAN PILTZ: Questions, State?

17           MR. YEE: No questions.

18           MR. KITAOKA: No questions.

19           CHAIRMAN PILTZ: Commissioners? Thank you.

20           Natalie Iwasa followed by Shirley Lum. (no response.)

21           Shirley Lum. And you are?

22           THE WITNESS: Shirley Lum.

23   SHIRLEY LUM

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

1 THE WITNESS: I do.

2 CHAIRMAN PILTZ: For the record would you  
3 state your name and address.

4 THE WITNESS: Yes. Shirley Lum, 738  
5 Lunalilo Home Road 96825. Hi, Dan.

6 CHAIRMAN PILTZ: Go ahead.

7 THE WITNESS: Are we ready?

8 CHAIRMAN PILTZ: Yep.

9 THE WITNESS: I get really nervous, right  
10 Dan? He remembers.

11 CHAIRMAN PILTZ: Well, it's real easy. Go  
12 ahead.

13 THE WITNESS: I'm a long-time resident of  
14 Hawai'i Kai. And I'm pleased to come here today to  
15 support and commend all of you who altogether are  
16 acting to reclassify the Ka Iwi shoreline from urban  
17 to conservation.

18 I first joined the effort to prevent hotel  
19 development at Queen's Beach in the early '80s and  
20 again a few years later. And soon after that came  
21 the massive grass roots opposition to a housing  
22 development at Sandy Beach.

23 That we have this open shoreline in the face  
24 of this tsunami-like development of Hawai'i Kai is  
25 such a gift -- Hawai'i in general. I'm sorry. It's a

1 gift to those past, present and future who enjoy the  
2 stunning view from the Blow Hole, those who travel  
3 around the island and those who just like hanging out  
4 at Sandy Beach.

5           It's not often we can be part of  
6 perpetuating such a gift. And we appreciate that  
7 today. The cautionary note here, of course, is  
8 vigilance over the mauka lands. Thank you.

9           CHAIRMAN PILTZ: State, questions?

10          MR. YEE: No questions.

11          MR. KITAOKA: No questions.

12          CHAIRMAN PILTZ: Anything from the  
13 Commissioners? Thank you. Next person will be Art  
14 Mori.

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

18          THE WITNESS: I do.

19          CHAIRMAN PILTZ: State your name and address  
20 for the record.

21          THE WITNESS: My name is Art Mori, 571 Hao  
22 Street, 'Aina Haina. From my appearance you probably  
23 realize I go way back in this particular movement.  
24 And actually even before me there was a Save Waimanalo  
25 Beach. And I would like to point out the hotel that

1 was mentioned earlier, that was supposed to be a  
2 4,000-room hotel at Queen's Beach.

3           That particular development and the  
4 development at Sandy Beach both were opposed and  
5 defeated by the citizens of Hawai'i, many of them that  
6 are in this room here, some of them that are passed  
7 on. It wasn't the government that did it. It was the  
8 people. And I did send in a brief e-mail earlier.

9           I just wanted to mention one more thing.  
10 And that is that in an earlier time, an idealistic  
11 time, I guess, a few of us went to see Governor  
12 Ariyoshi and asked him if he would change this  
13 particular designation from urban to conservation.  
14 And he told us that if we were able to get the City to  
15 change their designations, then the State would  
16 follow.

17           Well, the City did their work and now I'm  
18 here 25 years plus and I certainly can't hold Governor  
19 Ariyoshi or the present administration to what they  
20 said at that time. But I do think it really is time  
21 to complete this work.

22           One last thing. I would be wearing a Save  
23 Sandy Beach T-shirt but unfortunately it, like Dave  
24 Matthews, has passed on. Please do the right thing  
25 and then we can get busy on the mauka side. Mahalo.

1           CHAIRMAN PILTZ: Thank you. State,  
2 questions?

3           MR. YEE: No questions.

4           MR. KITAOKA: No questions.

5           CHAIRMAN PILTZ: Anything from the  
6 Commissioners? Thank you. Is there any other person  
7 in the audience that would like to speak at this time?

8           UNIDENTIFIED SPEAKER: I'll testify  
9 actually.

10          CHAIRMAN PILTZ: Come to the stand please.

11                           DOUG COLE

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

14          THE WITNESS: I do.

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

17          THE WITNESS: My name is Doug Cole. Address  
18 59-199 D Ke Nui Road Haleiwa, Hawai'i 96712.

19                   And just like to thank you guys for the  
20 opportunity to participate in the process. It's, I  
21 think, what's nice about the agenda item we're  
22 discussing right now is that it's one of those rare  
23 opportunities to make a no-brainer decision.

24                   I know that you guys have a very difficult  
25 job here and you face a lot of controversial

1 petitions. So it's refreshing when we have these  
2 opportunities to, I think, make a decision that has  
3 vast public support.

4 Speaking as a surfer and just general ocean  
5 enthusiast, places like Ka Iwi are really refreshing  
6 for us to get out in the water and look up at the  
7 natural beauty we have here in Hawai'i.

8 So thank you for the opportunity to share my  
9 perspective on this. And I encourage you to pass this  
10 petition. Thank you.

11 CHAIRMAN PILTZ: State, questions?

12 MR. YEE: No questions.

13 CHAIRMAN PILTZ: County?

14 MR. KITAOKA: No questions.

15 CHAIRMAN PILTZ: Commissioners? Thank you.  
16 Anyone else? At this time Scott will provide the  
17 Commission with the staff's report and the map  
18 orientation. Scott.

19 MR. DERRICKSON: Aloha, Commissioners. This  
20 is the map orientation for BR09-784 Office of  
21 Planning's, state of Hawai'i being referred to as Ka  
22 Iwi Coastline.

23 The Commission map is in the center on the  
24 wall up above but it's rather small so I gave each one  
25 of you in your packets a small one. It's pretty small

1 itself.

2           The Petition Area is located on the eastern  
3 edge of O'ahu approximately 1 mile from Sea Life Park  
4 to the north, 3 miles to Hawai'i Kai to the west,  
5 5 miles to Waimanalo to the northwest.

6           The Petition Area is bounded by Kalaniana'ole  
7 Highway on its western and northern edge, Pacific  
8 Ocean to the south and the ridge spine that runs  
9 North-South to Makapu'u Lighthouse to Pu'uokipahulu.

10           The reclassification is from the state urban  
11 district to the conservation district of 215 acres.  
12 The area's been in the urban district since August 23,  
13 1964. The area is part of the Ka Iwi Scenic Shoreline  
14 Park maintained and administered by the State Parks  
15 Division and the State Department of Land and Natural  
16 Resources.

17           In 1992 the Office of State Planning  
18 published the State Land Use District Boundary Review  
19 O'ahu Report which recommended the subject property be  
20 reclassified from the state urban district to the  
21 state conservation district.

22           The East Honolulu Development Plan includes  
23 the Petition Area as preservation. The proposed  
24 reclassification into the conservation district  
25 conforms to the East Honolulu Development Plan. And

1 the current zoning is preservation P2.

2 CHAIRMAN PILTZ: Thank you, Scott. Mr. Yee,  
3 would you describe the Petitioner's exhibits which you  
4 want to admit to the record.

5 MR. YEE: The Office of Planning has  
6 Exhibits 1 through 18 which primarily consist of a  
7 series of maps and pictures. In addition, there's a  
8 letter from OEQC regarding the environmental  
9 assessments, the lack of a need for one. There's an  
10 executive order with our metes and bounds.

11 There are minutes from the Hawai'i Kai  
12 Neighborhood Board in support, resolution from the  
13 city and county in support, certain notifications, and  
14 affidavits of service to satisfy some of the  
15 requirements as well as the written testimony of  
16 Mr. Mayer and the resumé of Mr. Kumabe who will be  
17 testifying today.

18 We would ask to admit Exhibits 1 through 18  
19 into evidence.

20 CHAIRMAN PILTZ: Any objections from the  
21 City and County of Honolulu?

22 MR. KITAOKA: No objections.

23 CHAIRMAN PILTZ: Commissioners, any  
24 objections? Hearing none, Petitioner's Exhibits 1  
25 through 18, and those will be admitted to the record.

