

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3 ORAL ARGUMENT, DELIBERATION AND ACTION) PAGE

4 A09-782 TROPIC LAND, LLC (O'ahu)) 6

5 ACTION)

6 A87-617 BRIDGE 'AINA LE'A, LLC and)

7 D.W. 'AINA LE'A DEVELOPMENT, LLC)

8 (Motion to Reconsider and Defer)) 109

9 ACTION)

10 A87-617 BRIDGE 'AINA LE'A, LLC and)

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13 ORAL ARGUMENT AND ACTION)

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15

16 TRANSCRIPT OF PROCEEDINGS

17

18 The above-entitled matters came on for a Public

19 Hearing at Conference Room 405, 4th Floor, Leiopapa A

20 Kamehameha, 235 S. Beretania Street, Honolulu,

21 Hawai'i, commencing at 9:45 a.m. on Friday, April 8,

22 2011 pursuant to Notice.

23

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

25 Certified Shorthand Reporter

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A P P E A R A N C E S

COMMISSIONERS:
KYLE CHOCK
VLADIMIR DEVENS (Chairman)
RONALD HELLER
CHARLES JENCKS
DUANE KANUHA
NORMAND LEZY
NICHOLAS TEVES, JR.

EXECUTIVE OFFICER: ORLANDO DAVIDSON
ACTING CHIEF CLERK: RILEY HAKODA
STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON
DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A09-782 Tropic Land, LLC

For the Petitioner: WILLIAM YUEN, ESQ.
ARICK YANAGIHARA Project Mgr.

For the County: DAWN TAKEUCHI-APUNA, ESQ.
Deputy Corporation Counsel
MIKE WATKINS, DPP

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
JESSE SOUKI, Drtr,
Office of Planning

For the Intervenors: MARTHA TOWNSEND, ESQ.
Concerned Elders of ALICE GREENWOOD
Waianae

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Docket No. A87-617 Bridge 'Aina Le'a, LLC
and D.W. 'Aina Le'a Development, LLC:

For the Petitioner:	ALAN OKAMOTO, ESQ.
D.W.'Aina Le'a Dvp.LLC	
Bridge 'Aina Le'a, LLC	BRUCE VOSS, ESQ.
	MICHAEL CARROLL, ESQ.
For the County:	WILLIAM BRILHANTE, ESQ.
	Deputy Corp. Counsel
For the State:	BRYAN YEE, ESQ.
	Deputy Attorney General
	JESSE SOUKI, Director
	Office of Planning

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1 CHAIRMAN DEVENS: This meeting is called to
2 order. Today is April 8th, 2011. This a meeting of
3 the State Land Use Commission. We're here in
4 Honolulu. The first item on the agenda is the
5 adoption of minutes. Any corrections or changes,
6 Commissioners? There being none, motion to adopt?

7 COMMISSIONER JENCKS: Move to approve.

8 COMMISSIONER HELLER: Second.

9 CHAIRMAN DEVENS: Any discussion? There
10 being none, all those in favor say aye.

11 COMMISSIONERS VOTING: Aye.

12 CHAIRMAN DEVENS: It's unanimous. Motion
13 carries. Dan, you want to cover the upcoming meeting
14 schedule, please.

15 MR. DAVIDSON: Sure. Thank you, Chair. You
16 have the meeting schedule. You'll note a lot of
17 travel in May; Kaua'i on the first meeting and Lana'i
18 on the second meeting. As always any conflicts, can't
19 make it, et cetera, let me or Riley know. Thanks.

20 CHAIRMAN DEVENS: Thank you, Dan. Next item
21 on the agenda is the Tropic Land matter. This is a
22 meeting for oral argument, deliberation and action
23 Docket No. A09-782 Tropic Land, LLC's Petition to
24 Amend the Agricultural Land Use District Boundaries to
25 the Urban Land Use District for approximately 96 acres

1 in Lualualei Waianae District, Oahu, Hawai'i, Tax Map
2 Key No. 1-87-09-02. We'll start by having the parties
3 make their appearances please, starting with
4 Petitioner. Mr. Yuen.

5 MR. YUEN: Good morning, Mr. Chairman.
6 William Yuen on behalf of Petitioner Tropic Land, LLC.
7 With me is Arick Yanagihara, project manager and
8 Michael Nekoba, one of the members of Tropic Land.

9 CHAIRMAN DEVENS: 'Morning.

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

14 CHAIRMAN DEVENS: Good morning to you.

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

19 CHAIRMAN DEVENS: Good morning.

20 MS. TOWNSEND: Good morning. Marty
21 Townsend, attorney for the Intervenors. And here with
22 me for the Concerned Elders of Waianae is Alice
23 Greenwood.

24 CHAIRMAN DEVENS: Good morning to you all.
25 First let me update the record. On February 2nd, 2011

1 the evidentiary portion of this proceeding was closed,
2 subject to the receipt of various follow-up reports
3 and/or answers that may have been requested during the
4 course of this hearing.

5 On March 17th, 2011 the Commission received
6 written correspondence from Patty Kahanamoku-Teruya
7 chairperson of the Nanakuli-Mailii Neighborhood Board
8 #36.

9 The Parties, with short extensions granted
10 by the executive officer, timely filed their
11 respective Proposed Findings of Fact, Conclusions of
12 Law, and Decisions and Orders, Responses and Comments
13 on February 28th, March 14th, 21st and 23rd of this
14 year.

15 On March 30th, 2011 the Commission received
16 written correspondence from DPP correcting an error in
17 their Partial Joinder to Petitioner's Proposed
18 Findings of Fact, Conclusions of Law and Decision and
19 Order.

20 Before we move into the oral argument part
21 of the hearing we'll first take public testimony. The
22 public testimony, because of the number of individuals
23 that have signed up I'm going to limit testimony to 2
24 minutes. And the executive officer will give you a 30
25 second warning. Dan, approximately how many witnesses

1 do we have today?

2 MR. DAVIDSON: Twenty-two, Chair.

3 CHAIRMAN DEVENS: After that we'll get into
4 the oral arguments. We'll give each side 20 minutes.
5 Petitioner, you can reserve a portion of your argument
6 for rebuttal if you wish. First witness, Dan?

7 MR. DAVIDSON: Patricia Patterson followed
8 by Ka'anohi Kaleikini.

9 CHAIRMAN DEVENS: For the understanding of
10 the public, for those that have testified before your
11 testimony has been transcribed and has been made an
12 official part of the formal record in this case. If I
13 can swear you in, ma'am.

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

17 THE WITNESS: I do.

18 CHAIRMAN DEVENS: If you can state your name
19 and address please.

20 THE WITNESS: Patricia Patterson, Makaha,
21 Hawai'i.

22 CHAIRMAN DEVENS: Go ahead.

23 THE WITNESS: I just would like to point out
24 that there are archaeological studies that should
25 probably be made. DLNR has made archaeological

1 studies. And just recently the Bishop Museum has put
2 up a website. It's Hawai'i Waianae Archaeological
3 Survey HAS Bishop Museum.org. I would really
4 appreciate your looking at that and seeing what they
5 have to say as opposed to the former so-called
6 cultural expert testified. Thank you.

7 CHAIRMAN DEVENS: Any questions from the
8 parties for this witness? There being none,
9 Commissioners? There being none, thank you for your
10 testimony.

11 MR. DAVIDSON: Kaleikini followed by
12 Malinousky.

13 KA'ANOHI KALEIKINI
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: Yes.

17 CHAIRMAN DEVENS: State your name and
18 address.

19 THE WITNESS: Ka'anoi Kaleikini, 89-107
20 Nanaikala Street, Nanakuli.

21 I oppose this Project. I oppose rezoning of
22 this Project. It is in agricultural land and I wish
23 for it to remain that way.

24 Anyway, I'd like to begin my testimony that
25 it is agricultural lands and the desecration of the

1 cultural landscape that's proposed -- the desecration
2 that this proposed industrial park will cause. The
3 cultural landscape is important because it reinforces
4 the validity of the ancient legends that belong
5 specifically to these lands and nowhere else in these
6 islands or in the world.

