

1	LAND USE COMMISSION	
2	STATE OF HAWAI'I	
3	ACTION	PAGE
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10	_____)	

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13 TRANSCRIPT OF PROCEEDINGS

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15 The above-entitled matters came on for a Public
 16 Hearing at Conference Room 405, 4th Floor, Leiopapa A
 17 Kamehameha, 235 S. Beretania Street, Honolulu,
 18 Hawai'i, commencing at 9:30 a.m. on September 23, 2010
 19 pursuant to Notice.

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

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A P P E A R A N C E S

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COMMISSIONERS:

KYLE CHOCK

5

THOMAS CONTRADES

VLADIMIR DEVENS (Chairman)

6

CHARLES JENCKS

LISA M. JUDGE

7

DUANE KANUHA

NORMAND LEZY

8

NICHOLAS TEVES, JR.

9

EXECUTIVE OFFICER: ORLANDO DAVIDSON

10

ACTING CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON

11

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

12

AUDIO TECHNICIAN: WALTER MENCHING

13

14

15 Docket No. A10-789 A&B PROPERTIES, INC.

16

For the Petitioner:

BENJAMIN MATSUBARA, ESQ.

CURTIS TABATA, ESQ.

17

GRANT CHUN, VP

18

19

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

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ABBEY MAYER

Office of Planning

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23

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1 APPEARANCES cont'd

2

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4 Docket No. A07-775 CASTLE & COOKE HOMES, HAWAI'I, INC.

5 For the Petitioner: BENJAMIN MATSUBARA, ESQ.
CURTIS TABATA, ESQ.

6

7 For the County: DAWN TAKEUCHI-APUNA, ESQ.
Deputy Corporation Counsel
8 MATT HIGASHIDA, DPP

9

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

12

13

14 For the Intervenor Sierra Club: ROBERT HARRIS, ESQ.

15

16 Also Present: KAREN LOOMIS

17 Neighborhood Board No. 25 Mililani

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PUBLIC WITNESSES

PAGE

6 Docket A10-789

7 Robert Harris

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10 Docket No. A07-775

11 Dawn Kovach

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12 Kevin Killeen

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1 September 23, 2010

2 CHAIRMAN DEVENS: Call the meeting to order.

3 This is a meeting of the Land Use Commission. Today

4 is September 23rd, 2010. We'll start with the

5 adoption of the minutes, if there's any changes or

6 corrections to be made. Hearing none...

7 COMMISSIONER JUDGE: Move to approve.

8 COMMISSIONER CONTRADES: Second.

9 CHAIRMAN DEVENS: Show of hands, all in
10 favor? Unanimous. Minutes are adopted. Moving on to
11 the schedule. Dan, you want to tell us what the
12 tentative schedule looks like?

13 MR. DAVIDSON: Thank you, Chair. We've had
14 a little dislocation, if you will, because the HHFDC
15 Forest City is now delayed 'til the second meeting in
16 October which means October 6-7 is a one-day meeting
17 only, the October 7. The primary agenda item will be
18 the North Kona O'oma oral argument. Any changes to
19 the schedule moving forward contact me or Riley.

20 Thanks.

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1 CHAIRMAN DEVENS: Thank you, Dan. Let's
2 move on to the first item on the agenda. This is an
3 action meeting on A10-789 A&B Properties, Inc, Maui to
4 determine whether the Land Use Commission is the
5 appropriate accepting authority pursuant to chapter
6 343 Hawai'i Revised Statutes of an environmental
7 impact statement relating to the reclassification of
8 approximately 545.229 acres at Wailuku and Waikapu,
9 County of Maui, State of Hawai'i, TMK 3-8-05: portion
10 of 23 and 3, and 3-8-07:71 portion of 101 and 104.

11 Also to determine whether the proposed
12 action may have a significant effect to warrant the
13 preparation of an environmental impact statement
14 pursuant to chapter 343 Hawai'i Revised Statutes.
15 Before I recite the state of the record, if the
16 parties would introduce themselves for the record.

17 MR. MATSUBARA: Good morning, Chair Devens,
18 members of the Commission. Ben Matsubara and Curtis
19 Tabata on behalf of Alexander & Baldwin Properties,
20 Inc. With me today is Grant Chun, vice president of
21 A&B Properties, Inc.

22 CHAIRMAN DEVENS: Good morning, sir.

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

1 CHAIRMAN DEVENS: Good morning, Mr. Yee.

2 Let me recite the state of the record.

3 On August 25th, 2010 the Commission received
4 Petition for Land Use District Boundary Amendment to
5 amend the Agricultural Land Use District Boundaries
6 into the Urban Land Use District for approximately
7 545.229 acres at Wailuku and Waikapu, County of Maui,
8 State of Hawai'i, TMK: 3-8-05: portion of 23 and 3 and
9 3-8-07:71, portion of 101 and 104, also Exhibits 1
10 through 8, the Affidavit of Service Petition for Land
11 Use Boundary Amendment and the Affidavit of
12 Notification of Petition Filing and \$500 Filing Fee
13 check.

14 On September 2nd, 1010, the Commission
15 received Petitioner's Affidavit of Sending First
16 Amended Notification of Petition Filing, Exhibit 1 and
17 2.

18 On September 20, 2010 the County of Maui
19 informed the LUC staff that they had no objection to
20 the LUC being the accepting authority pursuant to 343,
21 Hawai'i Revised Statutes, and would not be appearing
22 at this hearing.

23 Let me briefly describe our procedure for
24 today on this docket. We'll first give the Petitioner
25 an opportunity to comment on the Commission's policy

1 governing the reimbursement of hearing expenses. Then
2 call on those individuals desiring to provide public
3 testimony to identify themselves, step into the
4 witness box and give sworn testimony.

5 After the completion of the public testimony
6 portion of the proceedings the Petitioner will be
7 given an opportunity to make its presentation. After
8 that we will receive comments from the State Office of
9 Planning.

10 The Commission will then conduct its
11 deliberations. Are there any questions on the
12 procedures set out for today?

13 MR. MATSUBARA: No questions.

14 MR. YEE: No questions.

15 CHAIRMAN DEVENS: Hearing none,
16 Mr. Matsubara, has our staff provided you with the
17 Commission's policy regarding reimbursement of hearing
18 expenses, which I know you're familiar with?

19 MR. MATSUBARA: Yes, they have and we're
20 willing to comply with it.

21 CHAIRMAN DEVENS: Thank you very much. Is
22 there anyone in the audience that wishes to give
23 public testimony on this item? We have one witness,
24 Robert Harris. Mr. Harris, if we could swear you in.

25 ROBERT HARRIS

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

3 THE WITNESS: I do.

4 CHAIRMAN DEVENS: If you can state your name
5 and address and proceed.

6 THE WITNESS: My name is Robert Harris. I'm
7 the director of the Sierra Club Hawai'i Chapter. Our
8 business addresses is P. O. Box 2577 Honolulu, Hawai'i
9 96803. I recognize that this is a discreet matter.

10 With the Chair's permission I would like to
11 just briefly indicate that the Sierra Club Maui group
12 has been following this Project with particular
13 interest.