1 MR. YEE: Thank you.

2 CHAIRMAN PILTZ: County, please describe  
3 your exhibits that you wish to present.

4 MR. KITAOKA: On the list of the exhibits  
5 for the county Exhibit 1 is the Statement of Position  
6 of the Department of Planning and Permitting; Exhibit  
7 No. 2 is the testimony of the Department of Planning  
8 and Permitting; 3 and 4 is basically list of witnesses  
9 and list of exhibits.

10 Exhibit 5 is our excerpts from the general  
11 plan of the City and County of Honolulu. Exhibit 6  
12 are excerpts from the East Honolulu Sustainable  
13 Communities Plan.

14 Exhibit 7 is the East Honolulu's Sustainable  
15 Communities Plan and open space map.

16 Exhibit 8 is the East Honolulu Sustainable  
17 Communities Plan Urban Land Use Map. And the County  
18 at this time would request admission of these exhibits  
19 into the record.

20 CHAIRMAN PILTZ: Any objections, State?

21 MR. YEE: No objections.

22 CHAIRMAN PILTZ: Commissioners, any  
23 objections? We'll admit those to the record.

24 Mr. Yee, would you proceed with your case.

25 MR. YEE: Thank you. Good morning. The

1 Office of Planning is sitting in an usual position as  
2 Petitioner on a boundary review classification. The  
3 boundary review process is a little used procedure by  
4 which either the Office of Planning or the various  
5 counties can petition the Land Use Commission to bring  
6 parcels into conformity with the state's boundary  
7 review.

8           The land actually does not have to be owned  
9 by the state or county, although in this case it is  
10 state land. And unlike the normal district boundary  
11 amendments under section 205-4 we are not proposing to  
12 change the classification to allow for new uses.

13           Rather, we're proposing to bring the land  
14 into conformity with the State's boundary review  
15 pursuant to Section 205-18. In this case that means  
16 we are protecting existing park by reclassifying that  
17 land into conversation as recommended by the state  
18 boundary review.

19           Although the purpose of the boundary review  
20 cases are different, we have submitted all of the  
21 information you would need to reclassify this parcel  
22 under normal reclassification criteria.

23           And although we would be happy to clarify,  
24 explain, expand or expound on any or all subjects of  
25 interest to you, we anticipate this will be a

1 relatively short hearing. We will have only two  
2 witnesses.

3           The first will be Mr. Russell Kumabe who  
4 will testify about the existing park resources  
5 providing you with the facts as to why the land is  
6 appropriately reclassified into conservation.

7           The second will be Mr. Abbey Mayer who will  
8 provide the Office of Planning's position in support  
9 why we decided to file this petition and why it is  
10 important that the land be reclassified into  
11 conservation. Our first witness is Mr. Russell  
12 Kumabe.

13                               RUSSELL KUMABE,  
14 being first duly sworn to tell the truth, was examined  
15 and testified as follows:

16           THE WITNESS: Yes, I do.

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

19           THE WITNESS: Sure. My name is Russell  
20 Kumabe. I'm with the Division of State Parks, the  
21 Department of Land and Natural Resources. And let's  
22 see, the department's address is 1151 Punchbowl  
23 Street, Room 310, Honolulu, Hawai'i 96813.

24           CHAIRMAN PILTZ: Go ahead with your  
25 testimony.

1                   MR. YEE: For the Commission's information  
2 Mr. Kumabe's resumé was submitted as Exhibit 15.

3 xxx

4                                   DIRECT EXAMINATION

5 BY MR. YEE:

6           Q     Mr. Kumabe, among your prior positions, have  
7 you been a planner with the Office of Planning?

8           A     Yes, I have.

9           Q     What did you subsequently do after that?

10          A     From 1990-95 was with the Office of  
11 Planning. Upon that I had three years with the  
12 Department of Health, coordinator of the groundwater  
13 protection program. From '99 to 2004 was staff  
14 planner with the Land Use Commission. From there 'til  
15 now I'm with the Division of State Parks, Department  
16 of Land and Natural Resources.

17          Q     Welcome back. What is your current  
18 position?

19          A     I'm the development branch chief in state  
20 parks. What I do is I plan out the CIP improvement  
21 projects at Parks. Also I prepare the budget, any  
22 type of documentation that's needed. And also  
23 involved in getting funding processed, and help in  
24 design and construction with our engineering division.

25                   So I kinda -- my responsibilities are kind

1 of from the front end and goes all the way to the end  
2 product of our improvements.

3 Q So in your job are you familiar with the  
4 management and operations of the Ka Iwi Scenic  
5 Shoreline State Park?

6 A Yes, I am. My duties in planning out or  
7 scoping out improvements for our state parks, I need  
8 to have an idea of what types of improvements are  
9 appropriate and necessary. So what I have been --  
10 what we have been doing is pretty much soliciting  
11 input from our districts.

12 This goes down from the levels of our park  
13 superintendents who are the managers of the parks in  
14 each district, and all the way down to our maintenance  
15 field staff. I like to get a good idea from top to  
16 bottom as far as what people feel are necessary  
17 improvements.

18 At times when we can we also discuss  
19 improvements with the community or affected  
20 stakeholders. Unfortunately it's something that's a  
21 starting thing for us. It's a practice that we would  
22 certainly want to become well established but we are  
23 still beginning as far as getting that type of input.

24 The objective is just to identify what types  
25 of improvements that we really need. Because over all

1 our responsibilities I see as far as state parks is  
2 pretty much preserving and protecting our natural,  
3 environmental, cultural, historical resources.

4           Public health and safety is another criteria  
5 that we need to really implement. And also the other  
6 part is after we have met those two primary objectives  
7 it's also having recreational park facilities that  
8 provide at least a, you know, satisfactory experience  
9 for park users.

10           On the last point we are working on that.  
11 It's contingent on the type of funding we receive and  
12 the type of support. But along those lines we want to  
13 make it clear that as far as managing, operating our  
14 parks we do not do it alone. We do have, thankfully,  
15 the efforts of community members, organizations that  
16 help us out in that regard.

17           So to answer your question: Yes, to plan  
18 out what kind of improvements are needed I do need to  
19 know at least operational maintenance of Ka Iwi, yes.

20           Q     Is Ka Iwi Park well used?

21           A     As a matter of fact, yeah. Unfortunately  
22 state parks on our own accord we do not have the  
23 ability to have, to keep a count of visitation  
24 records. But what we have been relying on is the  
25 Hawai'i Tourism Authority periodically have conducted

1 visitation use surveys. The last one was in 2007.

2           And in the, I guess what they classify the  
3 Makapu'u/ Ka Iwi area, Makapu'u Lookout area plus the  
4 lighthouse area, I do believe that the count back in  
5 2007 was around 241,000. I think everybody in  
6 attendance would testify it probably exceeds that on  
7 any given day, especially on the weekends.

8           Q     Why do you think specifically with respect  
9 to Ka Iwi Park, why do you think so many people are  
10 going there?

11          A     I think the Commission has heard from the  
12 people before us that the area contains variety of  
13 very unique and important resources. I think just  
14 going down the attraction would be obviously the  
15 scenic resources, Makapu'u Lookout and the lighthouse  
16 lookout areas provide great scenic opportunities.

17           The recreational opportunities: hiking,  
18 walking, Makapu'u entry road lighthouse trail. There  
19 is a catacomb or a network of inland trails that goes  
20 along to the Ka Iwi coastline. So hiking.

21           And fishing, surfing out on the coastal  
22 areas, swimming and coastal tide pools, inlets. So I  
23 think the park attraction is a collection of the  
24 different types of amenities that Ka Iwi has.

25          Q     Are there historic areas within the Petition

1 Area?

2       A     Yes, there are. As far as the area --  
3 sorry, I got my little map here too. Sorry. The area  
4 over here, this part in the Petition Area and outlined  
5 on this part are remnants of the old King's road,  
6 Keala Kipapa Roadway.

7               I guess you can kind of see with the map  
8 these are the high mountain areas and these are the  
9 lower lying areas. So I do believe this is the valley  
10 or Keala Kipapa Valley in this area.

