

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3 ORAL ARGUMENT

4 A07-775 CASTLE & COOKE HOMES HAWAII, INC.)
5 _____)

6

7 TRANSCRIPT OF PROCEEDINGS

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10 The above-entitled matter came on for a Public Hearing
11 at Conference Room 405, 4th Floor, Leiopapa A
12 Kamehameha, 235 S. Beretania Street, Honolulu,
13 Hawai'i, commencing at 9:30 a.m. on August 19,
14 2010 pursuant to Notice.

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

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1 I N D E X

2	PUBLIC WITNESS TESTIMONY	PAGE
3	Lia Patrick	18
4	Dianne Hunkele	19
5	Jim Wahl	22
6	Maurice Morita	23
7	Al Lardizabal	25
8	Penny Johnson	27
9	Les Hunkele	29
10	Les Masutani	31
11	Kevin Kobayashi	34
12	Geoff Mayfield	35
13	Kathy Best	36
14	Kika Bukoski	39
15	Mary Bowers	40
16	Dean Hazama	41
17	Roy Doi	42
18	Rayson Sakugawa	44
19	Jose Tansiongco	46
20	Gary Battles	48
21	Mary Peddie	50
22	Scott Moore	51
23	Jicky Ferrer	53
24	Marilyn Freed	55
25	Ana Freed	57`

1 CHAIRMAN DEVENS: (Gavel) Good morning to
2 you all.

3 MR. MATSUBARA: Good morning.

4 CHAIRMAN DEVENS: Call to order the meeting
5 for today. Today is August 19, 2010. We're here on
6 the continuing Docket No. Alpha 07-775 to amend the
7 Agricultural Land Use District boundary to the Urban
8 District for approximately 767.649 acres at Waipio and
9 Waiawa, Island of O'ahu, State of Hawai'i. The
10 evidentiary portion of the record was closed on May
11 20, 12000.

12 I just want to note for the record on this
13 docket what has transpired since our last meeting when
14 the evidence portion of the case was closed. From May
15 21st, 2010 to August 19, 2010 the Commission received
16 the following: 12 postcards similar to those received
17 on February 19th, 2010; and written correspondence
18 from Bob Cherry, Councilman Nestor Garcia, Mary
19 Bowers, Patricia Gruse, Hawaii Laborers' Union Local
20 368, Al Lardizabal and the Hawaii Building and
21 Construction Trades Council, AFL-CIO William "Buzz"
22 Hong.

23 On June 7th, 2010, the Commission received
24 Petitioner's Fourth Amended List of Exhibits and
25 Petitioner's Exhibit 56.

1 The parties timely filed their respective
2 proposed findings of fact, conclusions of law and
3 decisions and orders on June 24, 2010, and their
4 respective comments, responses, joinders, objections
5 and replies on July 6th, 7th, 9th, 15th and 19th,
6 2010.

7 The procedure for today is we are going to
8 first take public testimony. For those witnesses that
9 have testified before we're going to limit that
10 testimony to two minutes. For those who have not
11 testified here before will be given a full three
12 minutes with a 30 second warning as a courtesy to let
13 you know when your time is winding down.

14 After that we're going to take closing
15 arguments from the parties starting with the
16 Petitioner. Each party will be allotted 20 minutes.
17 Petitioner has the option to reserve part of the 20
18 minutes for a rebuttal closing. That will be the
19 procedure for today.

20 Before we move forward I'd like to adopt
21 the minutes. Anybody have any corrections or changes
22 to the minutes? Hearing none, any motion to adopt?

23 COMMISSIONER CONTRADES: So moved.

24 COMMISSIONER TEVES: Second.

25 CHAIRMAN DEVENS: We have a motion to adopt

1 and a second. Dan -- actually raise of hands. So
2 adopted. Dan will now go over the tentative meeting
3 schedule.

4 MR. DAVIDSON: Thank you, Chair. You have
5 the tentative meeting schedule. I think it's now
6 about a 95 percent certainty that we will be at
7 Waikoloa in the month of October for the HHFDC Forest
8 City 201-H petition. Otherwise the document speaks
9 for itself. And as always please contact me or Riley
10 with conflicts, concerns about the schedule. Thank
11 you.

12 CHAIRMAN DEVENS: Thank you, Dan. Before we
13 move forward I'd like to introduce our newest
14 Commissioner, Mr. Charles Jenks from Maui, who's been
15 appointed on an interim basis. He's filling the
16 position for former Chair Piltz. Welcome aboard,
17 Mr. Jenks.

18 Also Commissioner Heller had a disclosure
19 that he wanted to put on the record. Commissioner
20 Heller.

21 COMMISSIONER HELLER: Yes, thank you.
22 Before I participate in any decision-making in this
23 matter I want to put the following disclosure on the
24 record, and give all parties the opportunity to object
25 to my participation if they choose to do so.

1 My firm, the Torkildson, Katz law firm, has
2 represented Wahiawa General Hospital and the Hospital
3 Association for a number of years. Although Wahiawa
4 Hospital is not actually a petitioner in this case, it
5 is my understanding that the hospital has an agreement
6 with Castle & Cooke whereby the hospital would acquire
7 certain land and build a new medical facility if the
8 petition is granted. And thus the hospital has an
9 interest in the outcome of this matter.

10 In the interest of full disclosure I should
11 note that it's not just my firm. I am personally
12 doing current ongoing legal work for Wahiawa Hospital.

13 Moreover, that work includes representing
14 the hospital in a lawsuit brought by an individual who
15 allegedly did certain work relating to the planning of
16 the hospital's Koa Ridge facility. Therefore I have
17 access to information relating to the hospital's
18 proposed facility which may not be part of the public
19 record in this case.

20 I believe that I can make a fair and
21 impartial decision in this matter based on the record
22 that has been presented to the Land Use Commission.
23 But if any of the parties are concerned about my
24 participation the issue should be addressed before I
25 actually become involved in any decision-making.

1 Thank you.

2 CHAIRMAN DEVENS: Do the parties have any
3 objections to Commissioner Heller continuing to hear
4 this matter?

5 MR. MATSUBARA: Petitioner has no
6 objections, Mr. Chairman.

7 MS. TAKEUCHI-APUNA: No objections.

8 CHAIRMAN DEVENS: OP, do you folks have any
9 objection to Commissioner Heller continuing to serve
10 in this matter?

11 MR. YEE: Could we ask just a couple
12 clarification questions on the extent of Commissioner
13 Heller's involvement?

14 CHAIRMAN DEVENS: Sure.

15 MR. YEE: I guess we would have two areas of
16 question. The first is whether or not the Torkildson
17 Katz firm would directly, directly be assisted by this
18 decision by the Land Use Commission. That is to say
19 were you involved -- or not you -- but would the
20 Torkildson Katz law firm get more business
21 specifically because it was involved in the particular
22 agreement to work on this particular Petition Area?

23 And I guess the second question is with
24 respect to the access to other information. Aside
25 from the access do you actually have information

1 outside of the record that you might think is relevant
2 to this case? I mean the possibility of access is one
3 thing but the actual knowledge in your mind it's hard
4 to erase. So that's the purpose of our inquiry.

5 COMMISSIONER HELLER: Okay. Let me take the
6 first question first. To the best of my knowledge
7 nobody at the firm is actually doing any work or has
8 been asked to do any work in connection with the
9 specific petition in this case.

10 As far as whether the hospital going forward
11 with the planned facility could result in my firm
12 being asked to do further work, that's a possibility.
13 I just don't know. I would assume that if a major
14 project goes forward there may be things that my firm
15 may be asked to do in relation to that, but there's
16 nothing specific that I know of at this point.

17 As to your second question on access to
18 information: The sort of thing that I'm talking about
19 would be more sort of internal hospital records, board
20 minutes and budgets, and those kinds of things that
21 might relate to the planning of the facility, not so
22 much directly to the overall Project by the Petitioner
23 but to the hospital's plans in terms of what it
24 envisioned building and what it might cost and those
25 sorts of things.

1 MR. YEE: We'll defer to Commissioner
2 Heller's decision on the matter and waive objections.

3 CHAIRMAN DEVENS: Well, he's not moving to
4 recuse himself. He's just making a disclosure.

5 MR. YEE: We have no objection.

6 CHAIRMAN DEVENS: No objection?

7 MR. YEE: No objection.

8 CHAIRMAN DEVENS: Thank you. Sierra Club.

9 MR. YOST: Just to explore it a little bit
10 further. The standard for recusal is fairly limited
11 for Commissioners. And I don't have the language
12 right in front of me. I assume you've looked at it as
13 part of your review of this.

14 COMMISSIONER HELLER: Hmm-hmm.

15 MR. YOST: I believe it's that recusal is
16 appropriate if a commissioner has a personal financial
17 stake in the subject matter of the petition or a
18 member of his or her immediate family has a personal
19 financial stake? Am I remembering it correctly?

20 COMMISSIONER HELLER: Without pulling it out
21 I think that's essentially right.

22 MR. YOST: Okay. So I guess the question is
23 because -- I mean do you think it's likely that the
24 Torkildson law firm would obtain additional business
25 and financial benefit from the hospital if this

1 petition were granted and the plans that are
2 contemplated by the petition would be put into effect?
3 I mean it's likely that the Torkildson firm would
4 obtain a financial benefit from that, correct?

5 COMMISSIONER HELLER: I think if the
6 hospital builds a major new facility anywhere, whether
7 it's a part of Koa Ridge or somewhere else, that
8 probably in that process my firm might be consulted on
9 various issues and would therefore receive some legal
10 work.

11 MR. YOST: Right. Okay. And you're a
12 partner in the Torkildson law firm, correct?

13 COMMISSIONER HELLER: Technically
14 shareholder and director but functionally partner,
15 yes.

16 MR. YOST: So you receive a personal
17 financial benefit that has some relationship to the
18 gross financial revenue of the firm.

19 COMMISSIONER HELLER: Correct.

20 MR. YOST: Based on some sort of formula for
21 shareholders.

22 COMMISSIONER HELLER: Correct. I receive a
23 certain share of the profits of the firm.

24 MR. YOST: Okay. So I guess I would ask you
25 to explain further why you don't feel that this

1 petition, you know, could result in essentially a
2 personal financial benefit to you through your firm
3 because of future business that would be likely
4 directed towards your firm.

5 COMMISSIONER HELLER: Right. Well, I mean
6 it is possible that granting the petition could cause
7 more work to be done by my firm than might otherwise
8 be the case but that's only a possibility. It's not a
9 certainty.

10 It's possible that if the petition is denied
11 and the hospital does something else, that could
12 result in additional work for my firm. And I don't
13 know at this point how much it would be either way, or
14 whether it would even happen for sure either way.

15 MR. YOST: Okay. Because this matter is
16 just coming up for the first time this morning I would
17 ask for just a one minute for me to discuss this
18 matter with my client and then we can say whether or
19 not we have any objection.

20 CHAIRMAN DEVENS: Sure.

21 MR. YOST: Thank you.

22 CHAIRMAN DEVENS: In the meantime does the
23 Neighborhood Board have any objection to Commissioner
24 Heller's --

25 MR. POIRIER: No.

1 CHAIRMAN DEVENS: No objection?

2 MR. POIRIER: No.

3 CHAIRMAN DEVENS: Thank you. We'll give you
4 the one minute recess.

5 MR. YOST: We'll step out of the room.

6 CHAIRMAN DEVENS: Sure.

7 (Short recess in place was held.)

8 CHAIRMAN DEVENS: We're back on the record.
9 Sierra Club, have you had a chance to consultant with
10 your client?

11 MR. YOST: Yes, thank you, Chair. What the
12 Sierra Club would like to do at this time is raise an
13 objection really just on the basis of incomplete
14 information. We feel that further investigation by
15 Commissioner Heller would be appropriate in terms of
16 discussions with his partners or his client as to
17 whether or not there's a likelihood of personal
18 financial benefit from the granting of this petition.

19 And that we just don't have enough
20 information as we sit here this morning to say one way
21 or the other whether he would personally financially
22 benefit. But we're just raising an objection based on
23 we believe there is a need for further investigation
24 by Commissioner Heller on that basis on that issue.

25 CHAIRMAN DEVENS: If I may ask what type of

1 information are you seeking? And assuming there's
2 nothing more other than the disclosure that he has
3 made, based on what he already has disclosed would you
4 have any objection to that?

5 MR. YOST: I think as an abundance of
6 caution we'd have to register an objection. We
7 haven't had time to really analyze this issue since it
8 was raised only this morning. And we don't doubt
9 Commissioner Heller's ability to understand the rules
10 and to follow them. It's just that we don't have
11 enough information.

12 So I think we'll just have to object at this
13 time and register that. If appears to us, based on
14 the information we have, which is limited, that there
15 is the likelihood of some personal financial benefit
16 coming to Commissioner Heller if the petition were to
17 be granted.

18 CHAIRMAN DEVENS: In what form?

19 MR. YOST: In monetary form from additional
20 legal work that would come from the hospital should
21 the Koa Ridge Project go forward as planned and a new
22 hospital be built. There'd be a lot of legal work
23 that would be associated with that. It sounds like at
24 least some of that legal work would be done by
25 Mr. Heller's firm and/or him personally. So that

1 would seem to be a personal financial stake.

2 CHAIRMAN DEVENS: All right. I'm going to
3 move to go into executive session on issues relating
4 to the Commission's powers and authority.

5 COMMISSIONER CHOCK: Second.

6 (Executive session recess.)

7 CHAIRMAN DEVENS: All right. We're back on
8 the record. Just for the record the motion to move
9 into executive session was carried by unanimous vote,
10 show of hands. Commissioner Heller, you want to add
11 anything more to what has been raised by the Sierra
12 Club?

13 COMMISSIONER HELLER: Yes, thank you. I
14 don't think it's actually possible for me to give you
15 any more definitive information than what I have
16 already provided. However, in view of that
17 uncertainty and in view of the objection that's been
18 raised I'm going to recuse myself from any further
19 participation in this case. And I have not
20 participated in any vote relating to the case other
21 than just going into executive session.

22 CHAIRMAN DEVENS: All right. So noted. The
23 recusal of Commissioner Heller will be noted as of
24 this date and time. Why don't we move ahead with the
25 public testimony. And before doing so if the parties

1 can note their appearances for the record.

2 MR. MATSUBARA: Good morning, Chair Devens,
3 Land Use Commissioners. My name is Benjamin
4 Matsubara. I along with Curtis Tabata and Wyeth
5 Matsubara represent Castle & Cooke Homes, Hawaii, Inc.
6 With me today is Laura Kodama, director of planning
7 and development and Rodney Funakoshi senior project
8 manager.