14 And they have a couple of environmental
15 concerns that they simply want to highlight for
16 Alexander & Baldwin to consider as they go forth
17 preparing the EIS, and to invite the possibility of
18 dialogue as the EIS is prepared.

19 With the Chair's permission I'd like to
20 briefly cover three of those environmental concerns.
21 It will be very quick, I promise.

22 CHAIRMAN DEVENS: Yes, proceed.

23 THE WITNESS: With regards to this proposed
24 project the Maui group is concerned that this property
25 is located in an area that is culturally significant

1 and that they believe significant efforts must be made
2 to address ongoing impacts on undetected burial sites.

3 Further, this Project proposes 2,500 units
4 without an identifiable source of water. The water
5 needs of this proposed Project could impact on the
6 'Iao Aquifer directly through unsustainable demands on
7 the Central Maui system.

8 Third, this Project is constructed adjacent
9 to a former landfill site and industrial sites that
10 may require testing and remediation. And specifically
11 testing should be done to see what the impacts would
12 be on this particular property.

13 We urge the Commission members to insist
14 upon complete information being provided through the
15 EIS process on these issues and again invite Alexander
16 & Baldwin to engage the communities on these
17 particular points. Thank you.

18 CHAIRMAN DEVENS: Thank you very much.
19 Parties have any questions for this witness?

20 MR. MATSUBARA: No questions.

21 MR. YEE: No questions.

22 CHAIRMAN DEVENS: Commissioners? Thank you
23 for your testimony, Mr. Harris.

24 THE WITNESS: Thank you for the opportunity.

25 CHAIRMAN DEVENS: Are there any other

1 witnesses, public witnesses that want to give
2 testimony in this matter? Hearing none,
3 Mr. Matsubara, you want to present your case? And
4 before I do that I'd just like to make a note for the
5 record we did receive on September 23rd, 2010 public
6 written testimony from a Claire Apana. We'll note
7 that for the record. Mr. Matsubara, you want to
8 proceed?

9 MR. MATSUBARA: Yes. Thank you, Chair
10 Devens. On August 25, 2010 Petitioner A&B Properties,
11 Inc. filed its Petition for the Land Use Commission
12 district boundary amendment to reclassify
13 approximately 545.2 acres of land in Wailuku and
14 Waikapu, Maui from the Agricultural District to the
15 Urban District for the master plan resort known as
16 Waiale, which will consist of village mixed use
17 commercial, business/light industrial, multi-family
18 and single-family residential, community center, a
19 regional park, neighborhood parks, greenways, open
20 space, cultural preserve, middle school and related
21 infrastructure. A total of approximately 2,550
22 residential units are planned for the Project.

23 Due to the scope of the Project and the
24 potential use of State and County lands the Petitioner
25 believes it is appropriate to proceed directly to the

1 preparation of an EIS and to address the requirements
2 of chapter 343, and at the earliest practicable time
3 to initiate the chapter 343 process at this point of
4 the entitlement process prior to proceeding with
5 Petitioner's Petition for land use district boundary
6 amendment.

7 Therefore, we request that the Commission
8 agree to be the accepting authority for requiring and
9 accepting statements that will be prepared for the
10 Waiale Project pursuant to chapter 343 of the Hawaii
11 Revised Statutes and chapter 200 of Title 11 of the
12 Hawaii Administrative Rules.

13 Attached to our Petition as Exhibit 7 is the
14 Environmental Impact Statement Preparation Notice for
15 the Project. Thank you, Mr. Chair.

16 CHAIRMAN DEVENS: Thank you, Mr. Matsubara.
17 Mr. Yee.

18 MR. YEE: The Office of Planning supports
19 the request for determining that the LUC is the
20 appropriate accepting authority and that an EIS is
21 warranted.

22 CHAIRMAN DEVENS: Thank you. Commissioners
23 have any questions for the parties? Hearing none, is
24 there a motion? I'm sorry. Commissioner Judge.

25 COMMISSIONER JUDGE: I'd like to make the

1 motion that the LUC find that the action does warrant
2 the preparation of an environmental impact statement
3 and that the Land Use Commission is the appropriate
4 accepting authority pursuant to chapter 343 for that
5 environmental impact statement.

6 CHAIRMAN DEVENS: Is there a second?

7 COMMISSIONER CONTRADES: Second.

8 CHAIRMAN DEVENS: Second. Any discussion?

9 Hearing none, Dan, you want to take the roll call?

10 MR. DAVIDSON: Motion on this docket as
11 stated by Commissioner Judge.

12 Commissioner Judge?

13 COMMISSIONER JUDGE: Yes.

14 MR. DAVIDSON: Commissioner Contrades?

15 COMMISSIONER CONTRADES: Yes.

16 MR. DAVIDSON: Commissioner Chock?

17 COMMISSIONER CHOCK: Yes.

18 MR. DAVIDSON: Commissioner Kanuha?

19 COMMISSIONER KANUHA: Yes.

20 MR. DAVIDSON: Commissioner Lezy?

21 COMMISSIONER LEZY: Yes.

22 MR. DAVIDSON: Commissioner Teves?

23 COMMISSIONER TEVES: Yes.

24 MR. DAVIDSON: Commissioner Jencks?

25 COMMISSIONER JENCKS: Yes.

1 MR. DAVIDSON: Chair Devens?

2 CHAIRMAN DEVENS: Yes.

3 MR. DAVIDSON: Motion passes 8/0 with
4 Commissioner Heller excused.

5 MR. MATSUBARA: Thank you very much.

6 CHAIRMAN DEVENS: We're going to move into
7 the second item on the agenda.

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9 This is an action meeting on Docket No.
10 A10-788 HHFDC/Forest City Kona, Hawai'i, LLC to
11 consider the Queen Liliuokalani Trust's Petition for
12 intervention. For the record this matter will be
13 deferred.

14 However, because this item is on the agenda
15 are there any public witnesses that wish to give
16 testimony in this matter? There are none signed up
17 and hearing none that will conclude the matter. This
18 matter will be deferred. We'll move on into the next
19 item.

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1 This is an action meeting on Docket No.
2 A07-775 Castle & Cooke Homes, Hawai'i, Inc. to
3 consider Intervenor Sierra Club's Motion to Disqualify
4 Charles Jencks, Nunc Pro Tunc, as of August 6, 2010;
5 and a second Motion to Disqualify Duane Kanuha, Nunc
6 Pro Tunc, as of April 26, 2010.

7 Before we proceed further if the parties
8 would identify themselves for the record.

9 MR. MATSUBARA: Mr. Chairman, Ben Matsubara
10 and Curtis Tabata on behalf of Castle & Cooke Hawai'i
11 Homes, Inc.

12 MR. YEE: Good morning. Deputy Attorney
13 General Bryan Yee on behalf of the Office of Planning.
14 With me is Abbey Mayer from the Office of Planning.

15 MR. HARRIS: Good morning and aloha. My
16 name is Robert Harris. I'm appearing on behalf of
17 Sierra Club Hawai'i chapter.