11              So a pronounced feature, historic and also  
12 cultural would be the King's roadway. There are also  
13 other features, historical features in Ka Iwi. As we  
14 all have gone up to the lookout area up here by the  
15 lighthouse, there is a collection of old military and  
16 coast guard lighthouse structures in these areas  
17 dating back, as far back as 1922 or maybe even  
18 earlier.

19              And as we go down to the coastline around  
20 the inlets there are remnants of the Alan Davis area.  
21 Over here right at the border of Ka Iwi and Olomalu  
22 Beach is the Alan Davis wall provides that boundary  
23 for what Alan Davis had pretty much constructed.

24              There are remnants of a seep hole what was  
25 constructed. Also in this area the Alan Davis

1 residence was resided in there.

2           As far as prior to that the area here also  
3 contained various settlement remnants. I do believe  
4 because of the coastal area fishing was of great  
5 importance. And I do believe fishing shrines and  
6 other types of, you know, sites are located within  
7 these areas around in this Petition Area.

8           So as far as for the historic and cultural  
9 resources Ka Iwi contains a wealth of different types  
10 of resources. Also of cultural significance would be  
11 Pele's Chair. So it's that landmark of the pu'u kind  
12 of rising up in the area.

13         Q     Pele's Chair is a rock formation.

14         A     That is correct.

15         Q     Various people talked about the scenic  
16 resources of the area. Were federal funds used for  
17 this purpose?

18         A     Yes. We had utilized funds from the  
19 Department of Transportation. What had happened was  
20 that I guess the history of Ka Iwi dates back. And as  
21 of -- DLNR had been working on acquiring the Petition  
22 Area for park use, as the city had explained and  
23 testifiers before that, the city had pretty much  
24 rezoned the Ka Iwi area as far as park preservation  
25 use.

1                   So DLNR had been working on trying to  
2 acquire that portion. We had utilized federal funding  
3 for land acquisition. I do believe that land  
4 acquisition came around \$11 million where it was a  
5 50/50 type of cost share between the state and DOT.

6                   Also we had sought and received DOT funding  
7 to improve what we call both Phase I and Phase II  
8 improvements for Ka Iwi.

9                   Phase I was basically burying the utilities  
10 to avoid or not have any overhead utilities in there.  
11 That kinda cost us about a million dollars.

12                   And Phase II is the improvements that you  
13 folks see now as far as the Makapu'u lookout and the  
14 parking area for the Makapu'u Lighthouse. So that  
15 price tag kinda ran about \$4 million.

16           Q       Was the money from the federal government  
17 given in large part because of scenic value of the  
18 area?

19           A       That is correct. The justification of the  
20 land acquisition was to establish a scenic shoreline  
21 in which DOT would allow us to do. So that's what we  
22 had established this area as the Ka Iwi Scenic  
23 Shoreline.

24                   Prior to that there is a portion up here in  
25 which DLNR State Parks had which was called Makapu'u

1 State Wayside. So by de facto default we pretty much  
2 referred to the whole area as Ka Iwi Scenic Shoreline.

3 Q Is whale watching an activity that occurs on  
4 the Petition Area?

5 A Yes. That's one of the activities or draws  
6 that we do have. Whale watching season pretty much  
7 still going on. Almost pau. December to April we do  
8 have a lot of visitation for that.

9 In relation to that we'd just like to, you  
10 know, kind of for your information that the areas --  
11 let's see, we currently have a NOAA, I guess, site  
12 area for whale watching.

13 What we had wanted to do is pretty much had  
14 planned in the last three years to make improvements  
15 to Ka Iwi which would consist of basically  
16 reconstructing the entry lighthouse road for public  
17 safety reasons. And also just putting in an  
18 accessible viewing and rest stops.

19 The whale watching areas that are currently  
20 here will pretty much improve that to be accessible or  
21 we plan to. Then the lighthouse is right here.

22 So what we want to do is provide an  
23 accessible lookout from this vantage point to  
24 basically allow our park users to have a safe and  
25 accessible opportunities to view whale watching on

1 this side of the coast.

2 MR. YEE: For the record Mr. Kumabe is  
3 referring to Office of Planning's Exhibit 6. It's a  
4 blown up copy.

5 Q Just to round out a couple things. In order  
6 to get to the Makapu'u Lighthouse in the area that  
7 side, you would need to hike through the Petition Area  
8 to reach there, correct?

9 A That is correct.

10 Q And you mentioned some of the recreational  
11 activities. Is fishing also one of the recreational  
12 activities that occurs?

13 A That is correct.

14 Q Finally, are there either indigenous or  
15 endemic plants included, threatened or endangered  
16 species in the area, in the Petition Area?

17 A That is correct. As far as our concern what  
18 you see on the wall I guess to your left, are a couple  
19 of photos of species that we are concerned about.

20 The furthest left is the Hawaiian Sedge,  
21 kind of that grassy reedy looking plant. And, you  
22 know, Ka Iwi possess a nice community of that species.  
23 That species would be located around this area over  
24 here.

25 The other species that's more to your right

1 that's a clover fern that also resides, have resided  
2 in Ka Iwi. That communities have been located here.  
3 So we have been concerned about these species. Steps  
4 have been taken to try and safeguard these species.

5           When we were doing the Makapu'u Lookout and  
6 the parking improvements we had also put in guardrails  
7 along Kalaniana'ole to safeguard at least off-road, I  
8 guess, vehicles from intruding into this area. Also  
9 we had put up some rock and also some pilar barriers  
10 on this side to augment the safeguarding or the  
11 security of the area.

12           MR. YEE: For the record the photo of the  
13 Hawaiian Sedge, which is to your far left, is  
14 Exhibit 17 Office of Planning. And the fern is Office  
15 of Planning's Exhibit 16 that he was pointing out.

16           Q Will any changes be made to the park because  
17 of this reclassification?

18           A No. The reclassification, as prior  
19 testifiers have said, would bring the park into  
20 conformance of its current use and would ensure that  
21 Ka Iwi will be maintained for that use.

22           Q And does DLNR support this petition to put  
23 the Petition Area into conservation?

24           A DLNR supports this petition and we  
25 appreciate the Office of Planning bringing the

1 petition for its reclassification forward.

2 MR. YEE: Thank you. I have no further  
3 questions.

4 CHAIRMAN PILTZ: County, do you have  
5 questions?

6 MR. KITAOKA: Just a couple.

7 CROSS-EXAMINATION

8 BY MR. KITAOKA:

9 Q Mr. Kumabe, if you look at Exhibit 6 -- I  
10 guess my first question would be: Are there state  
11 plans for future amenities or improvements to the park  
12 area?

13 A As far as the park area the improvements  
14 that I had mentioned before pretty much improving or  
15 reconstructing the Makapu'u Lighthouse entry road and  
16 also trying to establish new rest stops and improving  
17 our existing lookouts are the improvements that we are  
18 planning to do.

19 Q So no further improvements on any place that  
20 is unimproved at this point.

21 A As far as right now we do not foresee any  
22 type of improvements in that regard unless  
23 improvements would warrant public health and safety.  
24 That would be a, I guess, a criteria in case any other  
25 types of improvements are proposed.

1           That would definitely need to be reviewed  
2 and approved by the Board of Land and Natural  
3 Resources.

4           Q     Okay. But nothing's on the planning board  
5 as far as unimproved areas are concerned.

6           A     No. I do believe the areas that we are  
7 looking at already has been, so to say, previously  
8 improved. As far as the areas that are not improved  
9 we do not have any plans right now.

10          Q     Those green areas in conservation, they're  
11 all under DLNR, State owned and DLNR if you look at  
12 Exhibit 6?

13          A     As far as for this area here, yes. These  
14 outlined areas, no.

15          Q     So there's some conservation areas that are  
16 privately owned adjacent to the Petition Area?

17          A     As far as for the landownership on this side  
18 I'm not sure who owns that part of the land. But as  
19 far as for the Ka Iwi shoreline, if you were to take  
20 it from the Makapu'u Lookout down and towards the  
21 Petition Area, yes, it's under the control of the DLNR  
22 state parks.