9 CHAIRMAN DEVENS: Good morning.

10 MS. TAKEUCHI-APUNA: Good morning. Deputy
11 Corporation Counsel Dawn Takeuchi-Apuna on behalf of
12 the City's Department of Planning and Permitting.
13 Here with me today is Matt Higashida.

14 CHAIRMAN DEVENS: Morning.

15 MR. YEE: Good morning. Deputy Attorney
16 General Bryan Yee on behalf of the Office of Planning.
17 With me is Abbey Mayer, the director of the Office of
18 Planning.

19 CHAIRMAN DEVENS: Morning.

20 MR. YOST: Good morning, Commission. Colin
21 Yost representing the Sierra Club. With me is Robert
22 Harris, the director of the Hawai'i Chapter of the
23 Sierra Club.

24 MR. POIRIER: Good morning. Dick Poirier
25 Board No. 25 along with Karen Loomis.

1 CHAIRMAN DEVENS: Good morning to you all.
2 We'll have Mr. Davidson go through the list of
3 witnesses. They will be called in the order that they
4 have signed up.

5 MR. DAVIDSON: Also I'm going to indicate
6 "new testifier." And if I say "new testifier" again
7 the time limit is 3 minutes. If I don't say anything
8 the time limit is 2 minutes. First three speakers Lia
9 Patrick followed by Diane Hunkele and Jim Wahl. Lia
10 Patrick and Diane are both new testifiers.

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

14 THE WITNESS: Yes.

15 CHAIRMAN DEVENS: Go ahead. If you can
16 first state your name and address for the record.

17 THE WITNESS: My name is Lia Patrick. And I
18 live in Mililani 95-207 Paeheu, 96789. And I would
19 like to read my statement to all of you. We bought
20 our home located near the proposed site for the O'ahu
21 arts center in 1997. We don't recall any discussion
22 about the arts center when we purchased our home from
23 Castle & Cooke.

24 However, my husband was told by one of the
25 staff that's that time this area will be zoned

1 commercial. We heard about the proposed arts center
2 project through word of mouth through our neighbors.
3 Like our neighbors, we truly believed that there would
4 a cultural arts center built on the site. We are very
5 disappointed that it may never happen.

6 On the Castle & Cooke website my husband
7 found a Koa Ridge visioning newsletter dated December
8 2006 which advertised a cultural arts center in the
9 area. I'm not sure what cultural arts center they
10 were referring to. However, if they were promising to
11 residents a cultural arts center on their own, of
12 their own, we may want to remind them on their broken,
13 the promise here in Mililani Mauka. And I do have a
14 copy of the letter with the Koa Ridge developing that
15 they are offering a cultural center.

16 And I would like to know if that's gonna be
17 built over there or they're going to build two
18 cultural centers. And I want to also ask Castle &
19 Cooke why do you change your mind about the one in
20 Mililani and the one to Koa Ridge. And I do have some
21 copies of it. This is from the Castle & Cooke
22 website. I have some copies if you'd like to see
23 them.

24 CHAIRMAN DEVENS: We'll make that part of
25 the record.

1 THE WITNESS: Okay. Thank you.

2 CHAIRMAN DEVENS: Parties have any questions
3 for this witness?

4 MR. MATSUBARA: No questions.

5 MS. TAKEUCHI-APUNA: No questions.

6 MR. POIRIER: No questions.

7 MR. YOST: No questions.

8 MR. DAVIDSON: Diane Hunkele who is a new
9 testifier.

10 THE WITNESS: Hi. My name's Diane Hunkele.
11 I live at 95-1016 Inano Street in Mililani.

12 CHAIRMAN DEVENS: Can we swear you in first
13 before you start your testimony?

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

17 THE WITNESS: Yes, I swear to tell the truth
18 in this matter.

19 CHAIRMAN DEVENS: Go ahead.

20 THE WITNESS: I'm speaking of behalf of
21 myself. I'm not a part of any organization. I'm
22 speaking as a concerned citizen.

23 MR. DAVIDSON: Go ahead and sit down.

24 THE WITNESS: And before we bought our house
25 we talked to a Castle & Cooke agent and we got the lay

1 of the land. She let us know what's been developed
2 and what was to be developed. And among other things
3 she talked about an area that was an Hiwa Street next
4 to the middle school it was going to be -- it was
5 already zoned as commercial property. And among other
6 things they were going -- Castle & Cooke was going to
7 donate property for an arts center and then also
8 possibly put in some retail shops and restaurants.

9 We bought our home. Our daughter was taking
10 dancing lessons through Applause in Wahiawa. They too
11 often spoke about the day that they would get to move
12 their classes to Mililani, to that Mililani arts
13 center that Castle & Cooke was making possible for
14 them to be able to have.

15 I didn't hear anything more for a long time.
16 And this was in 2006 when we bought our home. I did
17 watch a storage unit go up in that area. And I
18 thought I guess this was part of the commercial
19 development although I had not heard about that
20 before. I was still lookin' forward to an arts center
21 and some retail shops to finish the community.

22 Then last week I heard that Castle and Cooke
23 had sold the land to a developer to build affordable
24 housing in that area. So I had a question for this
25 committee. That is: Is affordable housing in Koa

1 Ridge, in Castle & Cooke's Koa Ridge plan before you
2 today? Did they have affordable housing? Or if not
3 is there some type of a requirement that Castle &
4 Cooke is trying to fulfill by putting more in Mililani
5 and changing their promise to Mililani?

6 And I too am very concerned about Castle &
7 Cooke being allowed to renege on a promise for land
8 use in Mililani. And from their web site they
9 promised to put this fine arts -- an arts center
10 there. And is this the same arts center that they
11 promised for Mililani? I don't know that.

12 I would like to go on record, though, as
13 requesting this Commission to hold Castle & Cooke to
14 their commitment for commercial development in
15 Mililani before they approve the Koa Ridge plan.
16 That's all.

17 CHAIRMAN DEVENS: Parties have any questions
18 for this witness?

19 MR. MATSUBARA: No questions.

20 CHAIRMAN DEVENS: Hearing none, thank you
21 very much for your testimony.

22 THE WITNESS: Thank you.

23 MR. DAVIDSON: Next is Jim Wahl, a prior
24 testifier.

25 CHAIRMAN DEVENS: Sir, can we first swear

1 in.

2 THE WITNESS: Sure.

3 JIM WAHL,

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

6 THE WITNESS: I do.

7 CHAIRMAN DEVENS: Can you state your name
8 and address for the record.

9 THE WITNESS: Jim Wahl, 94-304 Kamalei
10 Street, Mililani. I've been a resident of Mililani
11 since 1975. I've been involve in the healthcare
12 industry since 1975 as well actually.

13 I'm here to support the Petitioner due to
14 the fact that this medical center potentially has a
15 number of advantages for the residents of Central
16 O'ahu. I think it will improve access, enhance
17 quality and make services available that are not
18 available out in that area at the present time.

19 I think partially addressing some of the
20 earlier concerns: Wahiawa General has been around for
21 a long time. It's a very old plant. It's in an
22 awkward position within the Wahiawa Town itself. It
23 will have to be relocated in order to survive. It's
24 really not viable. And then certainly the building on
25 the present site has been assessed. It's too costly.

1 It would be a lot cheaper to build it at a new site.

2 The new site would also offer a number of
3 advantages. You have the potential to build from the
4 ground up with the computer technology and the modern
5 equipment that would be potentially of value, improved
6 quality, et cetera, not only for the residents but
7 also be a magnet for new physicians. We have seen --

8 MR. DAVIDSON: 30 seconds.

9 THE WITNESS: Okay. We have seen a number
10 of different things but this is potentially a great
11 magnet for new physicians who train with this
12 technology, want this technology. So you're not only
13 approving an affordable housing and jobs, but you're
14 approving the quality enhancement for the residents of
15 Central O'ahu.

16 CHAIRMAN DEVENS: Parties have any questions
17 for this witness?

18 MR. MATSUBARA: No questions.

19 CHAIRMAN DEVENS: Hearing none, thank you
20 for your testimony.

21 MR. DAVIDSON: Next is Maurice Morita, new
22 testifier followed by Al Lardizabal.

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

1 THE WITNESS: Yes, I do.

2 CHAIRMAN DEVENS: Could you state your name
3 and address for the record.

4 THE WITNESS: Just for the record my name is
5 Maurice Morita and I live at 1142 Ala'aloa Street in
6 Honolulu, 96818. I'm speaking for the Hawaii LECET,
7 the Hawaii Laborers Employers Corporation and
8 Education Trust. We strongly support the Castle &
9 Cooke Homes Hawai'i, Inc.

10 We believe that the Koa Ridge, that this
11 Project, Koa Ridge, will help boost our economy and
12 return many construction workers back to work. We
13 have approximately about 700 laborers on the bench.
14 This Project would help return some of them back to
15 work.

16 Also we offer that Koa Ridge will also offer
17 some young families like my son and his girlfriend
18 that they're looking for a place to buy. They want to
19 live in Downtown Honolulu but the cost is so expensive
20 that I told them that they have to go out and look.
21 Koa Ridge will offer them an opportunity to look and
22 see if they want to live in Koa Ridge. Thank you.

23 CHAIRMAN DEVENS: Parties have any questions
24 for this witness?

25 MR. MATSUBARA: No questions.

1 CHAIRMAN DEVENS: Hearing none, thank you
2 very much.

3 MR. DAVIDSON: Al Lardizabal.

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

7 THE WITNESS: I do.

8 CHAIRMAN DEVENS: If you can state your name
9 and address.

10 THE WITNESS: Good morning, Commissioners.
11 My name is Al Lardizabal, director for government
12 relations and the staff lobbyist for the Laborers'
13 Union. I live to have 2222 Citron Street 303 in
14 Honolulu.

15 I testified in support before so I'll be
16 very short. The Commissioners heard over the months
17 the same arguments pro and some con about the Project.
18 We support the Project. But what the Commission
19 doesn't know is on the personal level.

20 You know that the Bureau of Labor Statistics
21 reported in the 2010 June report that Hawai'i lost
22 nearly 6,000 jobs in construction, 5800? And of
23 those, 800 are my members. They're hurting badly. So
24 we have a 21 percent, roughly, unemployment rate.
25 Other unions have it even higher, 53 percent. They're

1 hurting.

2 But let me talk about two members. I'll
3 bring these abstract numbers down to real people.
4 Roberto, who's a long-time worker, he came from
5 another country whose culture taught him not to go get
6 job and help when he's hurting. Until one day it got
7 so bad another member said, "Look, go to the Laborers'
8 Union. They have this labor community service
9 program. Get some food." He needed food. So we got
10 him some food items.

11 Same thing with Kalei, a local boy born
12 here, just got married. Unemployed a long time.
13 Needed food. We got him some food, thanks to United
14 Way, labor community service program. But the sad
15 thing about this is we could only help him one time.
16 So we had to give him the address of churches,
17 community groups, non-profit agencies to help them
18 survive. These are the real people being hurt.

19 So we ask the Commission, we have a local
20 company Castle & Cooke Castle willing to invest
21 millions of dollars for the economic opportunities for
22 employment for our people. We ask you to please
23 consider these. Thank you.

24 CHAIRMAN DEVENS: Any questions for this
25 witness?

1 MR. MATSUBARA: No questions.

2 CHAIRMAN DEVENS: Hearing none, thank you.

3 MR. DAVIDSON: Penny Johnson followed by Les
4 Hunkele.

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

8 THE WITNESS: I do.

9 CHAIRMAN DEVENS: Can you state your name
10 and address.

11 THE WITNESS: Penny Johnson, 157 Baldwin
12 Road, Wahiawa, Hawai'i. Good morning. I'm Penny
13 Johnson. I'm the director of nursing and the manager
14 for surgical services at Wahiawa General Hospital.

15 Thank you for this opportunity to testify in
16 support of this joint Project between Wahiawa Hospital
17 and Castle & Cooke.

18 I have been employed at Wahiawa for over
19 five years and seen the available services offered in
20 the community decline. My role as manager for
21 surgical services I have seen patient case load drop
22 drastically.

23 Since my arrival in the fall of 2005 I have
24 witnessed the departure of two general surgeons, three
25 OB-GYN surgeons, one orthopedist, three urologists,

1 one ENT surgeon and one gastroenterologist: 11
2 surgeons in five years. I do not believe these
3 surgeons left because their referrals dried up. They
4 followed the outward migration of other specialists
5 into Honolulu. This outward migration has imposed a
6 tremendous burden on the community of Central O'ahu.

7 Our current hospital was built in 1944. And
8 although the surgery department has been renovated it
9 cannot be expanded in its current location. This is
10 an example of what has happened in surgeries not
11 limited to my department. Since assuming the role of
12 director of nursing I see how this trend crosses the
13 organization.

14 Wahiawa provides critical emergency care to
15 the community of Wahiawa and Central O'ahu. As a
16 military spouse I would like to also say how critical
17 hospital in Central O'ahu is to the military
18 community. Our emergency room provides emergency
19 services to the soldiers and families of Schofield
20 Barracks.

21 MR. DAVIDSON: 30 seconds.

22 THE WITNESS: And this service has been
23 particularly important during the last five years when
24 the 25th Infantry Division has been called to serve in
25 the war effort. When we have services offered at

1 Tripler we're often referred out. I have a daughter
2 who has Type 1 diabetes. When we go to see her
3 pediatric endocrinologist at Queen's we literally have
4 to pack a lunch because we're going to be gone for
5 half to 3-quarters of our day. The financial of the
6 hospital is dire. And as more and more physicians
7 migrate to Honolulu or refuse to come to Wahiawa the
8 more desperate the situation will be.

9 Building a newer facility in a planned
10 community with state-of-the-art equipment and easy
11 access will allow Wahiawa Hospital to continue their
12 important mission of providing quality healthcare to
13 the citizens and communities of Central O'ahu. Thank
14 you for this opportunity to testify.

15 CHAIRMAN DEVENS: Are there any questions
16 for this witness?

17 MR. MATSUBARA: No questions.

18 CHAIRMAN DEVENS: Hearing none, thank you.
19 Next witness.

20 MR. DAVIDSON: Les Hunkele followed by Les
21 Masutani.

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

25 THE WITNESS: I do.

1 CHAIRMAN DEVENS: State your name and
2 address.

3 THE WITNESS: My name is Les Hunkele,
4 95-1016 Inana street, in Mililani, Hawai'i. In my
5 professional life I've been head of a federal
6 development agency, a general contractor and a
7 construction manager, so I certainly don't object to
8 construction. I don't, in fact, object to Koa Ridge.