7 Because Lualualei is frequently noted in old
8 Native Hawaiian literature, it makes the area
9 particularly important for Native Hawaiians. The
10 Lualualei corridor was the highway for Native
11 Hawaiians traveling from Waianae.

12 There were two major trails, Kolekole Pass
13 and Pohakea Pass. Kolekole Pass from back of
14 Lualualei and into Waianae Uka. Pohakea rose from
15 Halona Valley by Nioiula Heiau and into Honouliuli in
16 Ewa and down to Pu'uloa or Pearl Harbor.

17 Kolekole Pass is still known and used today.
18 Pohakea Pass was heavily used in the past by Native
19 Hawaiians as was noted in the book noted by John Papa
20 I'i, who was born in 'Ewa.

21 John Papa I'i's training began at the age of
22 10 to become the kahu or guardian of King Liholiho.
23 Whenever the king traveled to Wai'anae he preferred to
24 take the journey by land --

25 MR. DAVIDSON: Excuse me. 30 seconds.

1 THE WITNESS: -- instead of on the ocean by
2 canoe. They used Pohakea Pass for their journey as
3 the king loved to be outdoors and on their way to
4 Wai'anae. The king's court spent the night in Kunia
5 on the Lualualei side of Pohakea Pass with the
6 dwellers of the land along Pohakea Pass gathered and
7 prepared food for the king's entourage.

8 Testimonies by Pua Nogelmeier and Kamaki
9 Kanahale confirms the existence of this ancient
10 pathway which led in and out of Wai'anae, Ma'ili and
11 Lualualei.

12 The lands we are addressing today were
13 referred to by Kamaki Kanahale as "wasted lands". At
14 that time of his life while he lived on that 'aina or
15 land, all he did was use it as a walk-through to get
16 from Lualualei mauka to the kai or ocean to go
17 fishing.

18 This is the memory he retains today of the
19 'aina that it was dry, barren and wasted and could
20 only be used as a walk-through. His kuleana at that
21 time of his life was that of a lawai'a or fisherman
22 and not a mahi 'ai or farmer. So he would have
23 clearly --

24 MR. DAVIDSON: That's time. Thank you very
25 much.

1 THE WITNESS: I have 2 minutes that are
2 going to be given to me by other Petitioners.

3 CHAIRMAN DEVENS: What we can do, ma'am, do
4 you mind if we make a copy of your testimony and
5 attach that to the formal record?

6 THE WITNESS: I can do that but I'd also
7 like to use the 2 minutes that they're affording me.

8 CHAIRMAN DEVENS: Who's giving you 2
9 minutes?

10 THE WITNESS: I have Pauline Lukela.

11 CHAIRMAN DEVENS: Are they here now?

12 THE WITNESS: Yes.

13 CHAIRMAN DEVENS: Okay. Go ahead.

14 THE WITNESS: Okay. Maika'i. Okay. So at
15 that time of his life while he lived on that 'aina or
16 land, all he did was use it as a walk-through to get
17 from Lualualei mauka to the kai, or ocean, to go
18 fishing.

19 This is the memory he retains today of the
20 'aina, that it was dry, barren and wasted and could
21 only be -- and not a mahi 'ai or farmer or he would
22 have clearly seen the true value, productiveness and
23 sacredness of 'aina. In his mind the land was too dry
24 and would be hard to work to get it to the point of
25 growth. So he chose the life of a fisherman, which in

1 those days was by far much easier than farming the
2 'aina to provide food for the 'ohana.

3 "'Aina" is derived from word "'ai" or to
4 eat. Land was very sacred to Native Hawaiians in
5 every sense. And they primarily depended on the 'aina
6 to grow food in order to eat.

7 In the true Native Hawaiian cultural
8 understanding of 'aina no land is ever considered to
9 be wasted. The 'aina is where we get food. The 'aina
10 is where we kanu or bury the bones of our 'ohana. The
11 mana or divine power of our deceased person remains
12 within the iwi or bones of a deceased. The uhane or
13 spirit of the deceased surrounds the iwi and the wahi
14 or burial site of the deceased.

15 When iwi kupuna's in the 'aina, the 'aina is
16 a wahi pana and would never be considered as wasted
17 lands. One whose kuleana is not of the sacredness of
18 the 'aina could never comprehend that all 'aina or
19 land in and of itself is wahi pana.

20 But I can understand Kamaki's comment about
21 the non-existence of wahi pana on this Project Area.
22 If Kamaki does not possess kuleana to a wahi in this
23 Project Area then he would not have knowledge of the
24 existence of a wahi. So it does not mean that wahi
25 pana does not exist on this Project Area.

1 It only means that Kamaki does not know of
2 any wahi pana in this Project Area.

3 Not all wahi pana, especially those of
4 burials, were ever shared with just anybody. And
5 these were wahi kapu. And if one did not have kuleana
6 to these wahi kapu then one would never know about it.
7 So to say that wahi kapu did not exist in this area is
8 undermining our kupuna as well as our cultural
9 beliefs.

10 Radio carbon dates establish that habitation
11 in dryland fields in the upper and lower valley of
12 Lualualei were in use around 1300s.

13 MR. DAVIDSON: Thirty seconds.

14 THE WITNESS: Upper Lualualei Valley was
15 settled first due to the upland flowing waters.
16 Population at that time was estimated at a thousand to
17 1100 people.

18 In the 1600s Kakuhihewa built Nioiula Heiau
19 in Halona, upper Lualualei Valley along Pohakea Pass.
20 At that time Kakuhihewa, his permanent living quarters
21 expanded to upper Lualualei Valley because of the
22 coastal growing population.

23 As the population increased in Lualualei so
24 did the dryland fields of agriculture. Sweet potato
25 farming dominated and lo'i or taro farming in the

1 uplands were numerous and continues today.

2 Pollen studies taken from upper Lualualei
3 Valley found pollen from a variety of native trees
4 such as lama, mamane, naio, hau, ohe, lonomea and of
5 course, wauke. Wauke Valley was located in the area
6 of the naval base and was totally destroyed when that
7 base was built.

8 Wauke is used to make kapa. Archaeological
9 findings in Lualualei reveals several distinct
10 clusters of Native Hawaiian sites. Each of these
11 clusters contained at least one large residential
12 complex or kauhale and included a walled habitation
13 compound interpreted as a men's house or hale mua,
14 which was situated in view of a heiau.

15 MR. DAVIDSON: Excuse me. It's time again.

16 THE WITNESS: Okay. I have another two
17 minutes allotted to me.

18 CHAIRMAN DEVENS: What we want to do is we
19 want to have the --

20 THE WITNESS: I'm almost done.

21 CHAIRMAN DEVENS: How much more you got?

22 THE WITNESS: Two minutes will do it.

23 CHAIRMAN DEVENS: The witness is here?

24 THE WITNESS: Kala mai ia'u.

25 CHAIRMAN DEVENS: We're going to be

1 consistent.

2 THE WITNESS: Okay.

3 CHAIRMAN DEVENS: We're going be consistent
4 over here.

5 THE WITNESS: Okay. Maika'i. I appreciate
6 that. Okay. In the upper valley of Lualualei
7 archaeological ruins of almost all of the former
8 settlements are still in tact and has not been
9 touched. There are house foundations, field terraces,
10 walls and clearings, lo'i and canals, small he'iau and
11 burials.

12 These ruins cover the landscape and it is a
13 surviving treasure that needs protection. It provides
14 a window to the everyday life of people who once lived
15 in Lualualei Valley. Near the former homes of these
16 earlier generations of inhabitants lie buried their
17 iwi, their bones, the proof of the very existence of
18 the people.

19 The iwi need sensitive protection. The
20 habitation, ponds and lo'i deposits also need
21 protection for they contain important missing
22 information of these earlier inhabitants.