18 CHAIRMAN DEVENS: Good morning to you all.
19 Let me recite the state of the record. On September
20 15th, 2010, the Commission received the following:
21 Petitioner's Supplement Memorandum in Opposition to
22 Intervenor The Sierra Club's Motion to disqualify
23 Duane Kanuha, Nunc Pro Tunc, as of April 26, 2010;

24 The Office of Planning's Joinder in (1)
25 Petitioner's Memorandum in Opposition to Intervenor

1 The Sierra Club's Motion to Disqualify Charles Jencks,
2 Nunc Pro Tunc, as of August 6, 2010 filed on September
3 8, 2010.

4 And second, Petitioner's Memorandum in
5 Opposition to Intervenor The Sierra Club's Motion to
6 Disqualify Duane Kanuha, Nunc Pro Tunc, as of April
7 26, 2010, filed on September 8, 2010.

8 On September 20, 2010 the Commission
9 received a letter from David Tanoue, Director of DPP
10 advising that the DPP takes, quote, "no position"
11 closed quote, regarding the Intervenor's Motions to
12 Disqualify Commissioners Jencks and Kanuha, Nunc Pro
13 Tunc, both fled on September 8, 2010.

14 The procedure for today: We will call on
15 those individuals desiring to provide public
16 testimony, limited to the motions to disqualify which
17 is at issue for this hearing. All such individuals
18 will be called in turn to our witness box where they
19 will be sworn in prior to their testimony.

20 After completion of the public testimony
21 portion of the proceedings we will hear argument on
22 the motions from the parties starting with the Movant.
23 After we have heard from all the parties we will
24 conduct our deliberations.

25 Are there any questions on these procedures

1 from the parties?

2 MR. MATSUBARA: No questions.

3 MR. YEE: No questions.

4 MR. HARRIS: No questions.

5 CHAIRMAN DEVENS: Hearing none, are there
6 any public witnesses that would like to give testimony
7 on the motions itself? Seeing none are signed up and
8 hearing none, we'll start with the arguments with the
9 Sierra Club. Mr. Harris.

10 MR. HARRIS: Good morning and thank you.
11 With respect to the motion regarding Mr. Jencks we'll
12 rest on our written submissions.

13 With regards to the motion on Mr. Kanuha
14 we'd like to add a few additional legal points.
15 Mr. Kanuha, unfortunately, does not have the ability
16 to serve as a Commissioner under both our state
17 constitution and under section 26-34.

18 Castle & Cooke does not address a recent
19 decision by the Supreme Court *Hanabusa v. Lingle* --
20 for the record I'll give the pin cite: 198 P.3d 604 --
21 where the Supreme Court held that the governor has a
22 nondiscretionary duty to appoint new Commissioners.
23 Put another way, the governor cannot evade Senate
24 review by allowing Commissioners whose term has
25 expired to serve for another entire term.

1 This rationale as stated in that case is
2 even more appropriate where a particular Commissioner
3 has been rejected by the Senate. Here, unlike the
4 Hanabusa Case, there hasn't merely been a failure to
5 appoint a new Commissioner.

6 Instead, the governor is attempting to keep
7 on a Commissioner that no longer has the consent of
8 the Senate.

9 Allowing a rejected Commissioner to serve an
10 additional four years directly flouts the confirmation
11 power of the Senate and our mandate in the
12 constitution for checks and balances.

13 Castle & Cooke's arguments focus entirely on
14 section 26-34. It's questionable whether the statute
15 is constitutional in this case. Unlike the decision
16 cited by Castle & Cooke there is no basis in the
17 constitution or even a rationale for a holdover
18 member.

19 The governor has the express power to
20 immediately appoint a new Commissioner. There's no
21 vacuum or necessity for holdover members to continue
22 after a vacancy.

23 Even if holdover members are permitted under
24 the constitution, the statutes plainly provides that
25 anyone disqualified in section A is not permitted to

1 serve as a holdover member. Castle & Cooke tries to
2 take a narrow contrived reading of the statute by
3 focusing only on the last sentence.

4 "Statutes must be read in pari materia, or
5 in light of all their provisions." And a plain
6 reading requires us to look at the entire subsection,
7 the entire section A.

8 Particularly 2634 states that: "Members of
9 each board and commission established by law shall be
10 nominated by and with advice and consent of the
11 Senate."

12 Read plainly, a holdover member still
13 requires the consent of the Senate. Mr. Kanuha does
14 not have that consent. Reading the statute in light
15 of the constitutional requirement of checks and
16 balances that dictate we read everything in pari
17 materia it's apparent Mr. Kanuha cannot continue as a
18 holdover member.

19 And, further, his continued participation in
20 the Land Use Commission jeopardizes all actions taken
21 by the LUC.

22 Let me state that this motion is not filed
23 with any particular enthusiasm. We hope you recognize
24 that calling to question the individual's ability to
25 serve on the Land Use Commission, particularly in a

1 public forum, is not easy nor is it something we want
2 to do. But as an environmental organization,
3 environmental watch dog organization, we have an
4 obligation to ensure our laws are followed and the
5 rights of the public are respected. You also have
6 this obligation.

7 Please take the appropriate step and
8 preserve the public's right to participation and
9 preserve the decisions made by the Land Use Commission
10 going forward. Thank you.

11 CHAIRMAN DEVENS: Mr. Harris, let me just
12 ask you one question. But before I do so let me just
13 make clear that I don't think any of the Commissioners
14 take any personal offense to filing the motion.

15 We respect your obligation to represent your
16 client's interest. And you've been vigorously doing
17 that throughout the proceeding so please understand
18 that no offense is taken. We are going to weigh the
19 motion based on the facts and the law as provided to
20 us.

21 MR. HARRIS: I appreciate that.

22 CHAIRMAN DEVENS: One question I wanted to
23 ask you, though, what's your response to the argument
24 raised about a waiver? The Senate confirmation or
25 vote happened in April. And the filing of your motion

1 didn't happen until September 8.

2 MR. HARRIS: As was brought up at the last
3 hearing that we had, I think the key date is to
4 indicate when we had notice Mr. Kanuha was
5 participating or continued to participate as
6 Commissioner, which was at the I believe -- I'm sorry
7 I don't have the date of the last hearing -- I believe
8 it was in August.

9 We filed within a few weeks after that date.
10 So we attempted to do it as expeditiously as we could.

11 I would ask the Commission to view this in
12 light of the fact that we are a small nonprofit. We
13 don't have the resources necessary to file within a
14 few days. But plainly a few weeks is not a waiver.

15 And further, I point to the rules which
16 states that a motion can be filed at any time. We
17 obviously did not want to prejudice the Land Use
18 Commission by filing this after a decision was made.
19 But the rules do also allow for that procedure to
20 occur.

21 CHAIRMAN DEVENS: Appreciate your response.
22 Mr. Matsubara.

23 MR. MATSUBARA: Thank you. In regard to the
24 Motion to Dismiss Commissioner Jencks, just a brief
25 response in regard to -- the premise of the Sierra

1 Club's motion is that after the interim appointment of
2 Commissioner Jencks there were two special sessions
3 which did not include the confirmation of Commissioner
4 Jencks.

5 What we've included in our response are the
6 proclamation issued by the Senate and President
7 Hanabusa's position on that statement regarding the
8 fact that those special sessions were purely and
9 solely for the purpose of confirming judges.