23          Q     If you know, do you know, like, the adjacent  
24 land to the Petition Area, the land uses and ownership  
25 if you know to the, say, the east of the Petition

1 Area?

2 A On this side?

3 Q Right.

4 A We currently do not know what the land uses  
5 are except for I guess right now currently it is in  
6 open space. But as far as for the land use  
7 designations that the city and county has, no, I  
8 don't.

9 MR. KITAOKA: Okay. I have no further  
10 questions.

11 CHAIRMAN PILTZ: Commissioners, do you have  
12 any questions? Thank you. Your next witness.

13 MR. YEE: Our next weekends is Mr. Abbey  
14 Mayer.

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

18 THE WITNESS: I do.

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

21 THE WITNESS: My name is Abbey Mayer,  
22 director of the State Office of Planning, 235 South  
23 Beretania, sixth floor, Honolulu.

24 xx

25 xx

1 DIRECT EXAMINATION

2 BY MR. YEE:

3 Q Mr. Mayer, would you please describe the  
4 position of the Office of Planning in this docket.

5 A Yes. Thank you. Thank you, Chair and  
6 Commission members. Very happy to have the  
7 opportunity to be here before you today.

8 The Office of Planning submitted petition  
9 No. BR09-784 Petition to Amend the State Land Use  
10 District Boundary into the Conservation Land Use  
11 District for approximately 215 acres of land situated  
12 at Ka Iwi State Park and Queen's Beach.

13 The petition was deemed complete by the Land  
14 Use Commission on January 24th, 2010. This petition  
15 and the accompanying testimony and exhibits were  
16 prepared under my direction and authority. And I  
17 hereby affirm that the information contained therein  
18 is all true.

19 I have some technical issues to go over with  
20 you. So I would ask that you bear with me for a  
21 little bit here.

22 The first technical issue I'd like to  
23 describe, and you can refer to OP's Exhibit 1, it's a  
24 letter from the Office of Environmental Quality  
25 Control determining -- it's a determination letter

1 from OEQC that states that an environmental assessment  
2 is not needed for this petition.

3           The main reason behind OEQC's determination  
4 that an EA is not needed is because there is no either  
5 development or change in land use that's associated  
6 with this petition. Hence there are no impacts  
7 foreseen from this petition.

8           Accordingly, there are sections in the  
9 petition that are typically filled out and  
10 well-detailed in a typical petition which states  
11 basically no impact. And I won't go over every one.

12           But some of those typical sections would  
13 include impacts to policing, fire department, schools,  
14 natural and cultural resources. There are no impacts  
15 to any of those. So the petition in those sections  
16 just states that.

17           Additionally, I wanted to point out that  
18 OEQC noted that there is an accepted EIS. It was  
19 accepted in 1996 for the Petition Area and slightly  
20 beyond which was submitted for the development of the  
21 state park and included a master plan for that state  
22 park.

23           Additionally, as Mr. Yee noted in his  
24 opening statement, this petition has a boundary review  
25 number. It's BR09, et cetera. It's not a typical A

1 dash.

2 I did want to mention that the 1992 boundary  
3 review conducted by the Office of Planning is also the  
4 last statewide boundary review that OP conducted,  
5 included a recommendation for the reclassification of  
6 this Petition Area from urban to conservation.

7 You might ask why was this not done in 1992.  
8 And the main reason was the land was previously owned  
9 by Bishop Estate and was condemned by the state in  
10 1991.

11 So when the boundary review happened a year  
12 later in 1992, there were legal proceedings that were  
13 ongoing as far as the valuation of the land was  
14 concerned and how much the state was going to pay.

15 The Office of Planning never at that time  
16 filed a petition to revert to conservation because of  
17 the negotiations and legal action that were ongoing.

18 Subsequently the land wasn't purchased until  
19 10 years later, 2001. So at this time we're clear to  
20 file the petition for the boundary review.

21 Again as Mr. Yee stated in his opening  
22 comments, while this is a boundary review docket the  
23 petition still conforms to all the requirements of  
24 15-15-50 of your rules of a typical petition.

25 I'd now like to take a moment to discuss

1 some of the history of the Project Area. You'll see  
2 on the wall behind me a copy of the historic General  
3 Plan from the city and county of Honolulu.

4           Just to be clear that's not the current  
5 General Plan map but it is the historic document.  
6 It's admitted to you as OP's Exhibit 18 I believe, a  
7 blowup in particular of the Project Area. You can  
8 note more clearly on your blowup that you have with  
9 you or on the wall behind you, much of the project  
10 areas was either resort zoned -- and I'll ask the  
11 folks sitting near there to duck so I don't hit you  
12 with the laser -- but I do want to point -- you see  
13 the little red area here which is resort zoning.

14           You should also note the yellow above it is,  
15 residential zoning. So the previous General Plan and  
16 the urban designation at the state level that  
17 originated in 1964 really recommended a great deal of  
18 development of this area.

19           And you've heard public testimony about the  
20 struggles for decades that the community has waged in  
21 an effort to stop development and protect the  
22 shoreline.

23           This petition really represents the closing  
24 of that battle at least on the makai front as you've  
25 heard. In effect from Koko Head Park south of Hanauma

1 Bay all the way north to Makapu'u Point we'll have  
2 that entire coastline protected in conservation after  
3 this petition is successful.

4           And clearly the State is in support of this  
5 reclassification. You've heard from the landowner,  
6 DLNR, is also in support. OP Exhibit 10 is a copy of  
7 the City and County of Honolulu's County Council  
8 resolution dated February 25th, 2009 resolution No.  
9 09-29 CD-1 in support of the reclassification.

10           You heard the Chair of the Hawai'i Kai  
11 Neighborhood Board and OP Exhibit No. 9 is the minutes  
12 of the January 27, 2009 meeting in which the board  
13 voted unanimously in support of this petition.

14           Department of Planning at the city is also  
15 in support and has submitted a position and testimony  
16 which details conformance in the conservation district  
17 would be consistent with their existing zoning map of  
18 the city and county zoning is included as OP  
19 Exhibit 4.

20           Consistent within the East Honolulu  
21 Sustainable Communities Plan map of which is included  
22 as OP Exhibit 5.

23           And of course the current county General  
24 Plan which the county has submitted, and I'll leave it  
25 to their witness to discuss more in depth the

1 consistencies there of this action.

2           Also conforms to the State Plan. Pages 13  
3 to 17 of my written testimony detail all the  
4 particular aspects of the State Plan that this  
5 petition in reclassification would conform to. I  
6 won't detail them here now.

7           Likewise, the reclassification is consistent  
8 with the objectives and policies of the Coastal Zone  
9 Management program details of which are listed on  
10 Page 17 through 19 of my testimony.

11           Of note the conservation district standards  
12 I find are also applicable: 205-2 and HRS,  
13 specifically 205-E. details the standards of the  
14 conservation district.

15           Those standards are also mirrored in your  
16 rules 15-15-20. And I'd like to read if you'll  
17 indulge me, part of 205-2-E because I think you'll  
18 note how readily this Petition Area fits to those  
19 standards.

20           Specifically: "Conservation districts shall  
21 include areas necessary for protecting and preserving  
22 scenic and historic areas, providing park lands,  
23 wilderness and beach reserves, conserving indigenous  
24 or endemic plants, fish and wildlife, including those  
25 which are threatened or endangered, open space areas

1 whose existing openness, natural condition or present  
2 state of use if retained would enhance the present or  
3 potential value of abutting or surrounding  
4 communities, or would maintain or enhance the  
5 conservation of natural or scenic resources, areas of  
6 value for recreational purposes, other related  
7 activities and other permitted uses not detrimental to  
8 a multiple use, conservation concept."

9           So of, you know, perhaps a dozen standards  
10 listed there this Petition Area really fits with a  
11 vast majority.

12           Kind of more current and to the point my  
13 office was approached originally, I believe it was by  
14 Liz Reilly. The community's got to give a lot of  
15 credit to her for really bringing this issue to my  
16 attention and to continue to put pressure on me on  
17 behalf of the Neighborhood Board and the community to  
18 really, to take the step and get this done.