23 Night marchers were not specific to any
24 given area. They walked whenever and wherever they
25 pleased. Kamaki Kanahele testified that there were no

1 night marchers in Lualualei because of the Hina
2 legends. And he may be correct as I have not spoken
3 to anyone that can attest to night marchers in this
4 petitioned area.

5 However, I can produce witnesses who have
6 seen and talked to day marchers or an apparition that
7 was seen during the day on this petition site. And it
8 happened on the day that this company, Tropic Land,
9 LLC was having their land blessed where a small
10 elderly kupuna-type Native Hawaiian woman dressed in
11 black walked out of the slopes of Pu'uheleakala and
12 walked over very ragged stones.

13 There's no access to the slope except from
14 the front gate which no one saw her walk through. The
15 slope is where, is where there are -- they have
16 recognized the historic site. All those attending the
17 blessing saw her. She spoke to one person. I will
18 withhold his name for now. But there was at least
19 five people that witnessed this.

20 This kupuna was looking for the waterfall.
21 Everyone in attendance did not know of a waterfall.
22 It was later that in investigating and researching we
23 found that there was a waterfall in Pu'uheleakala, an
24 ancient waterfall. And 'til today you can see where
25 the rocks are mossy and wet.

1 And this would be the location of the
2 waterfall that this kupuna was looking for. So if
3 yes, night marchers maybe did not exist there but they
4 sure have day marchers there.

5 I would like to urge this council to protect
6 this land for its agricultural use and for its
7 cultural contents. Mahalo.

8 CHAIRMAN DEVENS: If you don't mind we'll
9 have the chief clerk make a copy and we'll put that
10 part of the record.

11 THE WITNESS: Mahalo.

12 CHAIRMAN DEVENS: Any questions from the
13 parties?

14 MR. YUEN: No questions.

15 CHAIRMAN DEVENS: Commissioners? There
16 being none, thank you.

17 MR. YUEN: Whose time was she taking, the
18 second person's time?

19 CHAIRMAN DEVENS: You can ask her.

20 THE WITNESS: Taresa Ray.

21 CHAIRMAN DEVENS: We appreciate it. Thank
22 you.

23 MR. DAVIDSON: Donaleia Malinousky followed
24 by Kimo Keli'i.

25 CHAIRMAN DEVENS: If you're gonna use

1 someone else's time, if you can identify so we can
2 account for the person. We can only allow any one
3 person to use two other witness's time on this because
4 there's a lot of witnesses, and want to make sure
5 everybody has a fair chance at giving their input.
6 And we also have other matters on the agenda that we
7 need to get to. If I can swear you in, ma'am.

8 DONALEIA MALINOUSKY
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: I do.

12 CHAIRMAN DEVENS: If you can just state your
13 name and address and your address please.

14 THE WITNESS: Donaleia Malinousky, Wai'anae.
15 Is that okay? You need more?

16 CHAIRMAN DEVENS: You have a mailing
17 address?

18 THE WITNESS: P. O. Box 107 Waianae.

19 CHAIRMAN DEVENS: That's fine. Go ahead.

20 THE WITNESS: The wisdom of our kupuna is
21 never more apparent than in the adoption of the
22 Wai'anae Sustainable Plan. Industrial sites are set
23 aside along main corridors, and agriculture land is
24 preserved and protected for future generations as a
25 food safety zone.

1 The kapuna knew future generations would
2 have to depend upon the Waianae Sustainable Plan for
3 their and Hawai'i's survival.

4 Because of global warming, tsunami, drought,
5 cyclones our agricultural lands throughout the world
6 are diminished. And fires and floods from cyclones
7 devastate major farming areas in Australia. The
8 U.S. mainlands agricultural areas were overwhelmed by
9 unseasonable snowfalls and now floods from melting
10 snow.

11 The Midwest no longer grows main food crops
12 for people and animals to eat but biofuel production.
13 Now the world nations are competing for less available
14 food supply. And why aren't we thinking of our own
15 food safety? Turmoil in oil production countries --

16 MR. DAVIDSON: Excuse me, 30 seconds.

17 THE WITNESS: -- stabilized prices. We need
18 a state and county food safety agency to make sure we
19 have enough food for our own people. When 80 percent
20 of our own food is imported, we have to plan and use
21 our agricultural lands productively. We need to snap
22 out of our complacency and encourage and support
23 farming on agriculture land.

24 When Australia is worried because 20 percent
25 of their food is imported, shouldn't we be worried

1 when 80 to 85 percent of our food is imported? Who
2 wants to pay \$10 for a tomato or \$15? How can we --
3 we are the most isolated land mass in the world.
4 Who's gonna worry about Hawai'i Waianae not having
5 enough food or water? Malama the 'aina.

6 MR. DAVIDSON: Excuse me. That's time.
7 Thank you.

8 CHAIRMAN DEVENS: Ma'am, is your testimony a
9 written form? You want us to attach it to the formal
10 record? We can make a copy if you wish.

11 THE WITNESS: Well, it's in bits and pieces
12 but you can take what you want.

13 CHAIRMAN DEVENS: It's up to you.

14 THE WITNESS: Yeah, sure.

15 CHAIRMAN DEVENS: Okay. We can do that for
16 you. Any questions for this witness? There being
17 none, Commissioners? There being none, thank you for
18 your testimony.

19 MR. DAVIDSON: Kimo Keli'i followed by Patty
20 Teruya.

21 THE WITNESS: Aloha.

22 CHAIRMAN DEVENS: Kimo, if we can swear you
23 in.

24 THE WITNESS: Sure. Well, I needed to ask
25 if -- Patty's not feeling well and she needs to leave.

1 She asked, she getting nauseated, if she could give
2 her testimony and I'll go after her. Is that okay?

3 CHAIRMAN DEVENS: Sure. Patty, if we can
4 just swear you in.

5 PATTY KAHANAMOKU TERUYA
6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: Yes.

9 CHAIRMAN DEVENS: Your name and address.

10 THE WITNESS: Patty Kahanamoku Teruya,
11 89-1101 Pohakupalena, Waianae, Hawai'i, 96782. Thank
12 you very much. Aloha, Chair Devens. I'm the chair,
13 Patty Kahanamoku Teruya--Nanakuli Maili Neighborhood
14 Board No. 36.

15 And on February 15, 2011 the Nanakuli Maili
16 Neighborhood Board No. 36 passed the attached
17 resolution, affirms its support for the proposed
18 amendments to the Waianae Sustainable Community Plan
19 including the proposed designation of approximately
20 96 acres of the land in Lualualei for light industrial
21 use for the proposed Nanakuli Base Project and
22 inclusion of its parcel within the proposed rural
23 community boundary in Lualualei.

24 Since the Land Use Commission has not yet
25 reached a decision on Tropic Land, LLC for this

1 Project we wanted to inform the Land Use Commission of
2 our continued support for this Project.

3 The Project will provide much needed
4 employment opportunities for the residents of our
5 Neighborhood Board district. And we support all of
6 the governmental approvals necessary to make this
7 Project a reality.

8 I just wanted to add: As a past
9 Neighborhood Board Chair for Wai'anae in 2006 we have
10 also had numerous committee meetings regarding this
11 Project and worked very closely with the
12 representatives.

13 I would also like to clearly add that the
14 representatives of in Project have been more than
15 accommodating to our community and have gone out of
16 their way in communicating, updating our boards of
17 this Project.

18 Under the Neighborhood Board system and plan
19 our Neighborhood Board has done our due process in
20 addressing concerns, open discussions and provided
21 updates that have been very transparent to this
22 Project. And under the neighborhood guidelines of the
23 Maili Neighborhood Board 36 --

24 MR. DAVIDSON: 30 seconds.

25 THE WITNESS: Thank you -- we did take the

1 position and recommendation of this Project of the
2 majority vote by members that represent this district
3 where this proposed Project will be located.
4 Commissioners, thank you again for this opportunity in
5 testifying on this Project.

6 I urge the Commission in supporting a
7 project that will beneficially gain the community.
8 Mahalo and thank you very much.