10 And seeing as that was the sole purpose of
11 the special session, there was no regular session at
12 which Commissioner Jencks' confirmation could be taken
13 up. So I believe there's no basis for that particular
14 motion. We've included as exhibits to our Memo in
15 Opposition the required Senate documents.

16 In regard to the Motion to Dismiss
17 Commissioner Kanuha, the motion as originally filed,
18 which we responded to the same day which was just
19 prior to our last hearing on the 9th of this month,
20 raised two issues: The statute and the constitution
21 which we addressed in a Memo in Opposition.

22 If I recall, the Chair gave Sierra Club up
23 to the 20th to file any responses to what we had
24 submitted. We did not receive anything further on the
25 20th. As far as I know the raising of the Hanabusa

1 case is not included in the pleadings as are filed.

2 But in any event I think basically Hanabusa
3 v. Lingle is inapplicable to this particular case.

4 Let me go back to our reasons as to why we don't
5 believe Chairman Kanuha is not entitled to sit.

6 The plain reading of section 26-34 basically
7 provides the situation that Commissioner Kanuha is in.
8 The only disqualification that would affect or apply
9 to Commissioner Kanuha would be if he had already
10 served two consecutive terms or eight consecutive
11 years. Under the clear reading of the statute that's
12 the only basis for the disqualification. That doesn't
13 apply here.

14 In order to buttress that common
15 interpretation we have attached an attorney general's
16 opinion to our Memo in Opposition which further
17 discusses that premise.

18 And in our Supplemental Memo in Opposition
19 we've included the Senate committee reports that
20 reflects the basis as to that being the sole and only
21 basis for the disqualification.

22 The attorney general's opinion that we have
23 attached addressed to then Senator Abercrombie related
24 to an opinion that the statute provides a basis where
25 a holdover serves according to the law, a de jure

1 status. That's what differs that case from the
2 Hanabusa case that the Sierra Club is relying on.
3 It's inapplicable in this particular situation.

4 The other important thing to remember is
5 that -- and that was raised in the attorney general's
6 opinion -- is that the whole purpose for having
7 holdovers being permitted to continue to serve is to
8 fulfill a public purpose. And that is to not let the
9 public mission or the public purpose suffer because of
10 an absent Chair.

11 And I believe the statute, if read logically
12 the way it's drafted as confirmed by committee
13 reports, which I don't believe are necessary because
14 the statute is clear on its face, the public service
15 is preserved by that interpretation. Thank you.

16 CHAIRMAN DEVENS: Mr. Yee? I'm sorry.
17 City, did you want to make an argument on this?

18 MS. TAKEUCHI-APUNA: Yes. The City takes no
19 position.

20 CHAIRMAN DEVENS: Okay. Mr. Yee.

21 MR. YEE: Thank you. With respect to the
22 motion involving Commissioner Jencks, let me briefly
23 note that their argument essentially is that when
24 there's an interim appointment and subsequent to the
25 interim appointment there's a special session which

1 could not have considered that interim appointment,
2 that somehow that special session then makes that
3 interim appointment no longer valid so the person has
4 to leave office.

5 That clearly is just a nonsensical reading
6 of the constitution. The whole idea is that there are
7 differences between judicial nominations and executive
8 nomination because judicial nominations have to be
9 considered within a certain timeframe.

10 And if the Legislature does not do that,
11 then the nomination's considered approved. That is
12 not true with executive appointments.

13 Consequently, there's a special provision
14 that allows the Senate to convene without the approval
15 of the house solely for the purpose of considering
16 judicial nominations.

17 So to say that then if the Senate is faced
18 with the question of either holding that special
19 session, in which it could not have considered the
20 executive appointments, and thereby finding every
21 single executive appointment to then no longer be
22 valid is, as I said, nonsensical reading.

23 This will have particular importance, quite
24 frankly, with the new governor because there are
25 typically many executive appointments that occur

1 subsequent to the regular session. There are, over
2 time, judicial nominations that come up in which a
3 special session would be needed.

4 So to find with the next governor that every
5 time the Legislature has a judicial nomination to
6 consider, they must either forego that special session
7 and have that judicial appointment automatically
8 confirmed.

9 Or they have to hold a special session in
10 which they could not consider each one of the
11 executive interim appointments. And then have each
12 one of those executive appointments then voided or at
13 least no longer qualified is just an ill-construction
14 of the constitution and the purpose of the
15 constitution.

16 With respect to Commissioner Kanuha we want
17 to make a few points. The first is that the
18 requirements for an interim appointment and the
19 requirements for holdover Commission members is not
20 the same thing. These are two different things.

21 You can see that because the statute 26-34
22 says basically a person who's disqualified for
23 membership under subsection (a) is not allowed, then,
24 to continue in office as a holdover member. The
25 question then is: What are the qualifications in

1 subsection (a)? And they look at subsection (a) and
2 say: Here's the process by which one is nominated and
3 confirmed. And within that there's a requirement that
4 you cannot be nominated and confirmed if you have
5 eight consecutive years.

6 And with that they then conclude, well,
7 because you have to be nominated and confirmed, if
8 you're not nominated and confirmed therefore you're
9 disqualified.

10 That's clearly untrue. Because if you look
11 at the second part of 26-34 it specifically says:
12 "Provided that a holdover member shall not hold office
13 beyond the end of the second regular legislative
14 session following the expiration of the member's term
15 in office."

16 So it clearly contemplates that holdover
17 members may serve through two regular legislative
18 sessions.

19 So if you were to incorporate all of those
20 interim appointment requirements, then that provision
21 about serving two regular sessions becomes meaningless
22 because you could not have held -- you could not have
23 served two regular sessions as a holdover member and
24 satisfied the requirements for the interim
25 appointments. It's impossible to do that.

1 So in order to read 26-34 consistently and
2 to find each one of these words means something, has a
3 purpose, which is a typical statutory construction,
4 you could not interpret subsection (a) as
5 disqualifying a member who is simply not confirmed
6 during that particular session. So in other words,
7 you can serve two regular sessions.

8 I then want to point out a couple of things
9 regarding the arguments today. And that is as I read
10 the original motion -- or let me backtrack. As I read
11 his oral argument today I think he's arguing that
12 section 26-34 as interpreted would be
13 unconstitutional.

14 One, that is not an issue that the LUC can
15 consider. You can look at the constitution how it
16 applies to your Commission membership. But you cannot
17 look at statutes and determine whether or not that
18 statute is or is not constitutional. That's just not
19 within the authority. He's allowed to make an
20 argument to preserve that for the Supreme Court but
21 you're not allowed to consider that.

22 But more importantly, as I read his original
23 motion, that was never raised. So I never had an
24 opportunity to research and respond other than to
25 appear today and hear the argument for the first time.

1 And he specifically -- I mean you talked about the
2 waiver. If there's a waiver -- if there was not a
3 waiver for his original filing there should certainly
4 be a waiver with respect to this argument.

5 Because, first, he filed the motion, didn't
6 include it. Then he had an opportunity to raise it
7 again on the 20th and never filed anything. So then
8 on the day of the hearing by raising this issue for
9 the first time it is unfair to the parties.

10 And we believe that argument should be
11 waived even if you could consider it.

12 He goes on to say that holdover membership
13 requires the consent of the Senate. I'm not sure. I
14 can only assume that follows from for his conclusion
15 that 26-34 is unconstitutional because otherwise
16 that's just clearly not true.