9 I am concerned -- and what I've heard -- I
10 haven't had enough time to do my homework the way you
11 all do -- to understand all the details. But it would
12 appear -- and you can check that out -- that there's
13 potentially a failure on the part of Castle & Cooke to
14 live up to the representations that they made to the
15 thousands of people that bought in Mililani Mauka.

16 We don't have commercial. It appears that
17 we're not going to have the arts center even though
18 \$300,000 of taxpayer money has already been spent on
19 preliminary design.

20 We're overloaded. Mililani Ike even with
21 the temporary buildings is 28 percent oversized. The
22 middle school is gonna go on four tracts this year
23 instead of just three. We really can't afford more
24 housing there.

25 It would seem to me that the way to take

1 that issue off the table and up for your consideration
2 is to simply, as one of the conditions of approving
3 Koa Ridge, is to have them transfer that land to the
4 arts center either to the arts folks or the city and
5 county in trust for them or somethin' like that so in
6 fact they won't be putting housing there and
7 exacerbate what is already a difficult situation.

8 CHAIRMAN DEVENS: Any questions for this
9 witness?

10 MR. MATSUBARA: No questions.

11 CHAIRMAN DEVENS: Thank you.

12 MR. DAVIDSON: Les Masutani followed by
13 Kevin Kobayashi, new testifiers.

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

17 THE WITNESS: I do.

18 CHAIRMAN DEVENS: State your name and
19 address.

20 THE WITNESS: My name is Les Masutani. My
21 address is 1900 Hau Street, Honolulu, Hawai'i 96819.
22 I'm the vice-president of Coastal Construction. And
23 we've built a variety of homes for many generations of
24 families in Hawai'i. And for us it's not so much the
25 type or size or feature of the house but more the fact

1 that we're building shelter, safety and security for
2 many people.

3 I support the development at Koa Ridge. It
4 will help two of the biggest concerns that I see:
5 Provide new home opportunities while creating jobs.

6 Our company has worked with Castle & Cooke
7 for many years. Our employees, associates are proud
8 to have been a part in building the Mililani
9 community. I have friends, family and co-workers who
10 have worked in Mililani and now live there. And they
11 love it. When their children grow up they'll want the
12 opportunity to live nearby and Koa Ridge would be the
13 ideal area.

14 I support Castle & Cooke's continued
15 commitment to build new homes. I also commend their
16 planning and approach for using their land to build
17 new communities. I am fortunate that I was able to
18 work, buy a house and raise a family in Hawai'i. Our
19 home provides us with so much joy and happiness. I
20 hope that my children along with yours and others have
21 the opportunity and a choice where to live. Thank
22 you.

23 CHAIRMAN DEVENS: Any questions for this
24 witness.

25 MR. MATSUBARA: No questions.

1 CHAIRMAN DEVENS: Hearing none, thank you
2 for your testimony.

3 MR. DAVIDSON: Kevin Kobayashi followed by
4 Geoff Mayfield.

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

8 THE WITNESS: Oh, yeah.

9 CHAIRMAN DEVENS: State your name and
10 address.

11 THE WITNESS: Kevin Kobayashi, 95-1023
12 Pu'ukoa Street, Mililani. I'm not here representing
13 any government agencies, either myself even though I
14 have worked for one for over 18 years now. I
15 understand the need for the development where people
16 are coming from on how they would like to see more
17 housing built, desirable neighborhoods and to have the
18 jobs come back into the community.

19 But going back to what I stated earlier as
20 being a government worker. People look to you to a
21 higher -- hold you to a higher standard. People --
22 some people like myself who bought a home in the
23 Mililani area twice have looked to Castle & Cooke to
24 be held accountable for what they tell us.

25 One of the things we were also told was that

1 once the development was finished at the top of
2 Leihewa -- sorry not Leihewa but Meheula Parkway that
3 that was going to be the end of it and all operations
4 was going to move further down the freeway to the Koa
5 Ridge Project.

6 We were also been told the arts center which
7 was supposed to have been built on the corner of
8 Leihewa and Meheula Parkway has now been changed so
9 that leaves a bad taste in everyone's mouth. So we
10 are here again would like to see they being held
11 accountable to what they have told all of us and hold
12 them to the reasons why a lot of us have bought into
13 these neighborhoods.

14 Again, I myself, born raised here, grew up
15 in Hawai'i Kai, had the opportunity to buy a house
16 twice again in Mililani, and I am very fortunate very
17 and in love where I live. I would like to continue
18 living out there. I have no desire to move back to my
19 old neighborhood. I would like to see again the
20 people who developed it to be a responsible
21 organization, to maintain what they've told us all
22 this time and to be able to restore the trust that the
23 community had in them at one time.

24 CHAIRMAN DEVENS: Any questions for this
25 witness?

1 MR. MATSUBARA: No questions.

2 CHAIRMAN DEVENS: Thank you for your
3 testimony. Next witness.

4 MR. DAVIDSON: Geoff Mayfield followed by
5 Kathy Best.

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

9 THE WITNESS: I do.

10 CHAIRMAN DEVENS: State your name and
11 address.

12 THE WITNESS: My name is Geoff Mayfield. I
13 live at 95-1039 A'ahu Street in Mililani. Twelve
14 years ago I thought I'd never sit here today. I was
15 told by Castle & Cooke certain promises. And I wasn't
16 given it in writing. I was told verbally. And living
17 in Hawai'i for the majority of my life that's what I
18 go by. I go by the person's word, by their
19 accountability. Since then I've learned otherwise.
20 I've learned Castle & Cooke the broken promises they
21 have made are basically that.

22 I'm concerned about Koa Ridge. Yes, I'd
23 love to see it built. Yes, I'd love to see the
24 hospital there. But what I ask you is on the Internet
25 Castle & Cooke, they posted this, the zoning. What I

1 ask all of you today is please hold them by their
2 word. If this is what they're representing today, 10,
3 15 years from now hold them to this. Keep the
4 hospital built there. Keep the stores built there.
5 Don't let 'em change the zoning. Don't let 'em go
6 back. 'Cause who's to say if they can continue their
7 behaviors that they've doing what's going to happen in
8 the future. What are we going to do? Who are we
9 going to stand by? So thank you.

10 CHAIRMAN DEVENS: Any questions for this
11 witness?

12 MR. MATSUBARA: No questions.

13 CHAIRMAN DEVENS: Okay. Hearing none, thank
14 you.

15 MR. DAVIDSON: Kathy Best followed by Kika
16 Bukoski.

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

20 THE WITNESS: Yes.

21 CHAIRMAN DEVENS: Please state your name and
22 address.

23 THE WITNESS: Aloha. My name is Kathy Lau
24 Best. I live in Mililani at 95-1100 Auina Street.
25 And I'm here today to share some thoughts in support

1 of the proposed Koa Ridge community by Castle & Cooke.

2 On behalf of my family -- and there's over a
3 dozen of us in homes there -- and my extended 'ohana
4 who were raised in Central O'ahu and have lived in the
5 Mililani Mauka community for that past 15 to 20 years,
6 we support the Koa Ridge Project.

7 We all work hard every day to have a place
8 that we can call home. If we take a moment to pause
9 we realize that life and time is short. At the end of
10 the day where we live, work and play is important to
11 our quality of life.

12 And for those of us who have children that
13 were born and raised in Central O'ahu we want our
14 children and families to be nearby so we can spend
15 more time together on a daily basis, not just on
16 weekends and monthly special occasions.

17 There were a lot of heart-warming stories we
18 shared in January about how we love our Mililani
19 community and the community that Castle & Cooke built.
20 My sister has a Mililani Physical Therapy and was able
21 to have a business employing 30 people since rehab
22 left. And there's, you know, a great livelihood she
23 had.

24 There's great schools, good churches, rec
25 centers, a safe neighborhood that our children enjoyed

1 growing up in. And many of us started as renters in
2 the model condo and eventually moved up.

3 And whether we bought the small starter home
4 or the upgraded model unit or my mom's in the Olaloa
5 retirement community, it's kept us all together.
6 We're thankful for the simple and comfortable quality
7 of life we have. And as parents and grandparents
8 getting older every day --

9 MR. DAVIDSON: 30 seconds.

10 THE WITNESS: -- okay, we look forward to
11 the chance to live in this community. But beyond the
12 testimony that's been shared there are also hundreds
13 of my neighbors and friends and associates that I've
14 talked story with over the years. And they share this
15 vision and hope.

16 And I've gotten in real estate now. Every
17 day many of my co-workers are realtors and talk to the
18 people looking for homes in the area: Renters,
19 first-time home buyers, young couples, families, empty
20 nesters, there are still hundreds looking for a place
21 to call home.

22 And when I mentioned I was coming to the
23 hearing today, many realtors from different companies
24 told me they have clients that are still waiting for
25 Koa Ridge to be built. And despite the delays these

1 hopeful homebuyers continue to make plans to move into
2 their dream homes there. We let them know there are
3 other new developments in 'Ewa and Leeward. But many
4 of them want to live in Central O'ahu 'cause it's
5 cooler and where their families are. As you make your
6 final decision on the future of Koa Ridge, we humbly
7 ask that you consider our voices and our thoughts.

8 MR. DAVIDSON: Time's up.

9 THE WITNESS: Thank you.

10 CHAIRMAN DEVENS: Any questions for this
11 witness? Thank you very much.

12 MR. DAVIDSON: Kika Bukoski followed by Mary
13 Bowers.

14 KIKA BUKOSKI

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

17 THE WITNESS: Yes.

18 CHAIRMAN DEVENS: State your name and
19 address.

20 THE WITNESS: My name's Kika Bukoski. My
21 address is 560 North Nimitz Highway, Honolulu. Good
22 morning Chair, Vice-Chairs, Commission members. I'm
23 here on behalf of William "Buzzy" Hong and the Hawaii
24 Building and Construction Trades Council. We'd just
25 like to state for the record we stand on our written

1 testimony as submitted.

2 CHAIRMAN DEVENS: Any questions for this
3 witness?

4 MR. MATSUBARA: No questions.

5 CHAIRMAN DEVENS: Hearing none, thank you
6 very much.

7 THE WITNESS: Thank you.

8 MR. DAVIDSON: Mary Bowers followed by Dean
9 Hazama.

10 MARY BOWERS,
11 being first duly sworn to tell the truth, was examined
12 and testified as follows:

13 THE WITNESS: Yes, I do.

14 CHAIRMAN DEVENS: State your name and your
15 address.

16 THE WITNESS: Mary Bowers. And I live in
17 Manoa. I was born and raised here. And I have seen
18 quite a number of changes. You get old enough that's
19 what happens. I am concerned because no one has
20 addressed the fact that we keep talking about
21 sustainability. How can we have sustainability if we
22 cover our ag lands with buildings, whatever kind of
23 buildings?

24 And I think that we have an upcoming rail
25 system, and I think a lot of the construction workers

1 are going to be put to work building the stations.
2 West O'ahu College has just broken ground, and I think
3 that construction workers will be employed there.

4 So I say let's grow our food. If you cover
5 the ag lands with buildings, when the buildings are
6 built what are we going to feed the people with?

7 CHAIRMAN DEVENS: Mary, if you don't mind
8 giving your address for the record.

9 THE WITNESS: 3134 Huelani Place.

10 CHAIRMAN DEVENS: Let me see if there's any
11 questions for you. Parties, any questions?

12 MR. MATSUBARA: No questions.

13 CHAIRMAN DEVENS: Commissioners? Thank you.

14 MR. DAVIDSON: Dean Hazama followed by Roy
15 Doi.

16 DEAN HAZAMA,
17 being first duly sworn to tell the truth, was examined
18 and testified as follows:

19 THE WITNESS: I do. Morning Chair and
20 Commissioners. Dean Hazama, address is 95-215 Luaehu
21 Place, Mililani, 96789. I'm the Chair of the Mauka
22 Neighborhood Board 35, the Mililani High School
23 Community Council and a long-time resident of Mililani
24 Mauka. I'm here this morning to testify as one of the
25 original members of the Koa Ridge community visioning

1 team. Initially we started with nearly 75 members
2 representing community organizations from across
3 Central O'ahu. The plans for Koa Ridge are the result
4 of our members' hard work and represent their vision
5 on what they wanted Koa Ridge to provide for the
6 families that choose to live there.

7 Castle & Cooke did not have to expend so
8 much of their time and energies to develop Koa Ridge
9 this way. They could have done what other developers
10 have, and simply design the community that they
11 thought people wanted. Instead they remain committed
12 to listening to what we have to say and learning what
13 people liked and disliked about their own community.
14 I ask you support this petition. Thank you.

15 CHAIRMAN DEVENS: Thank you. Any questions?
16 Hearing none, thank you. Next witness.

17 MR. DAVIDSON: Roy Doi followed by Rayson
18 Sakugawa.

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

22 THE WITNESS: I do.

23 CHAIRMAN DEVENS: State your name and
24 address.

25 THE WITNESS: My name is Roy Doi. My

1 address is 95-1045 Kuahewa Street. I live in Mililani
2 Mauka. This morning I'm testifying in favor of the
3 petition before you. I'm also -- I should tell you
4 that I'm the chair of the Wahiawa Association, the
5 hospital, and also president of the Association.

6 We strongly support the medical facility
7 coming up in Koa Ridge. As you've heard several
8 testimonies before you we have a problem over at the
9 hospital. We've got the medical initiatives that you
10 guys have all been hearing about from the federal
11 side. It's getting where we have to modernize our
12 hospital. And it doesn't make sense to modernize
13 Wahiawa's current hospital.

14 So the facility over at the medical center,
15 over at Koa Ridge would greatly help us as far as the
16 modernization.

17 Also since I've got a little bit more time I
18 want to add in that I used to be the neighborhood
19 board chair about 10 years ago. It's funny that I
20 followed Dean Hazama who's the current board chair.

21 And I have to tell you that in that 10 years
22 Castle & Cooke has finished developing Mililani Mauka
23 but I was chair of the Neighborhood Board right smack
24 in the middle of the development of Mililani Mauka.
25 And working with Castle & Cooke I gotta tell you that

1 it wasn't easy but, you know, they were willing to sit
2 down across the table from us, discuss our problems,
3 discuss our wishes. And sometimes we got 'em,
4 sometimes they didn't. But as a whole I think that
5 Castle & Cooke as a developer listens a lot to the
6 community. And like I said sometimes you get what you
7 want, sometimes you don't. Thank you.