9 CHAIRMAN DEVENS: Any questions for this
10 witness?

11 MR. YUEN: No questions.

12 CHAIRMAN DEVENS: Hearing none,
13 Commissioners? Patty, did you want to have us attach
14 your testimony or are you okay with...

15 THE WITNESS: I wrote some notes but this is
16 fine. Thank you.

17 CHAIRMAN DEVENS: Thank you. Hope you feel
18 better.

19 THE WITNESS: Thank you.

20 CHAIRMAN DEVENS: Kimo, if we can swear you
21 in.

22 KIMO KELI'I
23 being first duly sworn to tell the truth, was examined
24 and testified as follows:

25 THE WITNESS: Yes.

1 CHAIRMAN DEVENS: State your name and
2 address.

3 THE WITNESS: Kimo Keli'i, 89-234 Pi'ilau
4 Avenue, Nanakuli, Hawai'i. Okay. First of all,
5 Chair, aloha. You know, Hawaiians give anything,
6 that's all we want to do is ask to be treated fairly.

7 Your comment about being fair well just to
8 clear this, my mother, who is here, I'm asking to have
9 her two minutes. So she's right there Ariela Keli'i.
10 I didn't know that was possible so seeing you approve
11 that one....

12 CHAIRMAN DEVENS: I was trying to
13 accommodate the other witness to give here the same.

14 THE WITNESS: Yeah. So your consistency is
15 greatly appreciated. Okay. I have my testimony. I
16 have copies if you folks want it now or...

17 CHAIRMAN DEVENS: Our chief clerk will pick
18 it up after. We'll make it part of the record.

19 THE WITNESS: Okay. I hope can start 'em
20 now, my 2 minutes. (Laughter).

21 CHAIRMAN DEVENS: Go ahead.

22 THE WITNESS: Okay. First of all, I just
23 wanted to emphasize in my testimony, when you receive
24 it, that I'm involved in over 20, and I'm talking
25 actively involved, attend meetings.

1 Majority of these organizations,
2 associations, committees, boards, if I'm not writing
3 the minutes I'm doing something. So there's no one in
4 this room that can tell me they're engaged in this
5 many organizations, 20, all in Nanakuli, some in
6 Maili, some in Waianae. Majority of these entities
7 are within the education realm because education is
8 actually my passion.

9 However, I mean it varies from being the
10 cemetery chair at the Nanakulu Hawaiian Homestead,
11 cemetery, being the Parks Committee Chair. So I have
12 a pretty varied involvement, PTSA, parent teacher
13 student. But the point I wanna make is being involved
14 and engaged my ears are into what the community's
15 position, what the temperature is.

16 And so as Patty had stated earlier I'm also
17 on the board. We were elected. The last thing we
18 wanna do is do anything that would jeopardize our
19 constituents. So as Patty said the board as taken a
20 position.

21 We've always asked the community. Because,
22 you know, this developer -- and I keep telling
23 everybody -- when we were part of the Wai'anae
24 Neighborhood Board we were one board for that entire
25 coast. And that one board, that's why we have two

1 landfills, we have many social injustices because we
2 have one board. And that board could not move the
3 agenda.

4 So in our, my spearheading of separating the
5 boards was not to separate that unified feeling, but
6 was so that each community could take care of their
7 kuleana instead of having one huge board and nothing
8 got done. Then you had all these businesses coming in
9 that give nothing back to the community.

10 I am the instrumental person when I was on
11 that Wai'anae Neighborhood Board when developers,
12 businesses would come in to put up an antenna. I
13 said, "What are you giving back to the community? You
14 gotta give something back. And if you're not, then
15 don't even come to us and ask." There has to be a
16 give back.

17 And if the community feels they're going to
18 benefit from that, then let their voice be heard. And
19 we've had scholarships because of that initiative,
20 even the landfills.

21 If it wasn't for me spearheading the fact
22 that -- and I only found this out through research
23 that on the national level states that -- there's only
24 four states that passed issues or policies governing
25 landfills. But it's also to say if you put a landfill

1 in this community you gotta pay something called host
2 compensation fees. So I had to do a lot of research.

3 Now, this developer, trust me, you know,
4 that's why I'm telling "talk to the developer. Don't
5 go hearsay," he said/she said. Now, all the cultural
6 pieces, I've done two pages of get your facts
7 straight.

8 Please read these where I compare the
9 comments being made and the facts. And if you do your
10 homework you're gonna see that there's a lot of
11 erroneous information being shared this evening.

12 I love my culture. I'm Hawaiian. I'm proud
13 to be Hawaiian. My mother's great grandfather was one
14 of the first pioneers on the Waianae Coast. So when
15 you talk about who knows what, my family -- my tutu
16 cowboy was one of the first pioneers. So we know
17 areas in the community. And she's -- you're right.
18 It is a secret. And we're not going to say anything
19 about where.

20 But if I thought the secret of the treasure
21 of the family's knowledge was being compromised I
22 would be the last person in support of this
23 development. We met with the various schools in the
24 community.

25 MR. DAVIDSON: Kimo, 30 seconds.

1 THE WITNESS: We have the lowest achieving
2 schools in the State of Hawai'i. If you read the
3 newspapers Nanakuli High School is the number one
4 failing school in the state. So with this development
5 the schools, the teachers are excited. They see
6 possibilities here.

7 This is not heavy industrial. This is light
8 industrial. The teachers looked at all the things
9 that can be permitted that falls right in line with
10 robotics, all these different programs that are being
11 offered at our schools as the national Arney Duncan
12 said, "Economic development goes hand in hand with
13 education and improving the stamina, the worth."

14 So there's no way we can improve education
15 when we have homeless. There needs to be some kind of
16 economic development generated in the community so
17 that these children can feel like there's something
18 they have to look forward to. And right now there is
19 none.

20 So please read my testimony. There's tons
21 of things I want to say. The bottom line is I hope
22 you folks are getting your facts straight. Because I
23 hear a lot of emotions.

24 I hear a lot of you know, "Stop. Don't do
25 this. Don't do that." Names being thrown out. I was

1 here with Uncle Kamaki's testimony. Not once did he
2 say the land was wasted. He never made that comment.
3 So when I kept hearing, "the land is wasted," no way.
4 In Nanakuli -- that's why I don't even -- when the
5 developer starts to say, "Oh, well, you know the land
6 is..." No. In Hawai'i everything grows. I don't
7 care where you throw it. It grows. So no land is
8 wasted. No land is junk. All the land is good. It's
9 how we take care.

10 I'm also a farmer, by the way. Agriculture
11 is important. We have a pikake farm. So I am
12 concerned about agriculture, culture. But I'm now
13 concerned about the future of this community.

14 MR. DAVIDSON: That's time.

15 CHAIRMAN DEVENS: Thank you, Kimo. Any
16 questions for this witness?

17 MR. YUEN: Just one. So you support the
18 Project, Mr. Keli'i?

19 THE WITNESS: Wholeheartedly.

20 MR. YUEN: Thank you.

21 CHAIRMAN DEVENS: Any other questions for
22 the witness? Commissioners? There being none, thank
23 you.

24 MR. DAVIDSON: Roberta Searle followed by
25 Kahu Kila.

1 ROBERTA SEARLE

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

4 THE WITNESS: I do.

5 CHAIRMAN DEVENS: State your name and
6 address, please.

7 THE WITNESS: My name is Roberta Lehulu
8 Waialae Searle, third generation from Nanakuli. I
9 live at 85-538 Wai'anae Valley Road, Waianae, Hawai'i.
10 Aloha kakahiaka. I'm a Hawaiian cultural practitioner
11 in that I have been a born again Christian since 49
12 years ago, April in 1962.

13 In AD 400 the Hawaiians discovered and
14 settled Hawai'i. And they were one god-believing
15 people. In AD 1300 Pa'ao from Tahiti City came and
16 concurred the Hawaiian Islands and then instituted the
17 kapu system.

18 In the 1800s God gave the Hawaiian people a
19 dynasty through the Kamehamehas. And King Kamehameha
20 the Great united the Hawaiian Islands. In 1819 of
21 April King Kamehameha I died.