17 The whole idea of a holdover membership is
18 someone doesn't have the consent of the Senate. That
19 person continues on. A typical example would be,
20 let's suppose someone was appointed by the current
21 governor.

22 The new governor wants to appoint someone
23 else, but the existing member continues until that new
24 member, that new Commission member is nominated and
25 appointed. That's just a typical example of what

1 happens.

2 The holdover member never gets confirmed.
3 The new governor doesn't expect for that old member to
4 continue forever there. The new governor wants to
5 appoint someone new. But if that never happens, then
6 you need a continuation of authority for the various
7 boards and commissions in the state.

8 Finally, with respect to the citation to the
9 new case that he cites and he says, well, we never
10 responded to it, that's because he never argued it.
11 But, more importantly, the obligation to appoint is
12 meaningless with respect to Commissioner Kanuha
13 because the governor did appoint, did nominate a new
14 Commission member. The Legislature just didn't
15 approve it.

16 So the whole idea that somehow the Hanabusa
17 case impacts this particular issue in my mind just
18 doesn't make sense.

19 In closing I just want to note that this is
20 not an unusual issue. This happens from time to time
21 when we have Commission members and special sessions
22 and holdovers. And it will be happening certainly
23 more often. It's likely to happen more often with the
24 new governor that comes up.

25 And it would be a significant disruption of

1 governmental activity if you were to hold, as Sierra
2 Club would hold, to disqualify these Commission
3 members. So from a practical standpoint as well as
4 from a legal one the Office of Planning opposes these
5 motions to disqualify. Thank you.

6 CHAIRMAN DEVENS: Let the record reflect
7 that Ms. Takeuchi-Apuna is here with her client
8 representing the City and has had an opportunity to
9 hear the arguments on this matter.

10 Do either Mr. Yee or Mr. Matsubara, do you
11 request any additional time to address any of the
12 arguments that the Sierra Club has made? Or are you
13 comfortable with us proceeding and making a decision
14 on this today?

15 MR. MATSUBARA: I'm comfortable with the
16 Commission proceeding.

17 CHAIRMAN DEVENS: Mr. Yee?

18 MR. YEE: Yes, comfortable proceeding.

19 CHAIRMAN DEVENS: I see the Neighborhood
20 Board has a representative sitting in the crowd. Did
21 you want to present any arguments on this?

22 MS. LOOMIS: The Neighborhood Board is not
23 taking a position on this issue.

24 CHAIRMAN DEVENS: Thank you. Mr. Yee, let
25 me ask you, and I'll ask the same question of

1 Mr. Matsubara, how do you reconcile subsection (a)
2 with subsection (b) under 26-34 when it talks about
3 the Commissioner being able to continue as long as
4 they're not disqualified from membership? How do you
5 reconcile that in defending your position?

6 MR. YEE: Because the issue of confirmation
7 by the Senate is not a disqualification. So, in other
8 words, if you were, let's assume, appointed, and you
9 were denied by the Senate, you were not approved by
10 the Senate. You are still qualified to be appointed
11 again.

12 If you have served eight years you are not
13 qualified to be appointed again. That's the
14 distinction we would make. Subsection (a) and
15 subsection (b) are completely consistent. And indeed
16 they have to be read, they're supposed to be read as
17 being consistent. And that is the consistent
18 interpretation of those sections.

19 CHAIRMAN DEVENS: So your disqualification
20 language you feel is pointed to the two-term limit.

21 MR. YEE: Yes.

22 CHAIRMAN DEVENS: Mr. Matsubara.

23 MR. MATSUBARA: I agree with that
24 interpretation. We've included that in our Memo in
25 Opposition.

1 CHAIRMAN DEVENS: Any questions for the
2 parties from the Commissioners? Hearing none, is
3 there a motion?

4 COMMISSIONER CHOCK: Move to deny,
5 Mr. Chairman.

6 CHAIRMAN DEVENS: Motion is to deny both
7 motions to disqualify, correct?

8 COMMISSIONER CHOCK: Both motions.

9 CHAIRMAN DEVENS: Is there a second?

10 COMMISSIONER TEVES: Second.

11 CHAIRMAN DEVENS: Any discussion by the
12 Commission? Hearing none, Dan, you want to take the
13 roll call vote.

14 MR. DAVIDSON: Motion is deny the Sierra
15 Club's Motion for Disqualification.

16 Commissioner Chock?

17 COMMISSIONER CHOCK: Yes.

18 MR. DAVIDSON: Commissioner Teves?

19 COMMISSIONER TEVES: Yes.

20 MR. DAVIDSON: Commissioner Judge?

21 COMMISSIONER JUDGE: Yes.

22 MR. DAVIDSON: Commissioner Lezy?

23 COMMISSIONER LEZY: Yes.

24 MR. DAVIDSON: Commissioner Contrades?

25 COMMISSIONER CONTRADES: Yes.

1 MR. DAVIDSON: Commissioner Kanuha?

2 COMMISSIONER KANUHA: Abstain.

3 MR. DAVIDSON: Commissioner Jencks?

4 COMMISSIONER JENCKS: Abstain.

5 MR. DAVIDSON: Sorry, this sheet is all
6 messed up. Anyone I miss here?

7 MS. ERICKSON: Chair Devens.

8 MR. DAVIDSON: Chair Devens. Thank you.

9 CHAIRMAN DEVENS: Yes.

10 MR. DAVIDSON: The motion passes 6/0. Thank
11 you.

12 CHAIRMAN DEVENS: As it stands the two
13 Commissioners are not disqualified and will be allowed
14 to continue sitting in this matter. Thank you for the
15 arguments on the motions. Why don't we take a short
16 few minutes break and we'll reconvene and finish up
17 with the last item.

18 (Recess was held.)

19 CHAIRMAN DEVENS: This is a Deliberation and
20 Action meeting on Docket No. A07-775 Castle & Cooke
21 Homes Hawai'i, Inc. to amend the Agricultural Land Use
22 District Boundary into the Urban District for
23 approximately 767.649 acres at Waipio and Waiawa,
24 Island of O'ahu, State of Hawai'i.

25 Before we get started, parties please

1 introduce themselves for the record.

2 MR. MATSUBARA: Chair, members of the
3 Commission, Ben Matsubara, Curtis Tabata on behalf of
4 Castle & Cooke Homes, Inc.

5 MS. TAKEUCHI-APUNA: Good morning. Deputy
6 Corporation Counsel Dawn Takeuchi-Apuna on behalf of
7 the Department of Planning and Permitting. Here with
8 me today is Matt Higashida.

9 MR. YEE: Good morning. Deputy Attorney
10 General Bryan Yee on behalf of the Office of Planning.
11 With me is Abbey Mayer from the Office of Planning.

12 MR. HARRIS: Good morning and aloha. Robert
13 Harris on behalf of the Sierra Club Hawai'i chapter.

14 MS. LOOMIS: Good morning. Karen Loomis on
15 behalf of Neighborhood Board No. 25 Mililani.

16 CHAIRMAN DEVENS: Good morning to you all.
17 Let me just add for the record from September 15th
18 through the 21st the Commission received an additional
19 30 written correspondences via e-mail. And the
20 executive officer has the names of those that have
21 submitted the correspondence if you need that.