19           I did a couple of presentations before the  
20 Neighborhood Board about the urban zoned land back in  
21 2009. And from those meetings I really got a sense  
22 firsthand for the first time of what the community has  
23 struggled with over the years; the efforts they have  
24 made over the years, the legislative representatives,  
25 two of which you heard from Representative Berg and

1 Representative Ward, especially Representative Ward  
2 really worked closely with me and my office to ensure  
3 that this would get done.

4           Senator Hemmings also played a key role, as  
5 well as support from the governor herself. So I do  
6 want to take the time to thank all of them.

7           And, again, once we did make the decision to  
8 prepare this petition and file it with you it became  
9 more and more clear the value. Honestly I have to  
10 admit that prior to my presentations at the  
11 Neighborhood Board I hadn't been out to the park. And  
12 in getting out to the park and walking the land, both  
13 the coastal lands and the lands around the lighthouse  
14 and the lookout, it's an incredibly, incredibly  
15 impressive piece of land and shoreline.

16           I became more and more proud of our office's  
17 role, the small role that we have been able to play in  
18 completing this process for the state, for visitors  
19 and for the community.

20           I think I've hit all the notes here that I  
21 intended to. And if my attorney thinks I did then I  
22 certainly would be open to questions.

23           MR. YEE: I think that's fine. Mr. Mayer is  
24 open to cross-examination.

25           CHAIRMAN PILTZ: County, any questions?

1 MR. KITAOKA: No questions.

2 CHAIRMAN PILTZ: Commissioners, any  
3 questions? Thank you, Mr. Mayer.

4 MR. KITAOKA: Department of Planning and  
5 Permitting will call Tim Hata to testify.

6 TIM HATA

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

9 THE WITNESS: I do.

10 CHAIRMAN PILTZ: State your name and address  
11 for the record.

12 THE WITNESS: Timothy Hata, Department of  
13 Planning and Permitting.

14 CHAIRMAN PILTZ: Go ahead.

15 THE WITNESS: Good morning, Mr. Chair, and  
16 members of the Commission. The county is in support  
17 of this petition. And we find that it is consistent  
18 with our long-range land use plans and policies. It  
19 is outside of our urban community boundary for the  
20 East Honolulu Sustainable Development Plans.

21 We believe it should be protected for its  
22 valuable recreational and scenic resources. Therefore  
23 we are in support. Thank you.

24 CHAIRMAN PILTZ: Questions by the State?

25 MR. YEE: No questions.

1                   CHAIRMAN PILTZ: Commissioners, do we have  
2 any questions?

3                   MR. KITAOKA: I'd just like to protect the  
4 record?

5   DIRECT EXAMINATION

6 BY MR. KITAOKA:

7           Q       What's your occupation?

8                   (audience laughter)

9           A       I'm sorry. I'm an urban planner.

10          Q       Could you just briefly state your experience  
11 and background for your occupation.

12          A       I have nineteen years with the City's  
13 Planning Department as an urban planner.

14          Q       In summary, then, you're saying that this  
15 petition is consistent with all applicable City  
16 policies and plans, is that correct?

17          A       That's correct.

18                   MR. KITAOKA: No further questions.

19                   CHAIRMAN PILTZ: Again, any questions? Okay  
20 seeing none, given that the parties have completed  
21 their presentation before the Land Use Commission --  
22 would you like to make a statement at this time?

23                   MR. YEE: Well, I spent time drafting it  
24 so....

25                   (Laughter)

1                   CHAIRMAN PILTZ: All right. I've got to let  
2 you do that.

3                   MR. YEE: I wanted to tell you that the  
4 Office of Planning, which has its own resource  
5 challenges lately, felt that this petition was  
6 important enough to devote resources to doing this.

7                   It was really the hard work, I just wanted  
8 to acknowledge, of our Planner Mary Alice Evans as  
9 well as the very strong commitment of the Director  
10 Abbey Mayer as well as the cooperation of DLNR that we  
11 are here before you.

12                   It's unusual for us to do this. It's been  
13 certainly I've never done this before, been a learning  
14 experience. It's taken us maybe a little while to get  
15 here as you've heard regarding some of the struggles  
16 about it. But we are here. So we're now going to be  
17 asking for your approval to protect this resource.

18                   And we've cited and we have made you sit  
19 through all of our testimony, and you've seen all of  
20 our exhibits as well as our petition to give all the  
21 technical requirements, make sure we have dotted our  
22 i's and crossed t's and satisfied all the  
23 requirements.

24                   But in these closing remarks I just wanted  
25 to focus on one particular technical requirement. And

1 that's 205-2-E which describes the characteristics of  
2 the conservation land.

3           And I just wanted to take a few minutes to  
4 go through those characteristics and relate them to  
5 the testimony that you've heard.

6           The first characteristic, one of them is  
7 preserving scenic areas. And as you've heard, federal  
8 funds were granted specifically in recognition of the  
9 scenic value of the Petition Area.

10           That's popular for the whale watching  
11 purposes as well as the fact that, you know, anyone  
12 who's been there certainly can testify to the sweeping  
13 vistas that exist and to the fact it really completes  
14 a wrap-around scenic view between Kaneohe and Hawai'i  
15 Kai.

16           So it completes the total Ka Iwi Scenic  
17 Shoreline Park.

18           The second is preserving historic areas.  
19 You've heard the testimony regarding the Alan Davis  
20 wall, the saltwater pool, the settlement remnants and  
21 the King's trail.

22           The third is providing parklands for  
23 conservation. And the Petition Area has been visited  
24 by 251,400 people is the estimate from the Hawai'i  
25 Tourism Agency.

1           And, as Mr. Kumabe said, that may be  
2 undercounting the number of people who go. It's a  
3 very popular park and very valuable there for  
4 parklands.

5           A fourth is preserving beach preserves. The  
6 Petition Area includes the beaches adjacent to Sandy  
7 Beach. And, as Mr. Mayer testified, provides a  
8 complete coastal resource from Koko Head all the way  
9 to Makapu'u Point.

10           A fifth is conserving indigenous or endemic  
11 plants. We've got two of them on the wall which are  
12 threatened or endangered. And the conservation  
13 district is then completely consistent with preserving  
14 these areas.

15           Although we didn't discuss in our oral  
16 testimony, in our petition we talked about the 1946  
17 tsunami. One of the criteria is actually preventing  
18 floods. So it's also consistent with keeping the area  
19 clear of the development.

20           A seventh is preserving open spaces whose  
21 existing openness, natural condition or present state  
22 of use would maintain or enhance the conservation of  
23 natural or scenic resources.

24           And, this as I said before, this really  
25 completes the Ka Iwi Scenic Shoreline Park so is an

1 essential part of maintaining that large open space.

2           And, finally, provides an area for  
3 recreational purposes which includes hiking, fishing,  
4 swimming and surfing as Mr. Kumabe testified.

5           In summary, the State of Hawai'i, the City  
6 and County of Honolulu, the Neighborhood Boards and  
7 the community all support this petition. And we are  
8 hopeful that you will as well. Thank you.

9           CHAIRMAN PILTZ: City, do you have some  
10 closing remarks?

11           MR. KITAOKA: Just maybe two sentences. In  
12 accordance with Mr. Hata's testimony the petition is  
13 consistent with all applicable City plans and policies  
14 regarding this area. And therefore the City supports  
15 the petition.

16           CHAIRMAN PILTZ: Thank you. Now that I've  
17 given the parties a chance to complete their  
18 presentations before our Commission, I declare the  
19 evidentiary portion of this proceeding to have been  
20 completed subject to the receipt of various follow up  
21 reports and/or answers that may have been requested  
22 during the course of this hearing.

23           I direct that the parties draft their  
24 individual findings of fact, conclusions of law and  
25 decision and order based upon the record in this

1 docket and serve the same upon the parties.

2           The proposed findings of fact are to be tied  
3 in with the page and line numbers of the transcript to  
4 identify your facts. In addition to the transcript  
5 the exhibits in evidence should be also referenced.

6           I note for the parties that the Commission  
7 has standard conditions which we would like the  
8 parties to consider it preparing your proposed orders.