22 In 1819, of October 3 the two highest ali'i
23 in the land, Queens Ka'ahumanu and Ke'opuolani, wives
24 of King Kamehameha I abolished the kapu system. This
25 was done without Christian influence because it wasn't

1 until 6 months later in 1820 in April that the
2 missionaries arrived from Boston. On her deathbed
3 Queen Ke'opuolani is noted to have said, "Ua mau ke ea
4 o ka 'aina i ka pono o Iesu Kristo."

5 "The life of the land is perpetuated in the
6 righteousness of Jesus Christ."

7 In 1837 to the 1850s there was a period
8 known as "The Great Awakening". In the 1853 census
9 that was taken it was reported that 96 percent of
10 Hawaiian people were Christians.

11 In the book "Ruling Chiefs" on Page 303
12 Queen Kapiolani defied the Goddess Pele. And she
13 stated that, "If I am destroyed by Pele then you, my
14 people, believe Pele. But if I am preserved by Akua,
15 then you people will know that all of our Gods are
16 vain and Akua is who you need to believe in."

17 MR. DAVIDSON: 30 seconds.

18 THE WITNESS: In 1893 Queen Liliu'okalani,
19 who was overthrown on January 17th, says -- and she
20 was overthrown through charges of treason and paganism
21 and sorcery -- she is noted to have said in her book,
22 "Hawai'i's Story by Hawai'i's Queen" on page Roman
23 Numeral XII, "The people to whom your fathers told of
24 the living God, and taught to call Father, and whom
25 the sons now seek to be despoil and destroy, are

1 crying aloud to him in their time of trouble." That's
2 her Hawaiian people. "And He will keep his promise
3 and He will listen to the voices of His Hawaiian
4 children lamenting for their homes.

5 "How can He listen to the voice of His
6 Hawaiian people if Akua is not our God?"

7 I don't negate the validity or our history
8 as far as our cultural significance is concerned. But
9 I want to reemphasize the fact that if we are to live,
10 Hawaiian people are to live, our true legacy, our true
11 heritage, we need to recognize the wisdom of our
12 kupuna, the wisdom of our na ali'i who state that we
13 have to turn from our pagan ways and we have to
14 believe in Akua.

15 I'm in favor of this. I don't negate
16 anything culturally significant about this property.
17 If -- I can go on further. I am a -- I'm also a
18 farmer. And if you look at 96 acres that are to be
19 converted from farming to light industrial, just note
20 that on the Waianae Coast there are 140,000 acres that
21 are being underutilized. Because in the 2008 Mayoral
22 Report, only 2 percent of agriculture came from the
23 Waianae Coast. We have so much agricultural land that
24 we can use and this is not a tradeoff. This is a
25 trade-up because agriculture will be addressed. Thank

1 you very much.

2 MR. DAVIDSON: That's time. Thank you.

3 CHAIRMAN DEVENS: Any questions for this
4 witness?

5 MR. YUEN: None.

6 MS. TOWNSEND: I have two questions.

7 CHAIRMAN DEVENS: Go ahead.

8 MS. TOWNSEND: Aloha. I thank you for
9 testifying. You're Kimo Keli'i's aunty, yeah?

10 THE WITNESS: Yes, I am.

11 MS. TOWNSEND: And are you a paid consultant
12 for Tropic Land?

13 THE WITNESS: Yes, I am.

14 MS. TOWNSEND: Thank you very much.

15 CHAIRMAN DEVENS: Any other questions for
16 this witness? There being none, thank you for your
17 testimony.

18 MR. DAVIDSON: Kahu Kila followed by Kaiawe
19 Makanani.

20 KAHU KILA

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

23 THE WITNESS: Yes, I do.

24 CHAIRMAN DEVENS: Please state your name and
25 address, please.

1 THE WITNESS: Aloha. My name is Kahu Victor
2 Kila, 87-143 La'anui Street, Princes Kahana, Nanakuli.
3 I'm a third generation resident of Nanakuli, born and
4 raised there. And I'm also a third generation kahu of
5 men who have been serving congregations in the
6 Nanakuli area.

7 I'm here this morning, Commissioners, to
8 reiterate some facts courtesy of my colleague Kimo
9 Keli'i.i. And there are four reasons I'd like to
10 support the program. The first is cultural.

11 As a Hawaiian Tropic Land, LLC has committed
12 to acknowledging and honoring and respecting the
13 Legend of Maui and Hina's Cave by dedicating a place
14 on the Nanakuli Community Baseyard property for these
15 cultural facts and treasures to be memorialized.
16 They're not here to desecrate that but to memorialize
17 that.

18 Community-wise Tropic Land, LLC has promised
19 a \$1 million benefit package for the Nanakuli-Mailii
20 community as an incentive for funding programs and
21 events. These \$1 million are needed monies for our
22 community, for our schools and for our activities.

23 Economically Nanakuli Community Baseyard
24 Project is seeking and soliciting Waianae Coast
25 business owners and entrepreneurs with renting or

1 purchasing warehouse incubator space at its sites
2 first before marketing goes out to the general public.
3 There are already incubators and units that have been
4 put in reserve for various Wai'anae Nanakuli nonprofit
5 entities.

6 Employment-wise: The Nanakuli Baseyard
7 Community Project is proposing the creation of new
8 employment opportunities and vocational experiences
9 for the residents of the Waianae Coast. I support
10 this program adamantly because of what it will do to
11 our community, create more jobs.

12 On a spiritual note I also learned that in
13 the Campbell Industrial, Light Industrial Park there's
14 a church that's been established there and it's called
15 the Church of Jesus Christ of Latter Day Saints, the
16 Mormon Church, built on the light industrial park.

17 If that is possible I'm seeking
18 opportunities to establish a church in this community
19 area. And I think it's culturally fitting because
20 just as Maui held the sun we would like to be the
21 bearers of that same light in the community. Thank
22 you very much.

23 CHAIRMAN DEVENS: Any questions for the
24 witness?

25 MR. YUEN: No questions.

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

3 MR. DAVIDSON: Makanani in followed by Rocky
4 Naeole.

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

8 THE WITNESS: I do.

9 CHAIRMAN DEVENS: State your name and
10 address please.

11 THE WITNESS: Aloha. My name is Kaiawe
12 Makanani. My address is 89-234 Pili'la'au Avenue,
13 Nanakuli, Waianae, 96792.

14 I'm here today to testify in support of the
15 Nanakuli Community Baseyard Project. I'm also
16 involved in a lot of community organizations and
17 associations. I'm also a member on the Nanakuli Maili
18 Neighborhood Board. I'm the president of the Nanakuli
19 PTSA. There's just a whole list of other programs and
20 organizations that I'm involved in.

21 I'm a proud graduate of Nanakuli High School
22 and also a proud graduate of Arkansas State
23 University. My family owns several floral farms in
24 Wai'anae, Lualualei Valley as well as Wai'anae Valley.

25 As a student at Arkansas State University I

1 was exposed to agricultural production. I mean
2 agriculture was everywhere. You saw crops of wheat,
3 corn, rice. So definitely as far as being a student
4 at Arkansas State, I was definitely exposed to
5 agriculture at its fullest definition. I had friends.
6 I had professors that either owned farmlands or it was
7 inherited from their families. I also maintain and
8 operate my family's farm in Wai'anae.

9 And regarding this Project. As far as our
10 community give-back this Project is also talking to
11 different farmers about establishing an agribusiness
12 incubator on this site.

13 I've done a lot of research and done a lot
14 of homework as far as agriculture here in the state.
15 And there is entities from the City, from the state
16 and the federal government that actually support and
17 offer assistance, technical assistance, to farmers to
18 establish agribusiness, agritourism, agritainment.