22 Otherwise, at this time we'll take public
23 testimony. And before we take the testimony let me
24 remind you that all the prior testimony given by the
25 witnesses has been transcribed and has been made part

1 of the record.

2 Also want to remind you that the evidence
3 has been closed, therefore you should keep that in
4 mind while giving testimony here today.

5 We have two witnesses that have signed up.
6 There'll be a 3-minute limit if it's a new witness and
7 a 2-minute limit if it's a repeat witness who has
8 testified in the past.

9 For those that have testified in the past we
10 ask that you could provide new information during your
11 testimony. Dan.

12 MR. DAVIDSON: First is Dawn Kovach followed
13 by Kevin Killeen. Have you testified before?

14 THE WITNESS: Never.

15 CHAIRMAN DEVENS: Can we first swear you in.
16 If you can raise your right hand.

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

20 THE WITNESS: Yes.

21 CHAIRMAN DEVENS: If you can state your name
22 and address.

23 THE WITNESS: Yes. My name is Dawn Kovach.
24 I live at 11-20 Pua Lane.

25 CHAIRMAN DEVENS: Go ahead.

1 THE WITNESS: Yeah. I'm just really
2 surprised on all the traffic. When is enough building
3 enough? I realize all the evidence has been in. But
4 it's just surprising we're living on an island, this a
5 major tourist destination. Why do people want to come
6 here for vacation to be caught in traffic and stare at
7 a bunch of new homes?

8 Can't we do something to help the farmers
9 and make the beautiful pineapples grow so we have
10 something to enjoy that's natural and growing and help
11 the agricultural growers and do something fun? Why
12 does everything have to be invested in homes? I don't
13 understand all that.

14 I'm a simple person, you know, an artist, a
15 nature lover. I want to see natural things if I come
16 here on vacation. We need to attract the tourists and
17 have something exciting.

18 CHAIRMAN DEVENS: Is that it?

19 THE WITNESS: Yeah.

20 CHAIRMAN DEVENS: Let me ask the parties if
21 they have any questions for this witness.

22 MR. MATSUBARA: No questions.

23 CHAIRMAN DEVENS: Hearing none,
24 Commissioners? Hearing none, thank you for your
25 testimony. Next witness.

1 MR. DAVIDSON: Kevin Killeen. Have you
2 testified?

3 THE WITNESS: Yes, I have.

4 MR. DAVIDSON: Two minutes.

5 CHAIRMAN DEVENS: Swear you in.

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

9 THE WITNESS: Yes.

10 CHAIRMAN DEVENS: State your name and
11 address.

12 THE WITNESS: Kevin Killeen. My mailing
13 address is 1750 Kalakaua. I just want to say I went
14 to a lecture yesterday at UH. I learned that they
15 don't have an emergency plan if there is a tsunami
16 that damages the harbor. So agriculture is pretty
17 important.

18 Also a bigger landowner like Castle & Cooke
19 they can pick winners if it's going to be a wind farm
20 or solar farm or agricultural development. I think
21 there might be an antitrust issue here. Thank you.

22 CHAIRMAN DEVENS: Any questions from the
23 parties for this witness?

24 MR. MATSUBARA: No questions.

25 CHAIRMAN DEVENS: Hearing none,

1 Commissioners? Hearing none, thank you very much.
2 Are there any other witnesses that wish to provide
3 testimony in this matter? Hearing none, we'll move
4 forward. Commissioner Judge.

5 COMMISSIONER JUDGE: I'd like to request an
6 executive session to consultant with the Board's
7 attorney on questions and issues pertaining to the
8 Board's powers, duties, privileges, immunities and
9 liabilities.

10 CHAIRMAN DEVENS: Is there a second?

11 COMMISSIONER KANUHA: Second.

12 CHAIRMAN DEVENS: All those in favor raise
13 your hand. It's unanimous. Take a short break.

14 (Recess was held.)

15 CHAIRMAN DEVENS: We're back on the record.
16 We're going to be moving to the formal deliberations
17 portion of this Petition proceeding. And before we
18 start I just wanted to thank the parties for a very
19 efficient presentation of the case while representing
20 your clients. And I think all of you did an excellent
21 job.

22 On behalf of the Commission we just want to
23 tell you we appreciate the work you've done on this
24 case. We know there's been a lot of hard work, a lot
25 of evidence that we need to consider in this matter

1 and that we have considered in this matter.

2 Especially like to thank the public
3 witnesses that take time off to come here. We know
4 they work, have to take time off to come here and
5 spend time waiting to give testimony.

6 We very much value the testimony and the
7 public input on matters like this. And we wanted to
8 let you know that we're appreciative of that.

9 Moving forward. Commissioners, as a
10 reminder, the Commission is in formal deliberations
11 concerning whether to grant the Petition whether in
12 whole or in part or to deny the Petition.

13 If the Commission decides to grant the
14 Petition in whole or in part it needs to determine
15 what conditions of approval to impose.

16 I would note for the parties and the public
17 that during the Commission's deliberations I will not
18 entertain additional input from the parties or the
19 public unless those individuals or entities are
20 specifically requested to do so by the Chair.

21 If called upon I would ask that any comments
22 be limited to the question at hand. The Commission
23 held hearings on the merits of this Petition in 2010
24 on January 21st and 22nd, February 18th and 19th,
25 March 18th, April 21st and 22nd and May 20th.

1 As noted previously oral argument was held
2 on August 19th.

3 Commissioners, let me confirm that each of
4 you have reviewed the record and read the transcripts
5 for any meeting that you may have missed and are
6 prepared to deliberate on the subject docket.

7 After I call your name will you please
8 signify with either an aye or nay you're prepared to
9 deliberate on this matter.

10 Commissioner Chock?

11 COMMISSIONER CHOCK: Aye.

12 CHAIRMAN DEVENS: Commissioner Contrades?

13 COMMISSIONER CONTRADES: Aye.

14 CHAIRMAN DEVENS: Commissioner Jencks?

15 COMMISSIONER JENCKS: Aye.

16 CHAIRMAN DEVENS: Commissioner Judge?

17 COMMISSIONER JUDGE: Aye.

18 CHAIRMAN DEVENS: Commissioner Kanuha?

19 COMMISSIONER KANUHA: Aye.

20 CHAIRMAN DEVENS: Commissioner Lezy?

21 COMMISSIONER LEZY: Yes.

22 CHAIRMAN DEVENS: Commissioner Teves?

23 COMMISSIONER TEVES: Yes.

24 CHAIRMAN DEVENS: I'm also prepared to
25 deliberate on this matter. The objective today is to

1 determine by way of motion the Commission's decision
2 on whether to grant in whole or whole or in part
3 Petitioner's request to reclassify the subject
4 property or to deny the Petition and if granted, what
5 conditions of approval to impose.

6 If a decision is reached today and based
7 upon the Commission's guidance, staff will be directed
8 to draft appropriate findings of fact, conclusions of
9 law and decision and order reflecting the Commission's
10 decision. And those findings of fact and conclusions
11 will be further deliberated at the next hearing on
12 this matter.