8 CHAIRMAN DEVENS: Any questions?

9 MR. MATSUBARA: No questions.

10 CHAIRMAN DEVENS: Hearing none, thank you.

11 MR. DAVIDSON: Rayson Sakugawa followed by
12 Richard de Veas.

13 RAYSON SAKUGAWA

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

16 THE WITNESS: I do.

17 CHAIRMAN DEVENS: State your name and your
18 address.

19 THE WITNESS: My name is Rayson Sakugawa.
20 Address is 95-1142 Makaikai Street, Mililani, 96789.
21 The I'm here to testify against the construction of
22 Koa Ridge. I'm the employee of the DOE. Although I
23 do not work with Mililani Ike I'm concerned about the
24 overcrowding of our schools as well as the cutbacks on
25 the Department of Education at this time.

1 We are facing major cuts, cutbacks on the
2 assistant teachers. And in a time where we're
3 concerned about educating our students, we're facing a
4 big cut. I'm probably the only educator here, I'm
5 just assuming. But I just had to take the time out to
6 speak in representation on behalf of the teachers,
7 educational assistants and staff members as well as
8 parents who are concerned that their children are
9 lacking services.

10 And at my school level I teach in a school
11 where there's 1100 students. Right now in our school
12 we're facing cuts as well.

13 Although I have been a resident of Mililani
14 for 16 years, I've been promised that Castle & Cooke
15 would build an arts center. And that was one of the
16 considerations why I purchased the townhouse there. I
17 look for people who honor their work. Castle & Cooke
18 fell short of that. And I feel it's a disgrace that
19 they decided to go against their, the people who
20 purchased homes considering this arts center.

21 And on a side note, I'm concerned that there
22 is some, maybe one or more people on the board here
23 who has some influence or connection to contract
24 unions. And if there are any members who have
25 affiliations with the unions should excuse themselves

1 being that this will be a bias for Koa Ridge. But
2 anyway that's all I have to say.

3 CHAIRMAN DEVENS: Any questions?

4 MR. MATSUBARA: No questions.

5 CHAIRMAN DEVENS: Hearing none, thank you
6 very much.

7 MR. DAVIDSON: Richard de Veas followed by
8 Jose Tansiongco. Okay. (no reply) Jose Tansiongco
9 followed by Gary Battles.

10 JOSE TANSIONGCO

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

13 THE WITNESS: I do.

14 CHAIRMAN DEVENS: State your name and
15 address.

16 THE WITNESS: My name is Jose Tansiongco,
17 94-1025 Anania Circle No. 60 in Mililani. When I came
18 to Mililani six years ago as a member -- I'm sorry --
19 yeah, six years ago as a member of the military we had
20 already heard much about Mililani prior to coming to
21 Hawai'i.

22 And even though I worked at Fort Shafter I
23 told my wife, "We can either live here or we can live
24 here." As soon as she saw Mililani it matched up
25 exactly what she had heard people say. And she was

1 able to see for herself. It was a very, very
2 well-planned community.

3 It was such a good plan that my wife and my
4 kids didn't want to follow me to my next assignment in
5 Alaska. (audience laughter) When I came from Iraq my
6 son was a freshman at Mililani High School. And he
7 was doing very. He was in the band. They told me --
8 I had a lot of parents tell me it would be a good
9 sacrifice because he's going to be a leader. He's
10 very, very skilled as a drummer.

11 Just this past spring he did graduate as one
12 of the Mililani Valedictorians. We was a drum line
13 captain in Mililani for two years. He's now at
14 Colorado School of Mines.

15 What I simply want to say is this: The plan
16 that Mililani had for growth and development was just
17 right.

18 I am a little concerned now that Castle &
19 Cooke may be diverting from that plan. And it's just
20 a warning, I guess, for the that they're going into
21 Koa Ridge. And they've got a plan. They've got an
22 arts center there. Are they going to pull that out
23 from under the feet of the residents there also too
24 who plan to live there? Personally I would love to
25 see my kids come back. But at the same time I

1 understand that land use is a very, very important
2 topic in Hawai'i.

3 I like the comment about sustainability.
4 I'm concerned that we have a balanced community
5 resources-wise and people-wise in Hawai'i. I can see
6 the constrained resources. That's all I wanted to
7 say.

8 CHAIRMAN DEVENS: And questions for this
9 witness?

10 MR. MATSUBARA: No questions.

11 CHAIRMAN DEVENS: Hearing none, thank you.

12 MR. DAVIDSON: Gary Battles followed by Mary
13 Peddie.

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

17 THE WITNESS: I do. My name is Gary
18 Battles. And I live at 95-1037 Paepae Street in
19 Mililani. I first purchased a home in Mililani in
20 1973 when I was stationed at Schofield. I married a
21 local girl. We actually loved Mililani. We took one
22 off in the corporate world. And two and-a-half years
23 ago we decided to come that to Hawai'i moving back to
24 prepare to retire.

25 We were told again that Mililani was a

1 planned community just about built out. No more
2 housing would be built. This was reinforced by a
3 November 2009 article in the Star Bulletin that stated
4 that the last houses was completed and a family
5 purchased it and was moving in.

6 In addition, when we were moving into the
7 are where we were looking at homes there was a sign
8 around the warehouse where the performing arts center
9 would be housed. The signed proudly proclaimed this
10 would be the future site of the West O'ahu Performing
11 Arts Center. Okay.

12 The other thing I have a certain about, we
13 live up in the top. And sometimes in the morning it
14 can take me 10 to 15 minutes to get down to the
15 interstate state because the traffic is just so
16 congested there. If an emergency vehicle ever had to
17 come and pick somebody up and try and make it down to
18 that area that would be tough. So traffic is
19 congested in that area.

20 To me it seems like there's been a lot of
21 broken promises here from the start of the last
22 housing built to the promise of the performing arts
23 center. To me I would not want to have this happen in
24 my community.

25 I'm not a lawyer. But I have been in

1 corporate America for the last 30 years. I've been
2 counseled many times that a verbal agreement is the
3 same and binding as a written agreement. That's all I
4 have.

5 CHAIRMAN DEVENS: Questions? Hearing none
6 thank you.

7 MR. DAVIDSON: Mary Peddie followed by Scott
8 Moore.

9 MARY PEDDIE,
10 being first duly sworn to tell the truth, was examined
11 and testified as follows:

12 THE WITNESS: I do.

13 CHAIRMAN DEVENS: Can you state your name
14 and address, please.

15 THE WITNESS: My name is Mary Peddie. I
16 live at 95-1036 Hau'ulalau Street in Mililani, 96789.
17 I'm here to testify that we moved to Mililani almost
18 five years ago. And there have been broken promises
19 and I really didn't want to move to Mililani. I was
20 happy in Kaneohe, but my husband works in the Central
21 O'ahu area.

22 So when he said, "Oh, there's going to be
23 O'ahu arts center there. You love art. You've been
24 to Paris. You've been to the Louvre. You've been to
25 the Prado."

1 And I go, "Oh, yeah. Okay." I said "Okay.
2 That's fine."

3 Now imagine, just imagine, Commissioners,
4 Chair, being in my position. I love, I love where I
5 live but it would just be too much to just see more
6 housing, more overcrowding. Enough is enough. Don't
7 you think? Thank you.

8 CHAIRMAN DEVENS: Any questions? Hearing
9 none. Thank you.

10 MR. DAVIDSON: Scott Moore followed by Jicky
11 Ferrer.

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

15 THE WITNESS: I do.

16 CHAIRMAN DEVENS: State your name and
17 address, please.

18 THE WITNESS: My name is Scott Moore, I'm at
19 95-225 O'ahu Place, Mililani Mauka. I'm totally for
20 housing and hospitals. Castle & Cooke does build good
21 homes. Unfortunately there's some credibility issues.
22 I, among many other people, were attracted to
23 Mililani, put our life savings in a home in Mililani
24 because we were sold on the fact that this is a
25 planned community.

1 "We have a plan. We don't deviate it.
2 We're not like those other developers that try to fill
3 every square inch of space. We have a plan."

4 And that plan included the park and an arts
5 center and commercial zoning. They got all the
6 accolades. "We're great, we're wonderful." They got
7 the press. "This is our last house. We're not going
8 to build anymore. We have kept our word." They got
9 valuable consideration from government entities based
10 on their promises.

11 Then as a parting shot when we've got
12 elementary schools with over a thousand kids, we've
13 traffic up the wazu coming down the hill, 15, 20,
14 minute during rush hour, "Oh, by the way we're going
15 to build some more."

16 I love the house I live in. They build good
17 houses. But you have to ask yourself that if they can
18 do that to us how much can you count on what they tell
19 you in this Project. Five or 10 years from now are
20 there going to be Koa Ridge residents sitting here
21 saying: "Well, we were promised this and that and
22 never happened?"

23 Regarding the arts center what I've been
24 told by them is that Castle & Cooke donated the land
25 but wouldn't give them the deed. So when they tried

1 to raise money to build the arts center the donor said
2 "Well, you don't have the deed. How can we give you
3 money?"

4 When they went back to Castle & Cooke and
5 said, "We need the deed to raise the money," they said
6 "Well, when you raise the money we'll give you the
7 deed."

8 So I'm worried about what's gonna happen. I
9 think that this is a wonderful Project. It should go
10 forward. I think they build good houses and they
11 deserve every bit of profit they get. But I think in
12 exchange for all of that it's not too much to ask them
13 to keep their word. And if they don't keep their word
14 here how do you know they're going to keep their word
15 there. Thanks.

16 CHAIRMAN DEVENS: Questions for the witness?
17 Hearing none, thank you.

18 MR. DAVIDSON: Jicky Ferrer.

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

22 THE WITNESS: I swear to tell the truth.
23 I'm Jicky Ferrer. I live 95-222 Ha'alilo Place,
24 Mililani Mauka. In 2003 my wife and I happily
25 purchased our second home in Mililani Mauka. At that

1 time we were impressed with the master community that
2 was planned. We always visited the sales office and
3 often loved how everything was presented. We were
4 elated about the addition of a cultural arts center.
5 Being involved with the media for many years we looked
6 forward to the facility.

7 We read brochures from Castle & Cooke. We
8 read their magazine, their anniversary magazine
9 extolling information about the cultural arts center.
10 We saw their flyers and even our salesperson a
11 representative of Castle & Cooke told us about the
12 proposed facility and demonstrated that on their scale
13 model.

14 I just want to read something from the
15 Mililani Neighborhood Board No. 35 from August 18,
16 page 5 section 18. "Castle & Cooke: Matsunami said
17 that part of the agreement was to have the ability to
18 fund the Project. OAC has been part of Castle &
19 Cooke's dream. All milestones were not met by OAC.
20 They were offered an 18-month extension but Castle &
21 Cooke received no response. Axon stated that is not
22 true that nothing was done during the 18-month
23 extension and it took Castle & Cooke one year to
24 respond. He noted that on December 31st, 2008 the
25 land was turned over. August 8, 2009 no response from

1 Castle & Cooke."

2 Mililani has done wonderful things for
3 Central O'ahu. It is unfortunate that the final
4 chapter of Castle & Cooke in Mililani is ending with a
5 bill of goods that they misrepresented to customers.
6 This is a company that would want to open a new
7 chapter in Koa Ridge, and continue this type of
8 business practice to the community. I ask you to
9 review their actions in consideration for Koa Ridge.
10 Thank you.

11 CHAIRMAN DEVENS: Any questions for this
12 witness? Hearing none, thank you. Are there any
13 other witnesses that have not signed up that wish to
14 provide testimony?

15 THE WITNESS: My name a Marilyn Lee.

16 MARILYN LEE,
17 being first duly sworn to tell the truth, was examined
18 and testified as follows:

19 THE WITNESS: I do.

20 CHAIRMAN DEVENS: Could you give us your
21 address.

22 THE WITNESS: Yes. My address is 95-170
23 Newe Place, Mililani, Hawai'i 96789. I previously
24 testified in the last hearing and my testimony is on
25 record. I would ask that the testimony, written

1 testimony that I presented the last time be inserted
2 into the record again this time. If you don't have it
3 I can send it to you again. But you should have it.

4 I'm basically here today to support many of
5 the constituents that you heard this morning because
6 there is a great deal of anxiety in the community
7 related to not only the traffic, the school situation,
8 additional residential development happening.

9 And I think these things need to be
10 considered very well not only by the Land Use
11 Commission but also by the developer. I think a
12 dialogue needs to take place. And people need to have
13 something that helps them to lessen their anxiety
14 about this because it is true that it takes a long
15 time to get down the hill from mauka. It takes a long
16 time to get down the H-2 merge. And additional
17 development is really something that we all have to be
18 concerned about.

19 However, there are the needs that many of
20 you have spoken about. So I thank you for the
21 opportunity to speak to you today. And aloha.

22 CHAIRMAN DEVENS: Any questions for this
23 witness? Hearing none, thank you. Any other
24 witnesses?

25 xx

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

4 THE WITNESS: I do. Ann Freed 95-227
5 Waikalani Drive, Mililani. I'll be quick. You have
6 my written testimony from before too. I sit on
7 Neighborhood Board 25. I also sit on the board of the
8 O'ahu Arts Center. So just three things.

9 You've already heard about the issues of
10 overcrowding, transportation, schools and the broken
11 promises to O'ahu Arts Center. I think the third, the
12 last, final consideration for you folks in making
13 solid conditions that, I don't know what you can do in
14 the form of maybe a contract that has to be stuck to,
15 is that there's no guarantee that this developer will
16 build this Project once given the permit.

17 They could just as easily decide that
18 conditions in Hawai'i are not great and sell it to
19 another developer. And if that happens I would ask
20 this Commission to make provision so that whatever is
21 promised to those folks who are going to actually buy
22 there, that those conditions, if upon sale, are part
23 of the sale if that should happen. Thanks.

24 CHAIRMAN DEVENS: Questions? Go ahead, Mr.
25 Matsubara.

1 MR. MATSUBARA: Ms. Freed, you're on the
2 board of the O'ahu Arts Center.

3 THE WITNESS: I am.

4 MR. MATSUBARA: Were you involved in 2002
5 when the city and county requested that Castle & Cooke
6 donate three acres of land to the city and county of
7 Honolulu so that they could construct an art facility
8 and lease it to O'ahu Arts Center for 55 years a
9 dollar a year?

10 THE WITNESS: I was not on the board at that
11 time, no.

12 MR. MATSUBARA: But you're aware that's the
13 original --

14 THE WITNESS: Yes.

15 MR. MATSUBARA: -- that was the original
16 arrangement. The city and county was supposed to be
17 deeded the property by Castle & Cooke.

18 THE WITNESS: Right.

19 MR. MATSUBARA: And they'd lease it to you
20 for 55 years at a dollar a year, is that correct?

21 THE WITNESS: Right.

22 MR. MATSUBARA: You're aware that the city
23 and county wrote to Castle & Cooke in 2004 and
24 indicated that because of the absence of funding they
25 could not construct the O'ahu Art Facility. And their

1 request to Castle & Cooke was terminated. You're
2 aware of that?