19 So there's a whole list of a variety of
20 different agribusiness activities that can occur
21 anywhere in the state. So specifically in Nanakuli --

22 MR. DAVIDSON: 30 seconds.

23 THE WITNESS: -- as far as the site is
24 concerned, this Project, this is definitely a win/win
25 situation for the community. As far as agricultural

1 services, in Arkansas there's -- every town that I
2 went to provided agricultural services to farmers. On
3 the Waianae Coast there is none. We've got to drive
4 out of our community.

5 With the gas prices going up it's
6 ridiculous. You gotta go Campbells, you gotta go
7 Pearl City, we gotta go to Mapunapuna.

8 We want one in our own backyard so I can
9 walk to this agribusiness incubator instead of
10 driving.

11 So, again, I just want to reiterate my
12 support of this Project. And I look forward to
13 increasing the productivity of agriculture since a lot
14 of people who are not farmers talking about how prime
15 agricultural land is important to Hawaiians.

16 I'm a farmer. I live it, I work it. So you
17 talk about malama 'aina, I'm doing it right now.
18 Thank you. Mahalo.

19 MR. YUEN: No questions.

20 CHAIRMAN DEVENS: Any other questions for
21 the witness? There being none, thank you very much
22 for your testimony.

23 MR. DAVIDSON: Naeole followed by Michael
24 Lee.

25 xx

1 the pay that you had it was really hard work. And,
2 you know, from shoveling manure to planting crops it
3 was really hard work. Then we decided to -- I decided
4 to go outside Wai'anae.

5 MR. DAVIDSON: Excuse me, sir, 30 seconds.

6 THE WITNESS: Ooh, that was fast. Back then
7 there was no transportation. So the only way to get
8 to work was either you hitchhike or walk, walk in
9 town. It took me, like, four hours to hitchhike and
10 walk to the airport.

11 But now with the help of Tropic Lands we can
12 have businesses here over in Nanakuli, in Waianae to
13 help support our community. Again, the Waianae Rotary
14 Club supports Tropic Lands 100 percent. Any
15 questions?

16 CHAIRMAN DEVENS: Any questions for this
17 witness from the parties? Commissioners? There being
18 none, thank you for your testimony.

19 THE WITNESS: Mahalo.

20 MR. DAVIDSON: Michae Lee followed by Sean
21 Mullen.

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

25 THE WITNESS: I do.

1 CHAIRMAN DEVENS: Your name and address.

2 THE WITNESS: 91-1200 Keanui Drive 'Ewa
3 Beach Hawai'i, 96066. My family has been in the
4 presence of Wai'anae Uka since 1983 Captain John Meek
5 who came to Hawai'i in 1809. The Big Tree Ranch,
6 5,000 acres.

7 What confused the Commission last time was
8 Kamaki Kanahale's testimony belonging to Kamehameha's
9 family line of Kalani Kauleleiaiwi. Amelia Gora, the
10 official Kamehameha genealogist for the family, does
11 not recognize this, neither does Aunty Hannah
12 Kaniaikala. This is a fabrication of a genealogy that
13 confused this board.

14 My family through the Meek family married in
15 to Princess Kepo'okalani is recognized by SHPD and the
16 O'ahu Island Burial Council also to King Kalanikapule
17 in closed session which I cannot reveal under section
18 6(e) at this time. But I've asked for those records
19 to be released.

20 Also it was brought up that in the testimony
21 of Kamaki on Page 30, section 4 to 6, quote, "And this
22 specific area that's in question absolutely flat land
23 and to all of the kupunas including those in mama's
24 book, was simply a foot path and called wasted."

25 I beg to differ from testimonies that are

1 being heard. The underground caves that basically for
2 families, strategy of fishing for the underground
3 caves that connect to the ocean which I have taken
4 groups out to show that the cultural practice services
5 at the sea from the freshwater that travels
6 underneath. No amount of bribes to the community once
7 broken into will replace the cultural practice
8 damaged.

9 By the way, Kamehameha III was never
10 baptized. So it says Papa I'i in his documents at the
11 state archives.

12 Article XII of the constitution protects
13 Hawaiian cultural practice whether you choose to
14 believe it still exists or not. It's part of law.
15 That's why OHA was formed. That's another point that
16 has to be considered here.

17 So I'm opposed to this Project as a cultural
18 practitioner and part of the Kamehameha line that is
19 recognized by the state and Amelia Gora, who Princess
20 Abigail Kawanakoa puts her genealogy for Amelia to
21 look over.

22 MR. DAVIDSON: Excuse me, 30 seconds.

23 THE WITNESS: So I'm definitely against this
24 Project on multiple reasons. Thank you very much.

25 CHAIRMAN DEVENS: Any questions for this

1 witness?

2 MR. YUEN: No questions.

3 CHAIRMAN DEVENS: Commissioners? There
4 being none, thank you.

5 MR. DAVIDSON: Sean Mullen followed by
6 Daniel Gomes.

7 SEAN MULLEN

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

10 THE WITNESS: Yes, I do.

11 CHAIRMAN DEVENS: Thank you. If you could
12 tell us your address.

13 THE WITNESS: Name is Sean Mullen. Address
14 46-469 Holoka'a Street in Kaneohe, 96744. I'm here to
15 testify in support of this Project. I work for
16 Symmetric, president of Symmetric.

17 We've been working with DBED and the state
18 to identify pieces of land that will be good for solar
19 development, usually ones with lower agricultural
20 classifications and D and E agricultural.

21 We actually identified this plot of land
22 that they're trying to develop right now. What we
23 really want to do here is support these guys in
24 developing the land, but we want to try to make, see
25 if we can get it to be smaller and install a

1 photovoltaic system on the back part of the lands that
2 we're talking about.

3 I do have a map here if you guys would like
4 to take a look at what we're proposing to do. This
5 solar project will be enough power to power close to a
6 thousand homes in the area. It will lower the cost of
7 electricity for the community.

8 It will also create jobs, about 30 jobs for
9 this Project, and will work very well in their
10 proposal for the industrial classification. I guess
11 that's really all I have at this moment.

12 CHAIRMAN DEVENS: Any questions for this
13 witness?

14 MR. YUEN: No questions.

15 CHAIRMAN DEVENS: Ms. Townsend?

16 MS. TOWNSEND: I have two questions. Thank
17 you very much for testifying. I was just curious.
18 This is the first I've heard of your project. So at
19 what point -- did you identify this area before or
20 after Tropic Lands?

21 THE WITNESS: I guess after -- we identified
22 maybe a few months ago. I'm not sure when this whole
23 thing started. Just ended up trying to find out where
24 the landowner was, found out that this was in a review
25 process. And that it's a lot easier for us to build a

1 solar project on agricultural land than on industrial
2 land.

3 MS. TOWNSEND: I understand. Thank you. My
4 second question is: In your review of the property
5 are you aware of the shadow that's cast by the
6 ridgeline of Pu'u Heleakala?

7 THE WITNESS: I very well am. We were out
8 there a couple weeks ago. And we did a complete
9 analyzation of all of the lands. We would probably
10 get more solar resource by the street, but we only
11 lose about 3 or 4 percent by pushing it back towards
12 the rear part of the land, leaving the front part
13 available for development.

14 MS. TOWNSEND: Thank you.

15 THE WITNESS: Thank you.

16 CHAIRMAN DEVENS: Any other questions?
17 Commissioner? There being none, thank you.

18 MR. DAVIDSON: Daniel Gomes followed by JR
19 Keoneakapu.

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

23 THE WITNESS: I do.

24 CHAIRMAN DEVENS: Give us your address,
25 please.

1 THE WITNESS: A live at 86-232 Alamini
2 Street. That's in Wai'anae. I grew up in Waianae. I
3 grew up in Lualualei Valley surrounded by farms.
4 Today over time most of those farms have faded away
5 essentially because of the upcoming generation. The
6 families, the kids didn't want to take on that
7 responsibility or do that type of work.

8 And today if we look at the community, a lot
9 has changed. I made the commute from Waianae to
10 Honolulu because that's where my job was for three
11 years. Prior to that I went to the University of
12 Hawai'i for a couple of years. So that's a total of
13 40 years on the road.