9           A copy of standard conditions may be  
10 obtained from the Commission staff. Of course, should  
11 any parties decide to stipulate any portion or all of  
12 the findings of fact, conclusions of law and decision  
13 and order, they're encouraged to do so.

14           Mr. Yee, is it your intention to pursue the  
15 compilation of either a partial or fully stipulated  
16 order in this matter?

17           MR. YEE: Yes, it is.

18           CHAIRMAN PILTZ: Mr. Kitaoka, do you support  
19 the Petitioner's efforts to pursue either a partial or  
20 full stipulation in this matter?

21           THE WITNESS: Yes. We support a fully  
22 stipulated decision and order.

23           CHAIRMAN PILTZ: Given the willingness of  
24 the parties to pursue a partial or fully stipulated  
25 order, I direct the parties to file their stipulated

1 or separate proposed findings of fact, conclusions of  
2 law and decision and order with the Commission no  
3 later than the close of business on Thursday  
4 April 29th, 2010.

5           Where there is only a partial stipulation  
6 the objecting party will serve upon the other party  
7 any exceptions no later than the close of business on  
8 Monday, May 10th, 2010. Any proposed findings,  
9 stipulations and/or comments or objections received by  
10 this date will be considered no later than May 21,  
11 2010 here on O'ahu.

12           However, I prevail upon the parties to  
13 consult with their staff early in the process to  
14 ensure that technical and non-substantive formatting  
15 protocols observed by the Commission are adhered to.

16           Are there any questions with respect to our  
17 post-hearing procedures?

18           MR. YEE: No questions.

19           MR. KITAOKA: No questions.

20           CHAIRMAN PILTZ: Thank you again for your  
21 efforts in efficiently presenting your case in this  
22 matter. Thank you again. At this time we'd like to  
23 take a break for five minutes.

24           (Recess was held. 11:15-11:30)

25 xxx

1           CHAIRMAN PILTZ: We're back on the record.  
2 This is an action meeting on Docket No. A10-785 HHFDC  
3 Forest City, Kona, Hawai'i, LLC to consider  
4 Petitioner's motion to withdraw its petition without  
5 prejudice.

6           On January 21st, 2010 the Commission  
7 received Petitioner's notice of intent to file a land  
8 use district boundary amendment petition, affidavit of  
9 Jennifer A. Benck attesting to service, Exhibits A and  
10 B, affidavits of Jennifer A. Benck attesting to  
11 publications.

12           On January 28th, 2010 the Commission  
13 received Petitioner's affidavit of publication.

14           On February 23rd, 2010 the Commission mailed  
15 notice of pre-consultation conference to the parties  
16 and received a comment letter from DLNR-Morris Atta.

17           On February 24th the Commission received a  
18 certification letter from the county of Hawai'i Office  
19 of Housing and Community Development-Stephen J.  
20 Arnett, housing administration advising that the  
21 proposed development had been reviewed and accepted as  
22 an eligible affordable housing project and the OHCD  
23 supported the proposed project.

24           On March 4th, 2010 in Waikoloa a  
25 pre-consultation meeting was held pursuant to 15-15-97

1 to discuss this Chapter 201H petition.

2           On March 17th, 2010 the Commission received  
3 a copy of a letter from SHPD-Nancy McMahon to DLNR  
4 Morris Atta regarding Chapter 6E-8 Historic  
5 Preservation Review.

6           On March 22, 2010 the Commission received  
7 Petitioner's original and 15 copies of petition for  
8 land use boundary amendment and Exhibits 1 through 34,  
9 a Cashier's check for \$500 filing fee, two full size  
10 Tax Maps, Exhibit 6, two full size surveyor maps,  
11 Exhibit No. 21, and two full size incremental maps  
12 Exhibit No. 22, and 15 CD copies of the petition and  
13 Exhibits 1 through 34.

14           On March 31st, 2010 the LUC received Queen  
15 Liliu'okalani Trust's Petition for Intervention  
16 Exhibits A through C.

17           Then on April 1, 2010 the Commission  
18 received a letter from Loyal Mehrhoff, field  
19 supervisor for the National Park Service stating NPS's  
20 concerns with the project; Petitioner's motion to  
21 withdraw its petition without prejudice, memorandum in  
22 support of the motion; declaration of Jennifer A.  
23 Benck, Exhibits A through C. Also we received  
24 Petitioner's first list of witnesses; first list of  
25 exhibits.

1                   And on April 6th, 2010 the Commission  
2 received OP's memorandum in support of the  
3 Petitioner's motion to withdraw its petition without  
4 prejudice.

5                   On April 7th, 2010 the Commission received  
6 County of Hawai'i's Certificate of Service regarding  
7 the County of Hawai'i Planning Department's Witness  
8 and Exhibit lists; Petitioner's memorandum on Queen  
9 Liliu'okalani Trust's Petition to Intervene.

10                   Let me briefly describe our procedure for  
11 today on this docket. First, we will have the parties  
12 identify themselves for the record. I will then call  
13 for those individuals desiring to provide public  
14 testimony to identify themselves.

15                   And all such individuals will be called in  
16 to turn to our witness box where they will be sworn in  
17 prior to their testimony.

18                   After completion of the public testimony  
19 portion of this proceeding the Petitioner will make  
20 its presentation first since it has filed a Motion to  
21 Withdraw Without Prejudice.

22                   After the completion of the Petitioner's  
23 petition, we will receive any comments from the County  
24 of Hawai'i, Office of Planning State of Hawai'i.  
25 After we have received the comments of the Petitioner,

1 the County and the State we will conduct our  
2 deliberations.

3 Are there any questions on our procedures  
4 for today?

5 MS. BENK: No questions.

6 MR. YEE: No questions.

7 CHAIRMAN PILTZ: Any questions by the  
8 Commissioners? For the record the County of Hawai'i  
9 is not in attendance. Since I hear no questions, will  
10 the parties identify themselves for the record.

11 MS. BENK: Good morning, Chairman and  
12 Commissioners, thank you. This is Jennifer Benck  
13 representing Petitioner Forest City Hawai'i Kona. Here  
14 also is Steven Lim representing Forest City.

15 And behind me are Race Randle, the  
16 development manager of Forest City and Jon Wallenstrom  
17 the CEO of Forest City Hawai'i Kona. To my right is  
18 Craig Iha.

19 MR. IHA: Good morning, Mr. Chair and  
20 members of the Commission. My name is Craig Iha. I'm  
21 a deputy attorney general. And I represent the  
22 co-Petitioner, HHFDC. Present with me is Stan  
23 Fujimoto. He's HHFDC's project manager for this  
24 project.

25 CHAIRMAN PILTZ: Thank you. State.

1           MR. YEE: Good morning. Deputy Attorney  
2 General Bryan Yee on behalf of the Office of Planning.  
3 With me is Abbey Mayer from the Office of Planning.

4           CHAIRMAN PILTZ: Do we have anyone here for  
5 a public witness? Anyone wanting to testify? Thank  
6 you. Petitioner, will you make your presentation.

7           MR. IHA: Thank you, Mr. Chair. We have an  
8 affordable housing project here that's received  
9 broad-based support.

10           But the parties are in a difficult position  
11 right now, given the very strict and condensed 45-day  
12 timeframe under HRS 201-H-38. The Office of Planning  
13 has raised concerns with the adequacy of the  
14 Petitioner's Archaeological Inventory Survey.

15           Normally this would have been an issue that  
16 could have been resolved before the hearing. But  
17 because of the 45-day timeframe for decision-making  
18 it's something we can't fix, given the posture of this  
19 case.

20           We believe the best way to resolve this  
21 problem is for the petition to be withdrawn without  
22 prejudice and then refiled once it's updated, once we  
23 have updated the AIS and worked through any issue that  
24 the Office of Planning may have with this.

25           So we're here today to ask the Commission to

1 allow the petition to be withdrawn despite HAR  
2 15-15-76. That's a rule that bars the refiling of any  
3 petition voluntarily withdrawn for one year if the  
4 petition is before the Commission.

5 We first are requesting a determination from  
6 the Commission that that particular rule does not  
7 apply to this case because we do not believe that the  
8 petition is before the Commission as that rule  
9 intended.