3 THE WITNESS: I'm aware that there was an
4 negotiation. But the understanding that I have of
5 that negotiation is that the O'ahu Arts Center was to
6 provide a business plan, a fundraising plan and show
7 that they had viability of executing that plan.

8 MR. MATSUBARA: This is later after the city
9 and county withdrew from...

10 THE WITNESS: Okay. Honestly I do not know
11 the history, the details of the history before I got
12 on the board.

13 MR. MATSUBARA: So you're unaware that the
14 city and county also had to show to Castle & Cooke
15 that they had at least \$8 million to construct the
16 O'ahu Art Center?

17 THE WITNESS: No, I'm not aware of that.

18 MR. MATSUBARA: Okay. Subsequently once the
19 city and county withdrew, Castle & Cooke agreed to
20 negotiate directly with the art center, is that
21 correct?

22 THE WITNESS: That I do understand, yes.

23 MR. MATSUBARA: Weren't the same milestones
24 that the city and county was required to meet also
25 requested of the O'ahu Arts Center?

1 THE WITNESS: That's not my understanding.
2 My understanding is that we were to provide a valid
3 business plan, a valid fund raising plan, which we did
4 with the \$300,000 grant. And then the land would be
5 deeded over upon executing those milestones.

6 MR. MATSUBARA: That's your understanding.

7 THE WITNESS: That's my understanding.

8 MR. MATSUBARA: Have you seen any of the
9 agreements that reflect what your requirements and
10 responsibilities are?

11 THE WITNESS: I have seen some of the
12 letters and correspondence that went back and forth
13 between Castle & Cooke.

14 MR. MATSUBARA: You recall being required to
15 show financial ability to construct the facility
16 before conveyance of the property?

17 THE WITNESS: My understanding is that the
18 financial viability was the fundraising plan.

19 MR. MATSUBARA: The fundraising plan --

20 THE WITNESS: Yes, the fundraising plan --

21 MR. MATSUBARA: -- not the actual presence
22 of funds available to build.

23 THE WITNESS: Not that actual presence of
24 funds, no.

25 MR. MATSUBARA: Okay. Thank you. I have no

1 further questions.

2 CHAIRMAN DEVENS: Any other questions for
3 this witness? If not, thank you. This will conclude
4 the public testimony portion of our hearing. We'll
5 take a short 5-minute recess and then come back with
6 closing arguments starting with Petitioner.

7 (Recess was held.)

8 CHAIRMAN DEVENS: We're back on the record.
9 We'll start with the closing arguments starting with
10 the Petitioner. Mr. Matsubara, did you want to
11 reserve any time for rebuttal?

12 MR. MATSUBARA: Yes. Could I reserve five
13 minutes of the allotted time for rebuttal?

14 CHAIRMAN DEVENS: Five minutes.

15 MR. MATSUBARA: Five minutes.

16 CHAIRMAN DEVENS: Sure.

17 MR. MATSUBARA: Thank you. Chair, Members
18 of the Commission, our requested reclassification is
19 for the purpose of building a Project the planning of
20 which began eight years ago. Initially the site had
21 to be chosen. What was important about the site was
22 that we insured it was within the urban growth
23 boundary that the city and county had established in
24 the Central O'ahu Sustainable Communities Plan.

25 There was long-range planning by the city

1 and county in 2002 to divide and protect 10,350 acres
2 of prime ag land and demarcate the urban areas where
3 growth could occur through normal growth.

4 The Sustainable Communities Plan urban
5 growth boundary includes Koa Ridge and Waiawa. That's
6 the first planning step.

7 What the Petitioner then did was work and
8 create visioning groups with in excess of 50
9 individuals and organizations in the area with 16
10 workshops for the purpose of designing, coming up with
11 a Project that eventually became the Koa Ridge and the
12 Waiawa concept: 5,000 homes, a medical facility,
13 restaurants, commercial uses, light industrial uses,
14 schools, churches, playgrounds.

15 We had farming tenants on the property. We
16 worked to accommodate the farming tenants in terms of
17 relocating them to areas that would be satisfactory to
18 their continued farming and cattle operations. In
19 fact our farming tenant received double the acreage he
20 had on Koa Ridge and is beginning to farm that area.

21 The Project has been labeled "controversial"
22 by those who oppose it largely because it involves our
23 request to reclassify prime ag lands for urban uses.
24 I agree the Project is controversial but for other
25 reasons. I think the Project is controversial because

1 you have a Petitioner willing to invest in excess of
2 \$2 billion in this down economy to start this
3 particular Project. For purposes of comparison that's
4 larger than the federal stimulus money the state of
5 Hawai'i received and the city and county's annual
6 fiscal budget.

7 It's controversial also because the
8 Petitioner is committing to build 5,000 housing units
9 in a down real estate market.

10 It's controversial because it's expected to
11 create 1700 jobs during buildout, and 2400 jobs after
12 final buildout. It's helpful because it will add
13 \$10 million in county revenues after buildout, and 13
14 to \$14 million dollars during the actual construction.
15 It's revenue both the city and county and the state
16 could use for provision of basic services to all the
17 residents of the state.

18 It's also controversial because it will
19 create a state-of-the-art medical facility in an area
20 that could use that type of facility. It will service
21 Central O'ahu, the North Shore and the military.

22 It should be a hundred bed acute care
23 hospital. There will be a physician's office building
24 for 40 to 60 physicians which will help physicians
25 locate there and a hundred to 150 bed skilled nursing

1 facility. Because of this planning that was
2 incorporated into this Project I think it's a good
3 Project.

4 There are certain concerns that were raised
5 by the Office of Planning in regard to the
6 reclassification of this particular Project and the
7 Project itself.

8 Before I get into our areas of
9 differences -- and we have agreed to disagree on
10 certain instances -- I should state for the record
11 that the Office of Planning as the principal planning
12 office in the state has worked tirelessly with us to
13 address major problems that affected this Project,
14 namely highways, schools.

15 They have worked with us to develop
16 mitigation means and measures that should, that should
17 mitigate against problems that any development may
18 cause.

19 The Office of Planning has worked with us in
20 regard to looking at the sustainability plan we filed.
21 We're aware of their concerns for sustainability. And
22 so in this particular petition I believe we filed the
23 first sustainability plan ever submitted with an LUC
24 petition largely because of the Office of Planning's
25 concern.

1 So I only have time to talk about our
2 differences, but there is a whole area of agreement in
3 regard to us trying to accommodate concerns that the
4 state had.

5 The first issue relates to incremental
6 reclassification. Under your rules if the project
7 request is going to take more than 10 years to
8 substantially compete, the petitioner is required to
9 file an incremental plan that shows you during the
10 time periods that each segment will be developed.

11 Under your rules, though, even though the
12 project may take over 10 years, as laid out by the
13 incremental plan -- and our incremental plan does do
14 that -- Koa Ridge completed by 2020 within the 10
15 years, Waiawa 2024 -- even if it takes over 10 years,
16 under your rules you're authorized to grant
17 reclassification for the whole Project. We're asking
18 for total reclassification of both Koa Ridge Makai and
19 Waiawa.

20 The Office of Planning's concern is the fact
21 that Waiawa Ridge, who's our neighboring development
22 who we are going to share construction cost and
23 infrastructure cost for our Waiawa component, is not
24 committed to proceeding at this time.

25 I don't assume that they're aren't going to

1 proceed at this particular time. We remain optimistic
2 that whoever is the real party in interest of their
3 project based on both having the state entitlements
4 and the county entitlement will not let that valuable
5 asset slip away.

6 We've assumed positively that they will
7 proceed. And we have set in our time schedule a 2024
8 time limit for finishing Waiawa. We're making a
9 representation in our petition, in our incremental
10 plan and in our proposed D&O. And I'm aware of the
11 burden that accompanies representations made to you
12 regarding what we plan to do when we develop a
13 project. And we're making that representation.

14 The other area of disagreement we have
15 relates to the agricultural easement that the Office
16 of Planning is proposing. Basically what they want
17 done is that if 576 of the 767 acres reclassified is
18 prime A&B land they would like us to set aside prime
19 ag land of similar quality and place a perpetual
20 easement on that to the Department of Agriculture. I
21 think there is a statutory mechanism that already
22 allows you to protect Important Ag Lands. Let me back
23 up a little bit.

24 In 1978 in the constitutional convention
25 amendment was passed where the state made a commitment

1 to preserve and protect ag lands, promote diversified
2 agriculture and others.

3 That constitutional amendment also required
4 that the Legislature shall provide the standards and
5 criteria to accomplish the foregoing: The Legislature
6 enacted two Acts in 2005 and 2008 to accomplish the
7 preservation of Important Ag Lands. In that
8 legislation they specifically designated the Land Use
9 Commission as the agency that would be responsible for
10 designating Important Ag Lands. And if ever a
11 landowner wanted to withdraw the land from an IAL
12 designation, you again were the party responsible for
13 allowing that or not.

14 The way the mechanism works is that the
15 Legislature saw fit to delegate to you the important
16 responsibility of fulfilling a constitutional mandate.
17 And they've set up a whole structure that's designed
18 to ensure that Important Ag Lands are protected.

19 Now, it took 30 years to establish. In 1978
20 there was a constitutional amendment. In 2008 was
21 when the final law was passed to allow it to operate.

22 The 2008 law required that not only do you
23 set aside criteria to designate IAL lands, it also
24 indicated that incentives are necessary. And this
25 whole process doesn't begin until the incentives are

1 in place. Because the recognition is there. It's not
2 the absence or shortage of ag lands that creates the
3 issue. It's how difficult it is for farmers to engage
4 in the occupation of farming because of weather,
5 because of fuel costs, because of thefts, everything
6 else. So the incentives had to be passed before this
7 law became effective.

8 So you're responsible for a statutory
9 structure that exists that only describes to you what
10 types of land should be so designated. It also
11 provides incentives to encourage others to do it, and
12 it gives you control to do it.

13 I think what the Office of Planning is
14 proposing with the perpetual ag easement takes away
15 from your purview control over that property. If
16 property has a permanent ag easement, I think the
17 Commission may be somewhat restricted in what urban
18 land use classification it can classify in it.

19 I believe since 1963 when the Commission was
20 committed, constituted and you were delegated with the
21 responsibility of determining all land uses in the
22 state by whether you designated urban, rural,
23 agricultural, or conservation, you have the broad
24 overview and responsibility to understanding that land
25 uses change over periods of time. You were given

1 criteria to review and examine when requests were
2 asked.

3 And you've been doing it all these years.
4 And I see no reason why that should change by allowing
5 another agency, credible as it may be, to have
6 perpetual control over a single use on property.

7 The director for the Department of Ag
8 testified that there was a concern over the loss of
9 prime ag land. The figure they cited was since 1991,
10 3,297 acres of A and B grade lands have been
11 reclassified to urban.

12 If you examine this acreage 58 percent of
13 that acreage or 1900 acres were state land
14 reclassified by the state. Now, was it wrong for the
15 state to request that reclassification? Or was it
16 wrong for the Land Use Commission to grant those
17 reclassifications? I don't think so.

18 You have now with those reclassifications
19 the Department of Homes Land project in Kapolei, which
20 is a major project providing to their beneficiaries
21 homes.

22 You have the West O'ahu Campus for the
23 University of Hawai'i. You have the Villages at
24 Kapolei. You have the Kroc Center, all credible uses,
25 all public policy reasons why perhaps land was better

1 suited for another use especially when there remains
2 an abundance of vacant ag lands, at least 10,500 acres
3 on O'ahu alone.

4 So I believe through the IAL process you can
5 satisfy the constitutional and statutory mandate. And
6 I think you should continue to be the ones to have
7 that control. And that's why I would object to the
8 placement of any perpetual ag easement to the
9 Department of Agriculture on this property.

10 The third area we differ on is on the energy
11 conservation condition or the LEED condition.
12 Basically it's an argument we've had before with the
13 Office of Planning. They want to place a mandatory
14 requirement that we meet a certain LEED standard.

15 We, on the other hand, believe that you
16 should incorporate the conditions you imposed on three
17 of your last five decisions including the most recent
18 one which is Kihei residential, which indicates that:
19 To the extent feasible and practicable the Petitioner
20 is required to satisfy energy conservation measures.

21 You've used that condition three times in
22 the last five years. I think it applies in this
23 particular situation. LEED was always meant as a
24 voluntary initiative. It was never meant to be
25 mandatory. It was never meant to be punitive to the

1 extent you never met it you would be sanctioned. So I
2 think you should continue to utilize the "extent
3 feasible and practicable" provision.

4 In closing, I believe, it's a good Project.
5 I believe if you look at your own Land Use Commission
6 criteria that you need to consider in passing judgment
7 on any petition before you, that a lot of the criteria
8 is addressed.

9 For example, you're required to check the
10 maintenance of agricultural resources. We've
11 indicated that we have accommodated our ag tenants and
12 they're probably better off than they were before.

13 We have committed on the record to filing an
14 IAL petition for acreage greater than what we are
15 reclassifying in this petition. I think we've
16 mitigated and addressed the ag resources area.

17 You're also required to consider under
18 205-17 employment opportunities. We're talking about
19 1700 jobs during construction m2400 after buildout.
20 Economic development: \$2 billion invested and pumped
21 into this state. \$10 million to the county for annual
22 revenues; 13 to 14 million during construction to the
23 state. That's an infusion of capital.

24 The other thing you need to consider is
25 providing housing opportunity for all income groups

1 particularly the low and moderate gap groups.

2 Our expert testified by 2030 there's gonna
3 be a shortage of 29,000 homes. Currently there's a
4 shortage in Central O'ahu of 6500 homes. Homes will
5 be provided by this. I think we have made every
6 effort to meet the criteria that you're required to
7 observe in terms of judging the petition we've filed.
8 And I believe we have done so. Thank you very much.

9 CHAIRMAN DEVENS: Thank you, Mr. Matsubara.
10 You have five minutes rebuttal reserved.

11 MR. MATSUBARA: Thank you.

12 CHAIRMAN DEVENS: City and county.

13 MS. TAKEUCHI-APUNA: DPP supports the
14 petition for reclassification because it is consistent
15 with the vision development priorities and phasing of
16 the Central O'ahu Sustainable Communities Plan.

17 DPP has therefore partially joined
18 Petitioner's proposed findings of fact, conclusions of
19 law, and decision and order filed on June 21st, 2010
20 with the following exceptions: Technical
21 non-substantive changes to Petitioner's findings of
22 fact Nos. 8 and 82 which Petitioner has indicated it
23 does not object to.