14 My dad made that commute for about the same
15 amount of time before me. Today my son is making that
16 commute. And shortly my daughter will start making
17 that commute. And the reason for that is that there
18 are no job opportunities in the Waianae community.

19 I recently talked to a number of people,
20 young people, people who have gone away to college and
21 because of their commitment to the community have come
22 home because they wanted to do that. They wanted to
23 try to make a difference.

24 They're having a very, very difficult time.
25 These are real people today who are looking for

1 opportunities to make their way in the world. And
2 they can't do it. So the only option to them for many
3 of them at this point is to leave and to find a
4 community willing to support their dreams.

5 Unfortunately for us as a community that's
6 happening right now. It's going to be very, very
7 difficult to get them to come home once they leave.

8 You know, I recently looked at some
9 employment opportunities on the mainland. If you're
10 in the IT business you can get a job starting at 80 to
11 \$85,000. Here the same job pays maybe 45/50 if you're
12 lucky to find it.

13 My concern is for the upcoming generations.
14 I admire everyone's perspective. I believe everyone
15 has a right to be heard. I believe in agriculture and
16 supporting it.

17 MR. DAVIDSON: Excuse me, sir, 30 seconds.

18 THE WITNESS: The Tropic Land Project will
19 bring a lot of jobs into the community, not only with
20 the initial Project but also with the projects that
21 are proposed to be a part of this development. And
22 again I support this Project 100 percent.

23 There are tons of people who do that as well
24 but cannot make it to the hearings simply because they
25 can't afford to take the time off from work, a lot of

1 whom are working two or three jobs just to make ends
2 meet. This is something the community needs. It's
3 critical for the sustainability of the community, and
4 I hope that decisions made here by this council will
5 support that. Thank you.

6 CHAIRMAN DEVENS: Thank you for your
7 testimony. Questions for this witness?

8 MR. YUEN: None.

9 CHAIRMAN DEVENS: There being none, thank
10 you very much.

11 MR. DAVIDSON: Keponi Kapu followed by Maria
12 Sampson?

13 J.R. KEPONI KAPU
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: Yes.

17 CHAIRMAN DEVENS: Give us your address,
18 please.

19 THE WITNESS: Aloha. My name is J.R. Keponi
20 Kapu. Currently I reside at 'Ewa Beach, 5330-B
21 Edgewater.

22 You as Commissioners have a kuleana to hold
23 this place in perpetual righteousness and should not
24 allow the continued genocide of not only our cultural
25 beliefs but most important, the significant spiritual

1 site that this place holds.

2 How is this beneficial to us as a native
3 people when we were once deeply connected to this
4 place with proof through oral history with chants --

5 MS. ERICKSON: Could you slow down.

6 CHAIRMAN DEVENS: The court reporter has to
7 take down what's you're saying.

8 THE WITNESS: -- with chants like Hina, our
9 beloved deity of the moon, and her son our beloved
10 demigod Maui came to this special place. Do you
11 realize you as a board is making an important decision
12 to allow Tropic Lands to continue to desecrate this
13 ancient religious site?

14 All the ancient knowledge of this place has
15 survived many years of genocide. And I am very
16 grateful to have learned about this place. But my
17 heart breaks that I feel it is too late.

18 Why do you continue to take away our
19 inherent birthright to malama these places? My family
20 are strong cultural practitioners from the Island of
21 Maui and we stand up against the desecration of a lot
22 of our ancient sites.

23 It is very unfortunate to obtain knowledge
24 like this when in reality I'm here fighting for you
25 folks to stop desecrating it. We as a people who has

1 been so disconnected from our ancient spiritual past
2 need to acknowledge that this place really does exist
3 and we should be rezoning it back to conservation.

4 Tropic Lands has been illegally mining rocks
5 from this place for years with some of the pohaku
6 returning to its place of origin due to bad things
7 happening.

8 Instead of rewarding them you're giving them
9 exactly what they want, with this rezoning, which is
10 in the Wai'anae Sustainability Plan you are not only
11 rezoning what you call ag lands, you should be
12 preserving it.

13 And you guys are allowing them to build a
14 bypass road through the mountain which we hold deep in
15 our hearts. Are we truly ready for another H-3 where
16 lots of people got hurt desecrating religious sites?

17 Again, I strongly oppose this from any
18 further action. In fact it should be rezoned back to
19 conservation.

20 I'm here as a private individual who's not
21 representing anyone but myself. Though I am not a
22 cultural practitioner yet I do know and feel that this
23 place is sacred. Mahalo.

24 CHAIRMAN DEVENS: Thank you. Any questions?
25 None. Thank you.

1

MARIA SAMPSON

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

4 THE WITNESS: I do.

5 CHAIRMAN DEVENS: Your address, please?

6 THE WITNESS: 87-161 Manaoioi, Waianae,
7 Hawai'i. My name is Maria Sampson. I'm opposed and
8 totally against this light industrial park which
9 valleys are lush and green, mountains high with high
10 mountain peaks peeking over the land. Which I don't
11 practice the history.

12 I knew much of it until things that was seen
13 and brought upon me and dug up by the people who own
14 the land, who mined the land, who dumped on the land
15 was aware, far aware of what was going on on this
16 property, but turned the other way because of the
17 almighty dollar.

18 I hear from Kimo, which I don't really know
19 this man, and many others today, it comes behind the
20 dollar. What you can do for me I can do and then you
21 give me comes back in dollar form.

22 So I'm asking the people today to really
23 look at the whole picture because the people of
24 Wai'anae is not to be bought and to be sold for
25 somebody to make a profit. We are far worth more than

1 that. Thank you.

2 CHAIRMAN DEVENS: Thank you. Any questions
3 for this witness?

4 THE WITNESS: And by the way, Project
5 manager, trust no one. And this is the Project
6 manager. Who's running that Project of Tropic Lands,
7 LLC? Shame on you and shame on them. Thank you.

8 MR. YUEN: No questions.

9 CHAIRMAN DEVENS: Thank you for your
10 testimony.

11 MR. DAVIDSON: I've got a name I can't read
12 it all so I'm going to use the address: 1311
13 Houghtailing. Sorry.

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

17 THE WITNESS: Yes, I do. I'm Lance
18 Yoshimura from the Hawai'i Carpenters Union.

19 CHAIRMAN DEVENS: Lance, can you give us a
20 mailing address.

21 THE WITNESS: 1311 Houghtailing Street.

22 CHAIRMAN DEVENS: Thank you. Go ahead.

23 THE WITNESS: Well, I'm representing the
24 carpenters. For us this Project that we won't
25 probably get much work out because light industrial is

1 not part of our scope of work mostly, we're looking at
2 this Project 'cause like 50 percent of our O'ahu
3 members are from the West Coast. This Project has
4 two -- three points actually is beneficial to the
5 community and some of our members.

6 First of all, I would like to touch on the
7 digital media incubator that is planned for the
8 Project. As you guys are well aware Wai'anae High
9 School and Nanakuli excels in their media programs
10 there.

11 This incubator would be kind of a step for
12 the younger people who's not attending the high
13 schools and maybe some that transitioned out. And
14 it's an opportunity for more success in the community
15 in this field.

16 Another point would be the photovoltaic
17 farms. You know, you can see what's happening in the
18 world today, the sustainability, energy. I think
19 that's a good point for the community overall. And
20 one more point would be farming. I'm not a farmer.
21 But there's a lot of controversy about farming.

22 There's very small farmers here that make
23 ends meet just to get by, not big farming. I think it
24 brings employment to the community that this
25 industrial project will bring employment to the

1 community and will be a home base for local companies
2 that are based in the community.

3 Like once again, for us it's not about the
4 jobs because we don't do much of the work and we're
5 not guaranteed any of the work there. Thank you.

6 CHAIRMAN DEVENS: Okay, Lance. Any
7 questions for this witness?

8 MR. YUEN: No questions.

9 CHAIRMAN DEVENS: There being none, thank
10 you for your testimony.

11 THE WITNESS: Thank you.

12 MR. DAVIDSON: Jack Dafeo followed by Eileen
13 Luca. This page may have been folded over so people
14 couldn't really write very well. I apologize.