13 Given that, is there a motion? Commissioner
14 Contrades.

15 COMMISSIONER CONTRADES: Mr. Chair, in the
16 matter of Docket No. A07-775 Castle & Cooke Homes
17 Hawai'i, Incorporated, O'ahu, I move to approve the
18 request to amend the Agricultural Land Use District
19 boundary into the Urban District for approximately
20 767.694 acres at Waipio and Waiawa, Island of O'ahu,
21 State of Hawai'i, Tax Map Key 1-9-4-06: portion 1
22 portion 2, portion 3, portion 5, portion 29, portion
23 31, 38 and portion 39; 9-0503: Portions 1 and
24 portions 4 and 9-0604 portions 21.

25 CHAIRMAN DEVENS: Is there a second?

1 COMMISSIONER TEVES: Second.

2 CHAIRMAN DEVENS: Commissioner Teves has a
3 second. Discussion by the Commissioners?
4 Commissioner Judge.

5 COMMISSIONER JUDGE: Thank you, Chair. I
6 just have some concerns regarding -- and thoughts
7 regarding this Petition. There's been a lot of
8 discussion about the ag lands and the loss of ag lands
9 and how would we mitigate that impact.

10 And I know that the, there was a condition
11 from the Office of Planning to create a policy of ag
12 easements. And I've given a lot of thought to this.
13 But I can't support that condition because I feel that
14 it's outside the powers of this Commission: That
15 there are other state agencies or other statutes that
16 give other entities that power.

17 And I also recall in the testimony from the
18 Petitioner stating that they would be submitting a
19 voluntary IAL designation of lands prior to the end of
20 this year. And in my mind I would like to use the
21 existing statute, the IAL statute, to mitigate the
22 issue of the ag lands.

23 And a second concern to me is the traffic
24 issue. That's a significant -- obviously we have had
25 a lot of testimony on that. And on that condition I'm

1 feeling strongly that the Pineapple Interchange that
2 the county is recommending be built, given a concrete
3 date to that. Because that's a significant issue for
4 the circulation that this Commission consider giving a
5 concrete date to the construction of that interchange.

6 CHAIRMAN DEVENS: Thank you, Commissioner
7 Judge. Any more discussion? Commissioner Lezy.

8 COMMISSIONER LEZY: Thank you, Chair. Just
9 a couple of brief reflections on Commissioner Judge's
10 comments about the agricultural easement issue.

11 I think we had a lot of very heart-felt
12 testimony in this Petition matter about the loss of
13 agricultural lands, particularly those classified in A
14 and B soil rating.

15 And I'd like to think that all of us as
16 Commissioners are sensitive to the idea that once A
17 and B lands that are in the Agricultural District are
18 put into the Urban District it's unlikely that they
19 will ever return.

20 That said, though, I too have concerns about
21 the imposition of an easement under these
22 circumstances. And I guess I should say first I
23 commend OP in trying to come up with a novel way to
24 address this problem.

25 But as we've seen I think with other issues

1 that have come before us that have been proposed as
2 conditions, something like this because of the effect
3 of this type of easement I think it is better dealt
4 with by a more deliberative process. And I think that
5 necessarily has to come from the Legislature.

6 And I think, given what we've seen the last
7 two sessions and testimony that we've had before us,
8 that there is support in the Legislature for some type
9 of legislation that would address this issue. But I
10 have to join with Commissioner Judge in saying that I
11 don't think we can do this. And I don't think
12 actually it is for us to do.

13 But, again, I commend OP on trying to come
14 up with some sort of vehicle to encourage this. And
15 at the very least I think it has caused us to have
16 discussion about the importance.

17 I think the other point I'd like raise as we
18 look towards potentially a decision and order in this
19 case, is I personally have some concerns about the
20 question of incremental districting in this case.

21 During the time that I've been on the
22 Commission I can't recall a single petition where
23 there was a core condition that was based on a
24 condition precedent being met or was connected to the
25 actions of another private entity.

1 That is essentially what's being proposed
2 here. Is that this entire Petition Area has at least
3 some reliance on the Waiawa Ridge development putting
4 in its infrastructure in order for the conditions
5 regarding this Petition Area's infrastructure to be
6 met.

7 And because of that I'm looking at whether
8 or not I'm considering, and I think I'm leaning
9 towards a conclusion that this would be a Petition
10 that would more appropriately be subject to
11 incremental redistricting, the two increments within
12 the Koa Ridge Makai development. So something to
13 think about.

14 CHAIRMAN DEVENS: Thank you, Commissioner
15 Lezy. Commissioner Teves.

16 COMMISSIONER TEVES: Mr. Chairman, on a
17 different subject. Be part of one of the conditions.
18 During the last statewide tsunami, not scare, but the
19 big tsunami alert we had, it was my understanding on a
20 previous approval of a redistricting the developer was
21 required to put a disaster warning siren post along as
22 the development progressed.

23 It was my understanding they didn't do that.
24 People were occupying homes and the siren posts were
25 not installed. And during this last alert the people

1 had no warning at all.

2 I'd like to see a condition where that the
3 poles in the affected areas would be installed prior
4 to anyone moving in and, of course, accepted by the
5 Civil Defense.

6 CHAIRMAN DEVENS: Mr. Matsubara would the
7 Petitioner have a problem with such a condition?

8 MR. MATSUBARA: Not a problem, Mr. Chair.

9 CHAIRMAN DEVENS: Thank you, sir. Any
10 further discussion? Commissioner Chock.

11 COMMISSIONER CHOCK: Thank you, Mr. Chair.
12 I'd also like to echo some of the comments made by
13 you, Mr. Chair, in terms of the quality of the
14 intervention and the process we went through.

15 I want to thank also our LUC staff, OP staff
16 and all the Intervenors who put in a lot of time into
17 this Petition. I think we've been dealing with this
18 matter for the better part of the last year.

19 But I'd like to address some of the issues
20 that have come up during the course of the Petition
21 and speak a little bit to the criteria that the LUC
22 uses in terms of approving or denying Petitions of
23 this nature.

24 Specifically I'd like to cite some of the
25 economic opportunities that would be created by this

1 potential Project, not just in terms of the short-term
2 construction jobs but the long-term full-time jobs
3 that would be created. And also the opportunities for
4 the creation of primary housing that this Petition
5 would create.

6 Hawai'i at the last I checked still ranked
7 49th in the country in terms of homeownership. We
8 ranked 50th, last place in terms of the percentage of
9 intergenerational families living under the same roof.

10 And I believe even at the full development
11 and buildout of this Petition, which would take 20 to
12 25 years, we still would not be moving the needle much
13 in terms of making that statistic a better place.

14 This Petitioner is committed to building
15 homes primarily for local residents, first families,
16 not for the luxury buyer: Policemen, firemen,
17 teachers would have an opportunity to own homes at Koa
18 Ridge.

19 So for those benefits in terms of some of
20 the criteria that we look at, I'd like to note that
21 for the record.

22 Some of the key issues that were raised in
23 terms of traffic and agriculture I think are very
24 important items that we can get a little further into
25 when we deliberate on conditions.