24 Also DPP recommends the following three
25 conditions be included in the final D&O. Number 1.

1 The Pineapple Interchange. Rather than requiring the
2 Pineapple Interchange including all associated on and
3 off ramps and necessary freeway improvements be
4 completed by year 2017 or five years after delivery of
5 the first residential unit, it should simply be
6 completed by 2017 as a more definitive deadline.

7 A one-time 3-year time extension for good
8 cause may be granted if approved by the state DOT,
9 city Department of Transportation Services and DPP.

10 Further, if the interchange has not been
11 completed by the final deadline no building permits
12 shall be approved until the interchange has been
13 completed.

14 DPP strongly believes that the Pineapple
15 Interchange should be completed by 2017 as a
16 mitigation measure to address connectivity,
17 accessibility and infrastructure concerns by assuring
18 more than one access point to the Project for
19 livability, sustainability, public safety and
20 emergency purposes.

21 No. 2. TIAR updates. Rather than every
22 three years as proposed by Petitioner, DPP strongly
23 suggests that TIARs be updated, reviewed and approved
24 by the state DOT, city DTS and DPP every two years
25 following delivery of the first residential unit at

1 Koa Ridge Makai.

2 Petitioner may request a waiver from the
3 submittal of a subsequent TIAR if no construction has
4 occurred since the submittal of the prior TIAR.

5 DPP believes that updated TIARs at shorter
6 2-year intervals will help to better access changes in
7 traffic with the growth of the Project.

8 And No. 3: the detention basins. DPP asks
9 that should the lands upon which the detention basins
10 are situated be conveyed, Petitioner shall impose a
11 covenant that any and all successors shall preserve
12 and maintain the improvements as long as they are
13 necessary as determined by the city.

14 DPP believes that to ensure the maintenance
15 and preservation of the detention basins beyond the
16 ownership of the Petitioner, such covenants should be
17 required of any future landholders.

18 All three of these conditions help to
19 mitigate the impacts of traffic and drainage generated
20 by this Project.

21 While DPP partially joins Petitioner's
22 proposed findings or fact, conclusions of law, and
23 decision and order mit also strongly objects to OP's
24 proposed condition regarding the agricultural
25 easements for two reasons. No. 1. Unlike the IAL

1 policy OP's proposed ag easement policy is an
2 unwritten policy that lacks consensus and requires
3 landowners to place ag easements on their lands.

4 And No. 2. The ag easements policy sets a
5 precedent that may pose problems for city planning
6 processes. The City's urban community or growth
7 boundaries have been carefully developed and
8 designated to ensure that urban growth is limited to
9 within the boundaries while allowing for conservation
10 and agricultural uses outside of the boundaries.

11 If Petitioner places agricultural easements
12 on lands within the City's urban community or growth
13 boundaries, it may interrupt the City's vision for
14 controlling growth.

15 Further, in response to OP's question of:
16 Why would anyone either give up the highly valuable or
17 very expensive premium lands within the urban
18 community boundary rather than the less valuable or
19 the less expensive premium on ag lands outside the
20 urban community boundary?

21 DPP answers that there's a possibility that
22 a small landowner with less resources may be forced to
23 sell its lands within the community or growth boundary
24 or landowner may simply decide to do so regardless of
25 land market values.

1 With this possibility there's no guarantee
2 to DPP that this developer or a future developer
3 before this Commission will not place an ag easement
4 within the urban community or growth boundary.

5 Unlike the IAL policy where counties take
6 part in designating the IAL lands to ensure
7 consistency with their own plans, the lands to be
8 designated under OP's proposed ag easement policy are
9 at the whim of the petitioner. That is why this
10 policy requires further refinement.

11 This concludes DPP's closing argument.
12 Thank you.

13 CHAIRMAN DEVENS: Thank you. Office of
14 Planning.

15 MR. YEE: Good morning. The Office of
16 Planning recommends that the petition be incrementally
17 redistricted, although we do acknowledge the validity
18 of some of the concerns raised by Intervenors.

19 We start by noting that prior to this
20 hearing the Office of Planning had met with Petitioner
21 on a number of occasions, reviewing and working with
22 them on the incremental development plan, assisting
23 them in obtaining an opinion from the Office of
24 Environmental Quality Control to ensure that the EIS
25 previously done was sufficient even with the

1 incremental development plan.

2 And we've worked, made significant efforts
3 on their behalf to ensure that the Department of
4 Transportation worked on their Traffic Impact Analysis
5 Report on a timely basis. Even on issues where we
6 disagreed we laid out what those issues were so that
7 they knew what our position would be in advance of
8 this hearing.

9 But of all the issues upon which we
10 disagree, the most important issue to us is the issue
11 of agricultural easements. The question of
12 agricultural easements arose back in 2008 when we were
13 faced with two petitions seeking to reclassify large
14 acres of highly valuable agricultural lands: Ho'opili
15 and Koa Ridge.

16 And during our analysis we discovered that
17 case-by-case little-by-little since 1991 over 3,297
18 acres of A or B lands have been reclassified to urban.
19 Now petitioner asks: Well, is that -- are you
20 opposed? Do you think it was wrong to reclassify that
21 land?

22 The answer is no. We're not opposed to the
23 reclassification of the land. We're not opposed to
24 the reclassification of this land.

25 But we have to recognize that there are

1 impacts that we have discovered from that incremental
2 little-by-little erosion of the agricultural land
3 base.

4 The IAL or Important Agricultural Land
5 process which was in our state constitution for over
6 30 years in 1978, and in statute for over five years
7 in 2005, has done little to prevent the
8 reclassification of prime agricultural land and is not
9 likely to be a significant deterrent to
10 reclassification in the future, at least not on its
11 own.

12 It is significant to also note that there is
13 still to this day no petition filed to declare lands
14 as IAL on the Island of O'ahu. So if nothing else is
15 done, the erosion of the state's agricultural land
16 base is going to continue, perhaps to the point that
17 commercial agricultural operations are no longer
18 viable in any significant way on this island.

19 And the director of the Office of Planning
20 personally decided that the issue needed to be
21 addressed. Because in failing to decide one way or
22 another what is going to be the appropriate policy, it
23 would by default set a policy.

24 So if prime agricultural land is going to
25 disappear it at least should not disappear due to

1 inertia or fear of confrontation. If it's going to
2 disappear it should at least occur after we've
3 consciously decided that there are other higher and
4 better uses.

5 And as difficult and controversial as this
6 issue is the director decided that he could not defer
7 this; that we recognize the government is sometimes
8 criticized for refusing to make tough decisions. But
9 OP decided that it had to take a stand to take a
10 leadership role to make a call on this issue and to
11 squarely address the problem.

12 We also note it's not a position taking
13 lightly. Nor is it a personal decision by the
14 director himself. It was only done with DoA's
15 concurrence. And it was only done after being
16 thoroughly vetted through all levels of state
17 government.

18 So in our analysis we first turn to the law.
19 The first issue, of course, is Article 11 Section 3 of
20 the Hawai'i State Constitution which said: "The State
21 shall call conserve and protect agricultural lands,
22 promote diversified agriculture, increase agricultural
23 self-sufficiency and assure the availability of
24 agriculturally suitable lands."

25 That has an impact, we believe, upon the

1 LUC's decision-making process just as a right to a
2 healthful environment does in the Ala Loop Homeowners
3 Association Case. Furthermore there's a recognition
4 that this is a compelling state interest by the state
5 legislature.

6 In section 205-41 HRS it says, "There's a
7 compelling state interest in conserving the State's
8 agricultural land resource base and assuring the
9 long-term availability of agricultural lands for
10 agricultural use."

11 And specifically with respect to the Land
12 Use Commission itself: The maintenance of other
13 natural resources relevant to Hawai'i's economy,
14 including agricultural resources, is specifically
15 noted as a criteria for your decision-making in these
16 processes.

17 So when we looked at this case we looked
18 first at the high agricultural value of this land. So
19 accepting that there's a compelling state interest
20 we've noted that except for the City's inclusion of
21 the land within the urban community boundary, the
22 Petition Area would meet the standards of IAL. Bruce
23 Plasch, the Petitioner's witness, the Department of
24 Agriculture on behalf of the Office of Planning, as
25 well as the witnesses for the Sierra Club and the

1 witnesses from the public, all agree that the Koa
2 Ridge Makai Petition Area is just a great place to
3 grow diversified agricultural crops.

4 And so the removal of these high
5 agricultural-valued lands would have a significant
6 impact in a number of ways. The first is a reduction
7 of future options. With new technology we've seen an
8 increasing demand for bio-energy crops, which is
9 great. It helps the state ensure our energy security
10 independence. But it also provides increased
11 competition for those same agricultural lands which
12 then squeezes out, or makes it more difficult for
13 diversified agriculture to continue.

14 Furthermore, there are also changing
15 markets. As markets change, they grow, different
16 agricultural products are needed. For example, the
17 move from plantation to diversified agriculture. And
18 with the erosion of the agricultural land base it
19 becomes more and more difficult to position the state
20 to take advantage of those emerging or differing
21 market conditions.

22 Another impact is the lower supply of high
23 value agricultural land. And we talked about the
24 particular agricultural values of this property, the
25 soil, the water, the climate, et cetera. But in

1 addition to that, in addition to those agricultural
2 values it's also important to look at the price and
3 the term of the lease.

4 What has been more and more difficult is to
5 find land where the lease price is low enough to allow
6 for farming. And so as more and more land gets taken
7 out of circulation, it becomes that much more
8 difficult to find low priced agricultural lands.

9 Furthermore, the lease term has to be long
10 enough for farmers to make a commercially viable go of
11 the project. For example, they need to get necessary
12 financing to pay for the capitalization on their
13 farms. So the loans which may be 10 years you need to
14 have a lease that goes for at least 10 years. In fact
15 you need it to go longer as the farmer needs to make
16 an investment in that land and then not just pay back
17 the bank, but also make a profit for the farmer, him
18 or herself.

19 The Sierra Club also noted that in some
20 crops the maturation rate of the crops is so long that
21 a or 10-year lease is a deal breaker because it takes
22 that much longer. You need the lease that long to
23 mature the crops and then make a profit after that.

24 The precise term will vary with the farmer.
25 With the Department of Agriculture leases are in

1 excess of 35 years. The average private landowners
2 generally tend to be in the five to 10-year range. In
3 fact Dole itself leases its lands on average for five
4 years. And these relatively short-term leases we
5 believe are the results or reflect the speculation
6 potential.

7 In other words, landowners of relatively
8 cheap agricultural land believe that at some point
9 that land could be urbanized even if it's out of the
10 urban growth boundary. At some point they might want
11 try to take advantage of market conditions, urbanize
12 that land and use the land for urban purposes. So
13 they're motivated to keep the leases short so they can
14 take advantage of those markets.

15 And you can see this when Aloun Farms in
16 this case paid less for its short-term lease at Koa
17 Ridge Makai, even though it's great land. They
18 actually pay more for new lands they're going to have
19 grow, get used to and capitalize. They pay more for
20 that lease because it's for 10 years. So the
21 long-term leases tend to be higher than the short-term
22 leases because it's reflecting that speculation
23 potential.

24 And we recognize the characteristics of good
25 agricultural land are similar to the characteristics

1 of easily developable land: They're flat, it's close
2 to markets, there's moderate climate. But this is all
3 the more reason we need some type of protection to
4 ensure that there remains a base of good agricultural
5 lands that are not going to be subject to
6 urbanization.

7 And the reclassification of the Petition
8 Area and the cumulative effect over time results in
9 these increased pressures to keep the leases short and
10 to make stable long-term leases both more expensive
11 and more difficult to obtain.

12 The third impact from reclassification is an
13 impact on food self-sufficiency. The Department of
14 Agriculture testified when land's less available it
15 becomes more difficult to then ensure some increased
16 amount of food self-sufficiency. And as we have noted
17 before, there's a compelling state interest in
18 preserving an agricultural land resource base.

19 So the reclassification of this land
20 obviously is in conflict with that compelling state
21 interest.

22 So recognizing that this reclassification
23 has this impact upon agriculture, we nevertheless did
24 recommend incremental districting, because we believe
25 that with an agricultural easement this will mitigate

1 the impacts.

2 First, it would resolve that inherent
3 conflict with the compelling state interests. So,
4 yes, there's a compelling state interest to protect
5 agricultural lands. But with an agricultural easement
6 you can also mitigate that impact by ensuring that
7 there's some base of land that will remain for
8 specifically agricultural use.

9 Further, it would mitigate the erosion and
10 continued cumulative loss of agricultural lands as at
11 least some amount of land can be protected.

12 Third, it would remove that speculation
13 premium on that area of emerging protected agriculture
14 lands because with the agricultural easement the only
15 thing you can use the land for will be agriculture.
16 So you have no incentive to urbanize. You can't
17 urbanize. So the speculation potential goes away.
18 There's no reason why they need to keep the lease term
19 short. They can give out long-term leases at a price
20 that will be sufficiently attractive for new farmers
21 to go on.

22 Finally, we noted that the mitigation we
23 think is extremely reasonable. As we have pointed out
24 Castle & Cooke owns over 12,500 acres of A and B
25 lands. Now, they gave you an exhibit which showed how

1 much Castle & Cooke Homes owns of A and B lands. But
2 let's be clear. Castle & Cooke Homes' purpose is to
3 build affordable housing -- oh, I'm sorry, is to build
4 homes. And it is not to grow crops. So they don't
5 necessarily have all the prime agricultural lands.

6 But their parent company, Castle & Cooke, as
7 we have shown, has 12,500 acres. And they could
8 easily designate the lands that they proposed for IAL
9 to have the agricultural easement on. So they have a
10 variety of methods by which Castle & Cooke could
11 accomplish the agricultural easement, either by the
12 lands on which they're going to designate IAL or the
13 lands on which Aloun Farms is currently located or
14 comparable lands which they can just demonstrate which
15 is comparable to the Koa Ridge Makai Project.

16 Now, the Petitioner has raised a variety of
17 objections. They've talked about the nexus. We
18 explained why there is a nexus. They haven't
19 discussed it in their oral argument, so I'm going to
20 let that go as well as the issue of rough
21 proportionality. We have demonstrated that in our
22 memo in this respect.

23 We note, for example, that the one-to-one
24 ratio reflects the LUC's rules regarding automatic
25 approvals. And so this rough proportionality is

1 recognized by the LUC in its conditions.

2 We only want to note that even if future
3 rights of development are foreclosed that one has to
4 remember the landowner has no inherent right to
5 urbanize its lands. And that the government is under
6 no obligation to grant any reclassification.