10 Alternatively, we are requesting that the  
11 Commission waive HAR 15-15-76 so that Petitioner may  
12 refile within one year. And we believe that that  
13 request would be supported by a good cause. And it's  
14 not a jurisdictional rule so the Commission has the  
15 authority to waive it.

16 (Pausing)

17 CHAIRMAN PILTZ: State, any questions?

18 MR. IHA: I have a few more.

19 CHAIRMAN PILTZ: Okay. I'm sorry. I  
20 thought you were done.

21 MR. IHA: I think that the petition is not  
22 before the Commission in this case because the genesis  
23 of the one year bar was a particular case back in  
24 1976.

25 And we have attached the transcript to our

1 motion from that hearing where the Petitioner filed  
2 its petition, went before the Commission, got a  
3 continuance.

4           During that time other parties spent  
5 considerable amounts of time and money intervening,  
6 preparing oppositions to the petition, come the  
7 hearing day the petitioner shows up and wants to  
8 withdraw without prejudice. And intervenor opposed  
9 that request.

10           And the Commission determined that  
11 Chapter 205 did not impose any qualifications on the  
12 refiling of a voluntarily-withdrawn petition. And  
13 reluctantly allowed the Petitioner to withdraw.

14           However, the Commission did request or did  
15 give the intervenor's attorney an opportunity to  
16 suggest a rule to prevent this practice from occurring  
17 in the future.

18           The next day the intervenor's attorney  
19 submitted a letter with proposed amendments that are  
20 now identical to what's in HAR 15-15-76.

21           So I think that when you consider what's  
22 before the Commission for purposes of that bar, it's  
23 important to consider whether the petition has  
24 advanced to the stage where it's before the Commission  
25 for decision-making, whether other parties have spent

1 time and money trying to intervene or oppose the  
2 petition. And I don't think that's the case with our  
3 petition.

4           We have identified the problem very early  
5 on. There's been no testimony in opposition. There's  
6 been no formal opposition filed. There hasn't even  
7 been a pre-hearing conducted. So we believe that the  
8 petition is in very early stages not before the  
9 Commission.

10           Second, I believe that good cause exists for  
11 the reasons previously stated. But if the Commission  
12 were to determine that we are before the Commission,  
13 the Commission still has the authority to waive that  
14 rule because it's not a jurisdictional requirement.

15           Whether an agency has jurisdiction to act  
16 depends on the agency's statutory grant of authority  
17 under its enabling statute. In this case it's  
18 Chapter 205.

19           Chapter 205, as the Commission determined  
20 back in 1976, does not place any qualifications on the  
21 refiling of a petition. And in that sense there are  
22 no limits as to what a Commission can require or what  
23 conditions the Commission can impose on a party that  
24 wishes to refile a voluntarily withdrawn petition.

25           So I would submit that it's not a

1 jurisdictional requirement. There are filing  
2 requirements, other context that are found to be  
3 jurisdictional.

4           For example, a procurement protest has to be  
5 filed within so many days. That's been determined to  
6 be jurisdictional. But in those cases the filing  
7 requirements are specifically contained in the  
8 enabling statutes. That's not the case here.

9           So I would submit that the Commission has  
10 the authority to allow the withdrawal.

11           CHAIRMAN PILTZ: Are you complete now?

12           MR. IHA: Unless my co-counsel has something  
13 to add.

14           MS. BENK: No, I have nothing to add, thank  
15 you.

16           CHAIRMAN PILTZ: Comments?

17           MR. YEE: The Office of Planning supports  
18 the Motion for Withdrawal Without Prejudice. I think  
19 we have nothing to add regarding his first argument so  
20 I'm really going to focus on the second question of  
21 whether the Commission has the authority and whether  
22 it should waive the one year period if it applies.

23           I'm not going to spend a lot of time, but  
24 clearly there would be good cause if the parties have  
25 no objection to the withdrawal and the waiver of the

1 one year time period. We appreciate the willingness  
2 of the Petitioner to fix our concerns regarding the  
3 Archaeological Inventory Survey.

4           And the Office of Planning has committed to  
5 ask or to seek some assistance from SHPD to do an  
6 expedited review so that we can get this back before  
7 you as soon as possible.

8           Really I think the only issue before you is  
9 whether you have the authority to do so. That deals  
10 with whether or not this is a jurisdictional  
11 requirement. You're allowed to waive anything unless  
12 there is a jurisdictional requirement.

13           We submit in our memos describing for you  
14 some of the things that are jurisdictional, actually  
15 more importantly some of the things that are not  
16 jurisdictional. What we have pointed out is that not  
17 all deadlines are jurisdictional. Many deadlines are  
18 not.

19           Certainly your time periods to file  
20 statements of position or exhibits, et cetera, can be  
21 waived. And they actually frequently are. More  
22 importantly, and I think for our purposes, there is at  
23 least a few case that talk about waiting periods.  
24 That was the closest analogy I could find, anyway, to  
25 the question.

1           In at least one case there was a requirement  
2 that for a discrimination complaint if you want to  
3 file directly to federal court you have to first file  
4 a notice with the EEOC. Then you have to wait --  
5 under the law you have to wait 30 days before you can  
6 file in the federal court. And the issue came up as  
7 to whether that waiting period of 30 days was  
8 jurisdictional, and the court said it was not.

9           The court did an analysis in the ninth  
10 circuit that not all mandatory are jurisdictional.  
11 And they're subject to equitable estoppel and waiver  
12 and some of these other requirements that the  
13 attorneys, at least, are familiar with.

14           That becomes important because there are  
15 some cases that have tried to distinguish mandatory  
16 from directory. There's a distinction between the two  
17 but not all mandatory requirements are jurisdictional.

18           So even if the one year requirement was  
19 considered to be mandatory, it doesn't necessarily  
20 have to be considered jurisdictional. I think given  
21 the fact that in a waiting period, one year period  
22 really is in my mind most closely analogous to a  
23 waiting period. You have to wait one year before you  
24 can file again.

25           I think, given that case that said waiting

1 periods are not jurisdictional, given the fact that it  
2 is not a statutory requirement and is purely a  
3 decision made by you as to a waiting period, and we're  
4 also persuaded, I think, by some of the background  
5 that was given regarding how this rule came into play,  
6 trying to interpret this rule what it meant to apply  
7 and how it's meant to be applied I think is also  
8 important.

9 I think given all those facts it seems to us  
10 that it would be appropriate and correct that the one  
11 year waiting period can be waived. And that in this  
12 particular case it should be. So for those reasons  
13 the Office of Planning supports the withdrawal of the  
14 petition without prejudice. thank you.

15 CHAIRMAN PILTZ: Thank you. Commissioners,  
16 questions? Commissioner Lezy.

17 COMMISSIONER LEZY: Thank you, Chair.  
18 Mr. Yee, what's OP's position on the first argument,  
19 before the Commission argument?

20 MR. YEE: We really haven't taken a  
21 position. You know actually in our footnote we remark  
22 on a different issue which is whether or not it's a  
23 voluntarily withdrawal or not because if -- in my mind  
24 frankly anyone could say, "I'm withdrawing," and  
25 that's a voluntary withdrawal. And they don't need

1 LUC approval.

2           The fact they came and asked you to withdraw  
3 indicates they're looking for an order from the LUC  
4 which would then, arguably mandate the withdrawal and  
5 then remove it from the term you have in your rule.

6           With respect to whether it's before you or  
7 not the issue is honestly a more difficult issue to  
8 make because -- the issue is whether "before you"  
9 means that it was completed in which case then the  
10 Office of Planning becomes a party, et cetera. Versus  
11 whether you began the hearing.

12           I think that's the distinction that they  
13 were trying to make. Under the history of this --  
14 under the history of this in that particular case the  
15 hearing had already begun. So they're arguing to you  
16 that "before you" means the evidentiary hearing has  
17 started.

18           Once it starts it's almost like a jury, you  
19 know, in criminal cases you can't be tried twice.  
20 Right? The trigger for the jury issues is whether or  
21 not the evidentiary trial has begun.