1 But from my perspective in terms of some of
2 the mitigation that we have discussed and heard from
3 from the Petitioner, from OP and from some of the
4 other agencies, Department of Transportation, I think
5 it's important to also note that while, you know,
6 should this Petition be approved there is mitigation
7 for not just expanded agricultural opportunities for
8 the existing farmer on the land but an actual
9 doubling, if my math is correct, in terms of the
10 number of acreage that Aloun Farms would be farming
11 based on some of the mitigation.

12 I do have some concerns related to traffic
13 and the timing of some of the infrastructure
14 improvements, that we can get into that, I do believe
15 some of my colleagues on this Commission share.

16 And I think I'd like to reserve the rest of
17 my comments until we get into that specific
18 discussion. But just wanted to note some of those
19 items for the record, Mr. Chair.

20 CHAIRMAN DEVENS: Thank you, Commissioner
21 Chock. Any other discussion? Commissioner Judge.

22 COMMISSIONER JUDGE: Could I just have a
23 point of clarification? Is the motion on the floor to
24 approve -- to approve it all? It doesn't include,
25 it's a blanket approval right now. It doesn't

1 consider incremental. It's just to approve both the
2 Koa Ridge Makai and the Waiawa parcel.

3 CHAIRMAN DEVENS: Commissioner Contrades,
4 that's what I understood the motion to be. Is that
5 correct?

6 COMMISSIONER CONTRADES: Yes.

7 CHAIRMAN DEVENS: He says that's correct.

8 COMMISSIONER JUDGE: Okay. I guess my
9 thought is I would concur with Commissioner Lezy that
10 at this time I would feel that the Waiawa portion
11 would be a candidate for incremental districting but
12 not approval because of the lack of infrastructure and
13 the reliance upon an outside third-party at this
14 point.

15 CHAIRMAN DEVENS: Are you asking for an
16 amendment to the motion or consideration to amend the
17 motion?

18 COMMISSIONER JUDGE: Yes. I would ask for
19 that consideration.

20 CHAIRMAN DEVENS: Commissioner Contrades?
21 And if not we can vote on this motion and another
22 motion could be raised.

23 COMMISSIONER CONTRADES: I'd be willing to
24 accept the amendment.

25 CHAIRMAN DEVENS: So the motion has been

1 amended. Is there a second?

2 COMMISSIONER TEVES: Second.

3 CHAIRMAN DEVENS: Any further discussion on
4 the amended motion? Commissioner Lezy.

5 COMMISSIONER LEZY: Chair, just so we're
6 clear, can we have the motion restated please in its
7 amended format?

8 CHAIRMAN DEVENS: Commissioner Contrades.

9 COMMISSIONER CONTRADES: Dan, did you take
10 that down, Dan?

11 MR. DAVIDSON: It's the motion as stated to
12 approve the petition by Commissioner Contrades and
13 seconded by Commissioner Teves. The change is now to
14 convert it to an incremental approval whereas Koa
15 Ridge is approved and the Waiawa parcel is increment 2
16 of the approval.

17 COMMISSIONER CONTRADES: Thank you.

18 CHAIRMAN DEVENS: Is that accurate,
19 Commissioner Contrades?

20 COMMISSIONER CONTRADES: (Nodding head up
21 and down.)

22 CHAIRMAN DEVENS: Okay. The second stands.
23 Any further discussion on this matter? Just like to
24 state a couple of points. I think Castle & Cooke has
25 been a good neighbor, a good community member in this

1 on O'ahu and Honolulu and has done a lot of good
2 things in this case. I think it's a creative,
3 innovative Project.

4 A lot of creative ideas have been designed
5 into this Project. I think the Project itself is a
6 very good Project. It's an excellent Project.

7 On the other side, there's serious genuine
8 concerns about the traffic and the ag land. And I
9 share those concerns. I think some of it is beyond
10 the control of Castle & Cooke to address. If the ag
11 lands are going to be lost they're going to be lost.

12 I understand the mitigation that they've
13 done. And I think they've done everything they can to
14 try to mitigate the impact of the loss of these prime
15 lands.

16 But in my mind there are serious losses and
17 I have serious concerns about the traffic to the
18 extent that I'm respectfully going to be voting no on
19 this motion.

20 But I think I owe Castle & Cooke at least my
21 explanation as to why, the insight on it. That's just
22 my honest belief and my honest judgment as I see this
23 case.

24 I have to vote my conscience on this matter.
25 I appreciate the job opportunities. I'm a strong

1 proponent. I'd be the first person to tell you that
2 we need jobs and economic stimulus and housing.

3 I appreciate all those things very much.
4 But I think at the end of the day there's a price to
5 pay for all of this. And that's what I look at
6 against the criteria. And I can't get over the hump
7 on that in my mind. Therefore that's why I will be
8 voting no on the motion respectfully. Any further
9 discussion? Hearing none, Dan.

10 MR. DAVIDSON: Motion to approve A07-775 on
11 an incremental basis as stated by Commissioner
12 Contrades.

13 Commissioner Contrades?

14 COMMISSIONER CONTRADES: Aye.

15 MR. DAVIDSON: Commissioner Teves?

16 COMMISSIONER TEVES: Yes.

17 MR. DAVIDSON: Commissioner Judge?

18 COMMISSIONER JUDGE: Yes.

19 MR. DAVIDSON: Commissioner Jencks?

20 COMMISSIONER JENCKS: Aye.

21 MR. DAVIDSON: Commissioner Chock?

22 COMMISSIONER CHOCK: Yes.

23 MR. DAVIDSON: Commissioner Lezy?

24 COMMISSIONER LEZY: Yes.

25 MR. DAVIDSON: Commissioner Kanuha?

1 COMMISSIONER KANUHA: Yes.

2 MR. DAVIDSON: Commissioner Heller is
3 excused. Chair Devens?

4 CHAIRMAN DEVENS: No.

5 MR. DAVIDSON: Motion passes 7 to 1, Chair.

6 CHAIRMAN DEVENS: The Commission will direct
7 Mr. Davidson to draft the appropriate findings of
8 fact, conclusions of law that will be hashed out at
9 the next meeting. October 15th will be the next
10 meeting.

11 Also like to note for the record that
12 Commissioner Heller was excused from today's hearing.
13 One, he recused himself from the Castle & Cooke matter
14 and the other matter he was excused.

15 And that should be noted for the record,
16 Riley. Thank you very much. If there's no further
17 business... Mr. Matsubara?

18 MR. MATSUBARA: Mr. Chairman, on behalf of
19 the parties I'm sure we all share the appreciation and
20 patience the Commission had on weeks and weeks of
21 hearings and your deliberation and your studying of
22 all the exhibits and the evidence presented. We thank
23 you all for that.

24 CHAIRMAN DEVENS: Thank you as well.

25 MR. HARRIS: I'd like to share those

1 comments as well.

2 MR. MAYER: For the State we'd appreciate
3 your taking the time and all the careful deliberation
4 of all the evidence we have submitted. Thank you.

5 CHAIRMAN DEVENS: Thank you to you all.
6 We'll stand in recess. Adjourned.

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8 (The proceedings were adjourned at 11:20 a.m.)

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C E R T I F I C A T E

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

7

8 That I was acting as court reporter in the
9 foregoing LUC matter on the 23rd day of September
2010;

10

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

13

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

16

17 DATED: This _____ day of _____ 2010

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

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