7 So there's no reasonable expectation that
8 existing prime agricultural lands, especially those
9 outside of the Urban Growth Boundary, are going to be
10 urbanized. So the removal of that unreasonable
11 expectation should not be such a burden to the
12 landowner as to prevent the imposition of an
13 agricultural easement.

14 The third issue was the rule of rulemaking
15 we've answered that as well in our memorandum. We
16 only want to note that during the cross-examination
17 there was a suggestion that Office of Planning somehow
18 conspired in secret with the Department of
19 Agriculture, that we didn't go to public notice, we
20 didn't do public hearing, somehow this was a violation
21 of the law.

22 We have explained why it's not a rule. But
23 we also want to importantly note that OP frequently
24 meets with petitioners and other parties. And there
25 was never an objection when we worked with them to

1 come up with the incremental development plan. No one
2 suggested we needed to issue a public notice before we
3 worked with the Department of Transportation to review
4 the TIAR on a timely basis.

5 But when OP met with the Department of
6 Agriculture to reach a recommendation with which
7 Petitioner disagrees, now that action somehow became
8 suspect and somehow should have be reached after
9 public notice. That's just an incorrect reading. And
10 we object to that, to that argument.

11 We told the Petitioner about our position on
12 agricultural easements. They knew about it. In fact
13 they witnessed this argument in the Ho'opili case
14 before. And it's OP's statutory duty to representment
15 the state and all of its departments in every district
16 boundary proceeding. So there's nothing secretive or
17 inappropriate with what we did.

18 Petitioner also argues that IAL is somehow
19 the answer to the problem. That's just not true.
20 First, although Petitioner did say they would at some
21 point come in with an IAL petition, there is no
22 commitment that they were going to waive the 85/15
23 credits or that the lands would be used for, solely
24 for agriculture. There's no use restriction. So
25 without a use restriction, as was explained, you can

1 use IAL for anything. You can even urbanize IAL land
2 if you want to. It doesn't violate the law. IAL is
3 simply a resource overlay that identifies the land
4 that has a high agricultural value. But it doesn't
5 prevent anyone from using the land for anything else.
6 If you wanted to use it for urban and you get the
7 appropriate approvals you can do so.

8 Furthermore, you know, IAL is not the sole
9 answer. IAL may be a part of the answer but I don't
10 think anyone suggests, and I don't think the law
11 certainly doesn't suggest, that IAL is the only answer
12 for the preservation of an agricultural land base.

13 The Land Use Commission has a specific
14 responsibility to look at agricultural resources and
15 to protect them and to maintain them. There's a
16 compelling state interest. There's a constitutional
17 interest. These are all issues for which IAL does not
18 solve the entire problem.

19 And the LUC has a role to play. And the
20 Office of Planning suggests that an agricultural
21 easement is one way to do so.

22 We note that the Aloun Farms 10-year lease
23 is also not mitigation as well. Because it's -- first
24 of all, it's a 10-year lease with an option to renew.
25 But by the time this Project is ready to open that

1 Aloun Farms 10-year period may very well be over. And
2 Aloun Farms could need to look for another place to
3 stay.

4 In summary, there really is no -- well,
5 there are four issues that we wanted to just
6 highlight. We have a variety of issues we've laid out
7 in our pleadings. I just want to quickly highlight
8 four of them. One is incremental districting. The
9 second is sustainability. The third is the
10 infrastructure deadline. The fourth is the automatic
11 Order to Show Cause. We've discussed many of these on
12 similar occasions so I'll go fairly quickly over these
13 issues.

14 With respect to incremental districting, the
15 Petitioner says that the assume that Waiawa Ridge is
16 going to proceed, as we pointed out. Our argument is
17 based upon the fact that the Waiawa -- the Castle &
18 Cooke Waiawa Increment II is dependent upon WRD's
19 construction of infrastructure. The cost of that
20 infrastructure is extraordinarily high. That WRD's
21 failed to move forward after 20 years. And there
22 absolutely no assurance or evidence to indicate that
23 they're going to move forward in the future. So an
24 incremental approach is appropriate.

25 And if the Commission is not comfortable

1 issuing an incremental reclassification, somehow
2 that's something you're not comfortable with, the
3 Office of Planning would recommend then partial
4 approval of the makai side only.

5 With respect to sustainability, we've argued
6 about energy conservation on a number of occasions.
7 It's an important -- it's a criteria in the State
8 Plan. Everyone agrees sustainability is important.
9 The buildings that are built today are going to be
10 part of that urban landscape for 50 years. So you
11 have to design them correctly now because to retrofit
12 any building is always expensive and generally not
13 practicable on any large-scale level.

14 So it's important that we achieve those
15 energy and conservation and sustainability provisions
16 at the planning stage.

17 And we've talked in a number of cases about
18 how it can be done. We have proposed LEED. But even
19 if you object to a LEED condition, you should at least
20 require the Petitioner to comply with its
21 sustainability plan and its representations on green
22 infrastructure. So by imposing this as a specific
23 condition rather than simply relying on
24 representations that are contained somehow in a
25 100-plus-page document, it should be in the conditions

1 because the annual reports, as you know, is formatted
2 so it just goes condition by condition by condition.
3 And their reports and how they're complying with that
4 condition. So if you put it into the condition then
5 they specifically have to tell you in their annual
6 reports: Here's how we're complying with that
7 particular representation.

8 We don't need to make any decisions about
9 what Mililani Mauka was said or wasn't said to know
10 that it's important to put conditions, to state them
11 correctly in your decision and order.

12 The third issue is the infrastructure
13 deadline. I just want to note that the Office of
14 Planning recommends 10 years. They recommend 11. I
15 think that differing year is due to the difference in
16 incremental districting provisions.

17 So if you incrementally district 10 years is
18 appropriate. If you approve the whole thing -- if you
19 approve the whole thing, 11 years, we understand why
20 it's 11 years. Our point, though, is if it's 11 years
21 and they don't finish in 11 years because Waiawa Ridge
22 development doesn't move forward, what are you doing
23 to do then? So it would be better to incrementally
24 redistrict.

25 We've talked about the automatic Order to

1 Show Cause on a number of occasions. We only want to
2 point out it is not an automatic reversion. It's an
3 automatic hearing. So all we're saying is that you
4 should hold a hearing. You should require a hearing
5 automatically so the developer knows that if they're
6 having trouble they're going to have to come to you.

7 It places the onus on them to track their
8 progress rather than the onus on the rest of us to go
9 track them down in case they fail to meet their
10 infrastructure deadline requirements.

11 In summary, recognizing the preponderance of
12 the evidence supporting reclassification the Office of
13 Planning supports an incremental reclassification of
14 this Petition Area. But the impacts have to be
15 mitigated. That's true for this case. That's true
16 for every other cases. And for us there's no more
17 important condition than the proposed agricultural
18 easement. Thank you.

19 CHAIRMAN DEVENS: Sierra Club, Mr. Yost.

20 MR. YOST: Thank you, Chair. I'd like to
21 begin with the concept of sustainability. And castle
22 & Cooke brought this petition to you, to the public,
23 under the proposal and the pretense that it was a
24 green development essentially. And they've, as Mr.
25 Matsubara said, actually presented a sustainability

1 plan as long with their petition.

2 So sustainability is clearly no longer some
3 kind of fringe environmental aspiration. It's a
4 concept that's been around a long time now and
5 accepted. Everyone agrees that sustainability is
6 essential to social well-being and future prosperity.
7 But talking about sustainability and presenting that
8 concept in plans, aspirational plans, is a lot easier
9 than implementing it.

10 Sustainability is a long-term concept. It
11 means essentially to sustain the health and welfare of
12 humanity and the environment for many generations to
13 come. It's not a concept that deals with short-term
14 economic cycles or short-term profit.

15 By any definition the way that we are
16 organized now as a society in the state of Hawai'i and
17 particularly on the Island of O'ahu is not
18 sustainable. For many years we have been far too
19 willing to place short-term gain over long-term
20 benefit reacting rather than planning based on the
21 temporary economic cycle of the moment. As a result
22 this isolated community in the middle of the Pacific
23 Ocean imports 92 percent of its electricity generation
24 through imported oil and coal. We produce only 10 to
25 15 percent of the food that we consume. Our water

1 resources are progressively more limited and dependent
2 on weather. And it's just not a reliable source of
3 water given the unpredictability of climate change.

4 And a number of our major commuting arteries
5 on the Island of O'ahu are now being routinely
6 compared by national traffic experts to Los Angeles
7 and other places that are among the very worst
8 congested places in the country.

9 So we have -- because of the decisions we
10 have made we have put ourselves in the position we are
11 in where our current practices are just not facially
12 not sustainable.

13 The question must be: How do we reverse
14 this trend? How do we start moving in a true,
15 sustainable direction? That has to begin, among many
16 other places, with the developments that this Land Use
17 Commission approves.

18 The Sierra Club and the hundreds of people
19 who have testified both in person and in writing in
20 opposition to this particular development, are not
21 opposed to all development. They're not opposed to
22 jobs. The whole jobs versus the environment debate is
23 inherently false. What we are opposed to is
24 development that's focused on short-term gain rather
25 than long-term sustainability which is focused on

1 quantitative development over qualitative development.

2 We view that as an extremely important
3 distinction to understand that we're always going to
4 be developing as civilization. We're going to be
5 progressing and changing. But we should be doing that
6 in a way that improves our quality of live, improves
7 our ability to sustain ourselves for many generations
8 to come.

9 So there are three areas I want to talk
10 about as being areas where this Project is deficient
11 in terms of sustainability.

12 The first and most obvious one is
13 agriculture. And I want to deviate a little bit from
14 my planned remarks to talk about the IAL issue. Very,
15 very clearly IAL is not some sort of exclusive panacea
16 for protecting agricultural lands in Hawai'i. The
17 first layer of protection is actually zoning. We have
18 designated deliberately throughout the island and the
19 state different areas as being zoned agricultural,
20 zoned urban, et cetera. That's why the Petitioner is
21 here asking for reclassification because there is
22 already a layer of protection over the Koa Ridge
23 lands. It's zoned for exclusive agriculture use.

24 It also has other protections that exists
25 under HRS 205 for prime ag lands because it's been

1 classified as A and B lands. So there are other use
2 restrictions that are already placed by statute over
3 this land.

4 And what the Petitioner is doing right from
5 the beginning is saying: Remove this layer of
6 protection. We know the land's already protected for
7 ag, but we want you to take away that protection.

8 So that's why the Office of Planning's point
9 about mitigation is so obvious and essential. You are
10 from the outset, if you approve this petition, you're
11 removing land from the agricultural base that will
12 never be regrown. The lava on the Big Island's going
13 to take a long time to turn into productive ag land.
14 So land is not replaceable.

15 The Hawai'i State Constitution is explicit
16 about our obligation to try to conserve and protect ag
17 lands. The State Land Use Commission is explicitly
18 charged in HRS 266-7 to assure the availability of
19 agricultural suitable lands with adequate water to
20 accommodate present and future needs.

21 And the Land Use Commission is also charged
22 whenever it considers a reclassification proposal to
23 think about whether that proposal is consistent with
24 the Hawai'i State Plan.

25 And the Hawai'i State Plan contains numerous

1 provisions discussing the importance of protecting
2 agricultural land, especially the existing
3 agricultural base, and working not just to maintain
4 the status quo, which has been eroding steadily as we
5 have discussed, but to actually expand the
6 agricultural base that's being use and to increase the
7 self-sufficiency of our state which right now I think
8 no one would argue that we are remotely close to being
9 self-sufficient, producing 10 percent of our food.
10 We're not even remotely close to anything that could
11 be called food security.

12 There's no real statewide study as to what
13 that percentage would be, but it's clearly going to be
14 a lot higher than 15 percent. And we're nowhere near
15 that.

16 Now, the state Department of Agriculture is
17 actually the only state entity that just directly
18 opposes this petition. And it said that it does so
19 because very clearly you take this land out of our
20 agricultural base, that loss is going to be cumulative
21 and irreversible. And it will make it much more
22 difficult to sustain our population over the long
23 term.

24 The discussion by the expert for Petitioner,
25 Bruce Plasch, about there being tens of thousands of

1 acres throughout the state that are available, that,
2 frankly, is unsubstantiated fantasy.

3 If you look at the facts, even those
4 presented by Mr. Plasch, his chart showed actual
5 agricultural production in the state from 1960 until
6 now. And it is a line that just drops off like a
7 cliff heading downward. The agricultural production
8 in this state has been declining precipitously since
9 the 1960s. And that is what the private market has
10 been doing.

11 That's the various economic pressures that
12 relate to agriculture and relate to the speculation
13 value that the Office of Planning mentioned in terms
14 of land, all those things have been combining to have
15 a downward pressure on ag.

16 So what we are facing in reality is a
17 precipitous drop in our production which will do --
18 which indicates that we are nowhere close to actually
19 reversing the trend and improving our 10 to 15 percent
20 production rate. We are going in the opposite
21 direction quickly.

22 And if we leave it all to the private market
23 to remedy the problem, first of all, they don't care
24 about the problem. It's not their problem. Their
25 problem on an individual basis is the bottom line of

1 their stockholders and their interest. That's what
2 they have to do. It's totally legitimate and
3 understandable that they would behave that way. But
4 they are not looking at things from a statewide
5 planning perspective or from a future sustainability
6 perspective.

7 The only way to reverse that trend is to do
8 things such as saying "Stop." To put up the stop sign
9 and say, "We're the Land Use Commission. We've got no
10 obligation to approve your petition. This is already
11 protected in our state as agricultural land."

12 Clearly we're heading in the wrong
13 direction. The only way to reverse that trend is to
14 protect what we have now, especially the lands like
15 the Koa Ridge lands which are currently being used to
16 produce abundant crops. It's not like the land has
17 been sitting fallow for years and may or may not ever
18 have helped feed the people of Hawai'i. This land has
19 been producing dramatically beneficial crops for the
20 people, and it's close to market, has fantastic water
21 resources.

22 So for land like that we're going to say
23 "stop". We're heading in the wrong direction. If we
24 want to reverse it we have to at least stop things
25 from going in the wrong direction, from continuing in

1 the wrong direction.

2 This petition will just obviously continue
3 that trend of heading in the wrong direction at a time
4 when it's very important for us to go in the right
5 direction.

6 The lands that are out there and potentially
7 available for ag, because they're held in private
8 hands you'd have to have a crisis of people starving
9 and serious catastrophes to have the government start
10 exercising eminent domain over those lands and forcing
11 them into agricultural production.