22           If the prosecution withdraws that any time  
23 before, then they can file again. But once the  
24 evidentiary hearing begins double jeopardy applies and  
25 the prosecution cannot, normally cannot try that

1 individual a second time. So I think that's sort of  
2 the analogy that they're trying to make.

3 I have nothing to add, really, because  
4 there's really no way -- I don't know how to say other  
5 than read it and you kind of make a decision. I can't  
6 give you a very good reply.

7 COMMISSIONER LEZY: The reason I ask that  
8 question is my concern is that if we have accepted  
9 that argument that we would perhaps create a  
10 precedent. And under less friendly situations than we  
11 have here, OP would probably be in a position to  
12 object if a Petitioner attempted to withdraw their  
13 petition.

14 So I'm just wondering whether you wanted to  
15 try to argue that maybe we should focus on the waiver  
16 as opposed to before the Commission.

17 MR. YEE: Yes, that would clearly be your  
18 preference. That's why we focused on the waiver  
19 issue.

20 COMMISSIONER LEZY: Okay. Thank you.

21 CHAIRMAN PILTZ: Go ahead, Vlad.

22 COMMISSIONER DEVENS: Quick question for  
23 Mr. Yee. Do you agree with the argument that Mr. Iha  
24 made as far as the underlying purpose of the one year  
25 prohibition?

1           MR. YEE:  Actually I'm not really quite --  
2 the argument that it was based on the prior incident?

3           COMMISSIONER DEVENS:  Where you have  
4 somebody starting the hearing, and then things not  
5 going so good, they pull out.  Do you agree with that  
6 argument that he's making that that's really the  
7 purpose of the one year prohibition?

8           MR. YEE:  That's sort of a follow up I guess  
9 to Commissioner Lezy's position.  It's a difficult, a  
10 much more difficult argument to make that that's -- I  
11 mean the facts are what they are.  So it's difficult  
12 to draw those conclusions.

13           Our preference would be --

14           COMMISSIONER DEVENS:  What's the answer to  
15 the question, though?  Do you agree or not agree?  If  
16 you don't have an opinion that's fine.

17           MR. YEE:  At this time I think we would  
18 respectfully not submit a position and reserve our  
19 right to raise the issue again at a later date.

20           COMMISSIONER DEVENS:  Appreciate that.  
21 Okay.  Thank you.

22           CHAIRMAN PILTZ:  Any other Commissioners,  
23 questions?  Okay.  Commissioners, what's your  
24 pleasure?  Go ahead.

25           COMMISSIONER DEVENS:  Mr. Chair, I'd like to

1 move to go into executive session for a few minutes  
2 just to discuss a question about our powers and  
3 duties.

4 COMMISSIONER CHOCK: Second.

5 CHAIRMAN PILTZ: We have a motion on the  
6 floor to go into executive session and a second. All  
7 those in favor signify by saying aye.

8 VOTING: Aye.

9 CHAIRMAN PILTZ: Any denial? Okay. We're  
10 in executive session.

11 (Recess)

12 CHAIRMAN PILTZ: We're back on the record.  
13 Commissioners, what's your pleasure or any questions?

14 COMMISSIONER WONG: Mr. Chairman, I noticed  
15 that there was a Motion to Intervene by Lili'uokalani  
16 Trust and it doesn't appear that anyone's appearing.

17 MR. KUDO: I'm here for Liliuokalani Trust.

18 COMMISSIONER WONG: You are.

19 MR. KUDO: Yes.

20 COMMISSIONER WONG: I see. But you don't  
21 want to participate in this petition for a withdrawal.

22 MR. KUDO: We're not a party yet.

23 CHAIRMAN PILTZ: All right. Any other  
24 questions or comments, Commissioners?

25 COMMISSIONER DEVENS: Can I ask one

1 question?

2 CHAIRMAN PILTZ: Yes.

3 COMMISSIONER DEVENS: Question for the  
4 Forest City. Can you just state for the record in  
5 general the reasons for wanting to withdraw, anything  
6 in addition to what you have in your memorandum.

7 MR. IHA: While we defer to our written  
8 submissions and our reasons, it's basically to allow  
9 the parties to work towards a resolution rather than  
10 proceed with something that the Office of Planning has  
11 problems with.

12 We think that -- and I believe the Forest  
13 City representatives might have some update on their  
14 archaeological survey and when that would be completed.  
15 That really would be the only thing that would change.

16 So we'd get an updated AIS, work with OP and  
17 Historic Preservation and refile substantively the  
18 same petition with an updated AIS. So all the efforts  
19 that the parties and the Commission have put in to  
20 this point are going to be applicable to the new  
21 petition.

22 COMMISSIONER DEVENS: And it's simply  
23 something you cannot get done within the current  
24 timeframe, is that correct?

25 MR. IHA: That's correct.

1                   CHAIRMAN PILTZ: One question. Do you have  
2 any indication how long SHPD might come before you  
3 before they come up with a response? Do you have any  
4 idea?

5                   MR. YEE: I'm sorry. I think we are working  
6 to get SHPD's approval done within weeks. But they  
7 don't have it yet, to be clear.

8                   CHAIRMAN PILTZ: Okay. It's not going to  
9 take six months.

10                  MR. YEE: No.

11                  CHAIRMAN PILTZ: That's what I wanted to  
12 clarify.

13                  MR. YEE: No. We're thinking one to two  
14 weeks.

15                  CHAIRMAN PILTZ: Okay.

16                  MR. YEE: After it's completed and sent to  
17 SHPD.

18                  MS. BENK: And just to follow up on what Mr.  
19 Yee is saying. Forest City is anticipating that the  
20 updated AIS work and report will be done and submitted  
21 probably about mid-June or thereabouts.

22                  CHAIRMAN PILTZ: Okay. That helps. Thank  
23 you. Commissioners, what's your pleasure?  
24 Commissioner Devens.

25                  COMMISSIONER DEVENS: I move to grant

1 Petitioner's Motion to Voluntarily Withdraw its  
2 Petition Without Prejudice with the specific finding  
3 of good cause for waiver of the one-year refiling  
4 prohibition.

5 COMMISSIONER KANUHA: Second.

6 CHAIRMAN PILTZ: We have a motion by  
7 Commissioner Devens, the second was Commissioner  
8 Kanuha. Commissioners? Go ahead, executive director.

9 MR. DAVIDSON: Motion to accept the  
10 withdrawal without prejudice upon a specific finding  
11 of good cause for waiver.

12 Commissioner Devens?

13 COMMISSIONER DEVENS: Yes.

14 MR. DAVIDSON: Commissioner Kanuha?

15 COMMISSIONER KANUHA: Yes.

16 MR. DAVIDSON: Commissioner Judge?

17 COMMISSIONER JUDGE: Yes.

18 MR. DAVIDSON: Commissioner Wong?

19 COMMISSIONER WONG: Yes.

20 MR. DAVIDSON: Commissioner Chock?

21 COMMISSIONER CHOCK: Yes.

22 MR. DAVIDSON: Commissioner Lezy?

23 COMMISSIONER LEZY: Yes.

24 MR. DAVIDSON: Commissioner Contrades?

25 COMMISSIONER CONTRADES: Yes.

1 MR. DAVIDSON: Chair Piltz?

2 CHAIRMAN PILTZ: Yes.

3 MR. DAVIDSON: Motion passes eight/zero,  
4 Chair. And I think the withdrawal renders the  
5 intervention petition moot and not before you,  
6 Petitioner for intervention, you concur?

7 MR. KUDO: Yeah. Ben Kudo for the  
8 to-be-admitted, hopefully, Intervenor Lili'uokalani  
9 Trust. We believe that the petition to intervene  
10 because this docket will be closed in light of the  
11 withdrawal, renders it moot. So there's no need for a  
12 withdrawal of that petition.

13 CHAIRMAN PILTZ: Thank you. Okay. Thank  
14 you.

15 MS. BENK: Thank you very much.

16 (Recess in place)

17 CHAIRMAN PILTZ: Okay. Moving on. Next  
18 item on our agenda is adoption of procedural  
19 administrative rules.

20 (The court reporter was excused from  
21 reporting the above item. 12:10)

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C E R T I F I C A T E

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

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

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

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

DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2010

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