12 Unless that happens, some kind of crisis,
13 which we never want to see happen, the private
14 landowners are not going to make that land available
15 on favorable lease terms and favorable situations to
16 reverse the trend. It's just not going to happen. It
17 hasn't been happening since 1960. It's a pretty
18 reliable trend that we can look at.

19 On the issue of traffic: Traffic, just for
20 the sake of a little levity, but it also is just sadly
21 true the national columnist David Brooks, national
22 syndicated columnist wrote a while back that based on
23 studies that the daily activities that are most
24 associated with happiness are sex, socializing after
25 work and having dinner with others. The daily

1 activity most injurious to happiness is commuting.

2 Okay. And community obviously takes away
3 the time we have to do anything else we enjoy because
4 we're literally just stuck sitting in our "shiny metal
5 boxes" as the Police once said in a song in the '80s.

6 Right now we have Level of Service F on our
7 major artery heading from Central O'ahu into town on
8 H-1. And the Department of Transportation and other
9 witnesses, even those presented by the Petitioner,
10 have admitted that's not going get any better. And
11 it's not acceptable.

12 Level of Service F is the worst level of
13 traffic congestion you can have. It doesn't get any
14 worse. Instead of -- and the answer to well, will Koa
15 Ridge make it worse? It's already as bad as it can
16 be. It's not going to get worse in that Level of
17 Service F. What will happen is the area where Level
18 of Service F applies to will just get bigger. And the
19 so-called peak period, which used to be known as rush
20 hour, expands to being 2 to 3 hours long.

21 So the people who live out in Central O'ahu,
22 even further out, will wind up having to get their
23 kids up before 5 a.m. in the morning if they want to
24 get them to school downtown. And many people will
25 take their kids to school downtown.

1 It's hard enough for me to wake my son up at
2 7 in the morning to drive him five minutes down the
3 road to Aina Haina Elementary. So I can't imagine the
4 burden that that places on families to have to
5 organize their whole schedules around their commute
6 and their whole lives.

7 However how well-planned the community may
8 be, you can't enjoy your life living in that
9 well-built house if you're never there, or if you're
10 only there for a very few brief hours of the day where
11 you have to take care of all the household chores and
12 things you need to do just to keep your life going.

13 So the transportation infrastructure that
14 exists in Central O'ahu simply does not support any
15 further development. When Professor Flashbart from
16 the University of Hawai'i came here and testified, he
17 said: You gotta think about concurrency. You have to
18 think about putting the infrastructure in at the same
19 time that you're putting the people there. That's
20 part of planning. That's the most basic concept of
21 planning is you have people in a place. How are they
22 going to move around from place to place? How are
23 they going to do work? You have to think about all those
24 things in the same context.

25 The people who live there now are not

1 sustainably commuting anywhere. It will get
2 progressively worse with the housing that's already
3 been authorized and approved for Central O'ahu. So if
4 you just add in even more without fundamentally
5 changing something like getting a new rail system
6 along H-1 or something, you are not doing a service to
7 the people of Central O'ahu and you're not engaging in
8 sustainable planning.

9 With regard to Smart Growth, this is another
10 thing that the Petitioner has claimed from the
11 beginning that this is Smart Growth. This is the good
12 development.

13 Smart Growth, as Professor Flashbart
14 explained, can be divided into two categories. One
15 relates to design. One relates to location. The
16 design categories, they've made some substantial
17 advancements in their design categories for this
18 community. But all of the locational issues are
19 wrong. It's in the wrong place, meaning it's not
20 infill development. It's being built around the urban
21 fringe in a green zone.

22 It's not preserving ag lands. And it
23 doesn't have a transportation plan that's realistic.
24 It's going to get -- people are going to be driving
25 15, 20 minutes down the hill and more, the more houses

1 and the more cars we add to this area.

2 So to the extent at best you can say that is
3 the right development in the wrong location. And
4 these kind of developments, you know, are better than
5 others. But they have to be built in the right place.
6 And it's part of the obligation of the Land Use
7 Commission to ensure that these developments are
8 taking place in the right locations on our island as
9 opposed to the completely wrong location.

10 As regards to the Central O'ahu Sustainable
11 Communities Plan, that does not change the Smart
12 Growth analysis whatsoever. That was a plan that was
13 created in 2002. It is completely outdated at this
14 point. It was supposed to be up for public review in
15 2007. The city has been sitting on it since 2007 not
16 releasing it to public review for any sort of process.

17 During the hearing they testified they
18 thought it was going to be released in March, several
19 months ago, for public review. That did not happen.
20 Again, they're just sitting on it.

21 There have been numerous material changes
22 since that plan was enacted relating to the passage of
23 the IAL legislation, relating to gas prices, relating
24 to massive increase in traffic congestion and also
25 greater sensibility as to the loss of ag land. None

1 of that has been considered or was considered in 2002.

2 Notwithstanding all these concerns that this
3 Project is not sustainable from the standpoint of
4 agriculture, from transportation or from developmental
5 planning, if, nonetheless the Land Use Commission
6 decides to grant this petition, then Sierra Club will
7 strongly ask that all of the conditions the Sierra
8 Club requested in its written submissions be strictly
9 enforced and provided for in the ultimate Decision and
10 Order, including obviously the ag easement which is a
11 valuable concept but it is still in our view half a
12 loaf because you've already lost the land at Koa
13 Ridge.

14 So you're just guaranteeing you're not going
15 to lose a little bit more land in the future. But the
16 actual inventory has been irreversibly reduced. So
17 it's not full mitigation. It's still only partial
18 mitigation.

19 The other thing the Sierra Club would like
20 to really emphasize are the energy conditions. The
21 Hawai'i Clean Energy Initiative requires us to
22 completely reverse our current trend, which is
23 fantastic, of having over 90 percent of our energy
24 come from imported oil and coal, and start really
25 doing our own, taking advantage of our own natural

1 renewable resources.

2 So we propose at least 10 percent of the
3 houses in this development should be entirely powered
4 by renewable energy onsite. And that at least
5 50 percent of the commercial load for the commercial
6 buildings in the area should also be powered by
7 renewable energy sources.

8 We don't necessarily have to restrict that
9 to any type of renewable energy. It just has to be
10 there so that we have some hope of actually meeting
11 our 40 percent renewable energy production target by
12 2030. We have to start requiring these things of new
13 developments if they're not going to do it
14 voluntarily.

15 So in conclusion, I'd like to reiterate and
16 emphasize OP's point that the Petitioner has no right
17 to reclassification. There's no presumption that
18 their petition is valid or in the public interest.
19 And it's very important for the Land Use Commission to
20 think closely and carefully about its statutory and
21 constitutional obligations to preserve and expand
22 agricultural production in this state; to make sure
23 that things like the Hawai'i Clean Energy Initiative
24 are satisfied. And also to try to make our community,
25 make our island truly sustainable.

1 The traffic conditions are increasingly
2 worse. They're going to get worse. We cannot allow
3 this to continue. It's not good for anyone's lives
4 and livelihoods for future generations.

5 And I thank the Commission very much for
6 their patience throughout this proceeding.

7 CHAIRMAN DEVENS: Thank you, Counsel.
8 Neighborhood Board -- unless the court reporter's --
9 Holly, you okay on going? Take a short break? Okay.
10 We'll take a short 5-minute break.

11 (Recess was held.)

12 CHAIRMAN DEVENS: We're back on the record.
13 We're going to continue with the closing statement.
14 Neighborhood Board.

15 MR. POIRIER: Thank you, Chair. Since I am
16 not an attorney I should probably be able to do this
17 in less than 20 minutes! (Laughter) Bravely spoken I
18 know.

19 From a community perspective we foresee a
20 number of problems if this petition is approved
21 unconditionally. There are five in number. The first
22 is the continued lack of comprehensive state and local
23 planning problem. The lack of any response or actions
24 addressing the numerous planning and zoning
25 resolutions adopted by our board in response to

1 various developer initiatives clearly demonstrates the
2 lack of any viable state or county comprehensive
3 planning process which controls or manages urban
4 development in Central O'ahu.

5 Even the EIS for this petition is deemed to
6 be in general compliance with the state EIS law in
7 spite of the fact that it fails to disclose the
8 cumulative impact of commuter travel time to and from
9 downtown or Kapolei or the interim impacts associated
10 with the lack of available onsite school facilities at
11 the time of occupancy.

12 Second problem is the Gentry Waiawa-Turtle
13 Bay problem. Gentry Waiawa has been fully vested
14 since the mid 1980s to build up to 12,000 houses if
15 they choose at any time without further Commission
16 review.

17 Adding another 7,000 houses absent
18 appropriate and necessary regional transportation
19 infrastructure virtually assures the dreaded 2-hour
20 commute time each way from Central O'ahu to town as
21 predicted by the O'ahu Metropolitan Planning
22 Organization.

23 The pace of traffic at that time would be
24 stop and go, which is the range from zero to 13 miles
25 per hour. Even worse is the fact that much of the

1 2-hour morning commute would be accounted for by
2 having to wait at a virtual standstill to access H-2
3 from the commuter residences. Even the Petitioner's
4 own traffic study forecasts a substantial increase in
5 travel time from Mililani to Pearl City.

6 Next problem is the no improvements in an
7 already-inadequate traffic infrastructure systems
8 problem. As currently proposed there will be no, and
9 I repeat no additional transportation infrastructure
10 added to the region either in terms of increased
11 capacity or connectivity. There will be no fixed
12 rail. There will be no additional through-lane on Kam
13 Highway. There will be no Central Mauka Road. There
14 will be no road from Mililani Mauka to Wahiawa.

15 The next problem is the lack of a second
16 access road off Kam Highway as recommended by Castle &
17 Cooke, but denied for safety concerns by DOT problem.
18 This will result in a usual one-way in, one-way out
19 situation turmoil such as in Mililani Mauka, until
20 such a time as the Pineapple Road Interchange is
21 completed. That the proposed DOT condition calling
22 for the completion of the interchange is tied to the
23 percent of completion rather than the actual need for
24 the interchange, will virtually assure an unnecessary
25 interim gap as was experienced during the completion

1 of the final phase of the Mililani/H-2 Interchange.

2 The education facilities accommodations
3 problem. Our classroom capacities over time may be
4 deemed to be adequate by the DOE but they don't
5 reflect the realities of declining quality of
6 educational experiences at existing schools because of
7 having to accommodate more and more students because
8 of inadequate planning or resource availability.

9 Additional students can only exacerbate this
10 problem. The middle school, for example, in Mililani
11 went from having a standard calendar year to a
12 three-track year-round schedule and is already
13 changing to a four-track system to accommodate all the
14 children. Mililani Ike Elementary has more portables
15 every year with class sizes becoming larger and
16 larger.

17 Our high school is getting so large that all
18 school assemblies have to be held on the football
19 field.

20 On the matter of conditions. We believe
21 that the conditions that we are recommending are both
22 reasonable and necessary if we are to achieve any
23 degree of balanced growth in Central O'ahu while
24 minimizing adverse community impacts.

25 Our recommended education condition

1 addresses the notion of interim impacts caused by the
2 proposed development. The cost of mitigating the
3 imposition of additional students in existing schools
4 in the complex pending completion of the new Koa Ridge
5 Elementary School is not part of the original
6 DOE/Petitioner agreement dated June 13th, 2008 and are
7 not included as part of DOE's operating budget.

8 Assessing the Petitioner's pro rata share of
9 these costs as an addendum to the agreement of
10 June 13, 2008 is both reasonable and fair to the
11 Petitioner and most beneficial to the surrounding
12 communities burdened with having to accommodate
13 additional students.

14 Our recommended transportation and highway
15 conditions address the notion of cost and cumulative
16 impacts. The first deals with the Petitioner's fair
17 or pro rata share of regional transportation
18 improvements currently being borne exclusively by the
19 state and county governments. A similar cost sharing
20 arrangements was done in regards to developments in
21 Leeward O'ahu where developers contributed their pro
22 rata share of regional transportation improvements as
23 part of an agreement with state and county
24 transportation departments.

25 We believe that developers in Central O'ahu

1 should be held to the same standards as their
2 counterparts in 'Ewa in this regard.

3 Our second recommended transportation
4 condition addresses the critical need to formulate a
5 data base on an ongoing basis which will assess
6 impacts attributable to this and other developments in
7 Central O'ahu.

8 This will be accomplished by using the OMPO
9 travel demand forecasting model, which will determine
10 the incremental cumulative effect of single occupant
11 vehicle commuter travel times under various conditions
12 resulting from the construction of some 20,000
13 additional housing units not yet built in Central
14 O'ahu.

15 Results of this modeling effort will be
16 useful to decision-makers and others by establishing
17 the necessary parameters for determining cumulative
18 impacts of ever-increasing travel times and the extent
19 to which some impacts can be mitigated.

20 In closing, while our proposed conditions
21 are not required by existing statutes or rules, they
22 are, nonetheless, within the scope of the Commission's
23 authority, and would certainly do much to mitigate
24 many of the adverse impacts of the proposed
25 development, should you decide to grant the petition.

1 Thank you.

2 CHAIRMAN DEVENS: Thank you. Mr. Matsubara,
3 you've got five minutes on your rebuttal.

4 MR. MATSUBARA: I think the most persuasive
5 thing I can do on my client's behalf is not say
6 anything. But because of my professional training I
7 feel obligated at least to say one thing. (Laughter)
8 That's to correct a statement that they have indicated
9 that we should not feel that we have a right to
10 reclassification.

11 I don't think from the very beginning of
12 this process my client has felt that way. We have
13 taken up nine days of your time including today to
14 present you a case which we believe satisfies the
15 statutory requirements in your rules and regulations
16 in order to earn the reclassification we are
17 requesting.

18 So, no, we don't believe we have a right to
19 reclassification. We feel if you grant us one it's
20 because we have earned it. On behalf of my clients I
21 would like to thank you for the time you've provided
22 us. And have a good afternoon. Thank you.

23 CHAIRMAN DEVENS: Does the Commission have
24 any questions for any of the parties? Hearing none,
25 this matter will be taken under advisement prior to

1 our final decision-making on this case. Just so you
2 know, Commissioner Jenks will be provided a full copy,
3 have an opportunity to review the entire file and
4 record to be prepared for the decision-making process.
5 Other than that, if there are no other matters we can
6 adjourn for the afternoon. Thank you.

7 MR. MATSUBARA: Thank you very much.

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9 (The proceedings were adjourned at 12:30)

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1 C E R T I F I C A T E

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

5 That I was acting as court reporter in the
6 foregoing LUC matter on the 19th day of August 2010;

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

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

13

14

15 DATED: This _____ day of _____ 2010

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20 _____
21 HOLLY M. HACKETT, CSR #130, RPR
22 Certified Shorthand Reporter

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