15 CHAIRMAN DEVENS: If I can swear you in.

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

19 THE WITNESS: Yes, I do.

20 CHAIRMAN DEVENS: Your name and address,
21 please.

22 THE WITNESS: My name is Jack Dafeo. And I
23 reside at 84-740 Kili Drive Apartment 1321, Makaha.

24 CHAIRMAN DEVENS: Go ahead, Jack.

25 THE WITNESS: I'm here to -- I'm vehemently

1 opposed to this light industrial. The ag lands that
2 were there that used to grow food are still viable.
3 Anything you hear today that it may be not viable is
4 untrue. And there are many farmers who are looking
5 forward to the opportunity to continue their
6 tradition.

7 The major point to all of this is the
8 agricultural land is the heartbeat of this island. If
9 you take that away and introduce light industrial and
10 rezone it to take the zoning of their agricultural
11 land away, you are defeating not only the
12 opportunities for here today but well into the future.

13 This light industrial plan was ill-conceived
14 without any forethought of the future impact of many
15 years down the road that will adversely negate the
16 quality of life. You can't survive without viable
17 agricultural land. We're talking about food security.

18 It is essential that if this island is to
19 survive well into the future you must have a
20 sustainable source of healthy produce. You will hear
21 later on a lot of people who have been farming this
22 land that will tell you the opportunities for job
23 growth are there.

24 The jobs that are being proposed now I'm
25 telling you from my perspective is a carrot on a

1 stick. Leave ag land as it is.

2 This light industrial park doesn't belong
3 there. It could be taken elsewhere. All I'm saying
4 is think for the future, not for the moment, monetary
5 gain of today but well into the future. It is vital
6 that you see this. Ag land is the heartbeat of this
7 island and the state of Hawai'i. We're looking at
8 severe adverse changes well into the future in the
9 economy.

10 MR. DAVIDSON: Thirty seconds, sir.

11 THE WITNESS: So think from your heart.
12 Please use your conscience and let that be your guide.
13 Thank you.

14 CHAIRMAN DEVENS: Any questions for this
15 witness?

16 MR. YUEN: None.

17 CHAIRMAN DEVENS: Thank you.

18 MR. DAVIDSON: Luca followed by Pali Grace.

19 THE WITNESS: Aloha. It's Lucero, Spanish.

20 ERLINE NAWAIOMAKANA NULANG LUCERO

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

23 THE WITNESS: Yes.

24 CHAIRMAN DEVENS: Your name and address.

25 THE WITNESS: Aloha. My name is Erline

1 Nawaiomakana Nulang Lucero. I'm fourth generation.

2 I'm from the Ho'opulapula o Nanakuli Homestead.

3 Basically I'm here today on behalf of my
4 family and my kupuna. Gandhi -- Mahatma Gandhi said,
5 "Freedom is not worth having if it does not connote or
6 involve freedom to err."

7 I have erred and have caused my family and
8 kupuna much distress. I am a member of the Nanakuli
9 Homestead Community Association that voted in October
10 after a presentation given by Aunty Roberta Searle
11 from Tropic Land, LLC as their cultural specialist.

12 I voted to support it. I took home the
13 flier to my family. And my friends started to ask me
14 questions, questions I could not answer because this
15 was the first time in my life I took a vote based on
16 my friends that I've known for over 25 years because I
17 sat on the neighborhood boards. I sat on community
18 boards. And I knew these people would cooer do good
19 things.

20 But after I researched and found that Tropic
21 Land, LLC was requiring or requesting to rezone to a
22 light industrial actually going from preservation to
23 ag and now light industrial, but in my mind I see
24 urbanization of that whole area, not only their place.

25 To my sons all they saw, first of all was,

1 "Mom, you did it. Urban land down to Nanakuli. Thank
2 you. It's done."

3 I said, "I said no if I can be. I can give
4 my testimony, we can change it. Hopefully we can
5 change it."

6 So that's why I'm here today. I'm Hawaiian
7 and I'm American. And I have to believe democracy and
8 structures and boards like yours, the Land Use
9 Commission set up by our government to protect us the
10 people. Even when my mind knows that money is all the
11 government understands, that is the impetus for
12 stabilizing the economy.

13 But where are the laws that protect our
14 sacred 'aina, our sacred sky, our sacred water from
15 investors who love only money? Money drives investors
16 to our beautiful idyllic shores to buy our sacred
17 'aina with the iwi of our kupuna.

18 We changed laws, but we don't have laws that
19 protect all of this. I know the 'aina is a living
20 being. It breathes, it cries, it wants to bring forth
21 great things to heal our state and the people of
22 Hawai'i Nei.

23 So I cut through all these things so I'll
24 just leave you with this quote and I'll leave my paper
25 with you. Martin Luther King, Jr. said, "We have

1 strong men but weak minds. We have power to hate but
2 not the mind to conceive of kindness. We have fists
3 but not hearts. We are misguided men with missiles in
4 our hands."

5 Another quote, "Landless, homeless victims
6 to the greed and vices of civilization, they are
7 slowly sinking under the restraints and burdens of
8 their surroundings and will in time succumb to social
9 and political conditions foreign to their natures and
10 poisonous to their blood.

11 "Year by year their footprints will go dim
12 along the sounds of the reef-sheltered shores. And
13 fainter and fainter will come their simple songs,"
14 (pausing, crying) "from the shallows of the ponds
15 until finally their voices will be heard no more
16 forever."

17 This was given by United States Minister
18 resident to the Kingdom of Hawai'i Roland M. Daggert,
19 "See the cries of the Native Hawaiians" in 1887.

20 So I leave this with you and know that
21 although I voted initially for this Project I now sit
22 and stand for my family in opposition of it under the
23 basis it is not a good thing. Thank you.

24 CHAIRMAN DEVENS: Thank you. Any questions
25 for this witness? (Applause).

1 MR. YUEN: No questions.

2 CHAIRMAN DEVENS: There being none, thank
3 you.

4 MR. DAVIDSON: Last witness Polly Granny
5 Grace.

6 POLLY GRANNY GRACE

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

9 THE WITNESS: Always do.

10 POLLY APOLONIA KEALUWAILUKINI MILLER FLORES GRACE

11 CHAIRMAN DEVENS: Please can state your name
12 and address please.

13 THE WITNESS: My real name is Polly Apolonia
14 Kealuwailukini Miller Flores Grace. But most of the
15 people on our side of the island calls me "Granny". I
16 have six children --

17 CHAIRMAN DEVENS: You have a mailing address
18 that you can give us for the record?

19 THE WITNESS: 87-1589 Kaukai Road. I'm the
20 only one that live on that road.

21 (Laughter)

22 CHAIRMAN DEVENS: Go ahead.

23 THE WITNESS: Okay. I have six children, 20
24 grandchildren and 26 great grands. At first I said,
25 yes, I supported it because of my business. I'm a

1 business person and we had to move to Campbell
2 Industrial to expand. And we've been there like 12
3 years already. But then my children and my
4 grandchildren reminded me of a story that I told them.
5 So I'm gonna tell you the story today. It's titled
6 "Cultural Respect".

7 Gramma Silva -- when I moved to Nanakuli my
8 husband was a reposessor. He went there to repossess
9 a car from one of our tenants. And she came out and
10 we started talking kuka kuka. And then she was
11 telling me about the place, Pohakea and how huhu she
12 was, upset in here because of what NED was doing to
13 her and no respect there.

14 She gave me my first ti-leaf plant that I
15 planted. And I still have it today. This woman told
16 me the story that Pohakea is a very sensitive area.
17 This area do have iwis, I'm sorry. And there are
18 people who wander in that area.

19 I know there was a mini industrial going on
20 when my daughter took me up there. And I look at the
21 road that they built, a bypass road from Puhawai to
22 NED road.

23 This woman told me this story that in this
24 area it was highly respected because of the ali'is who
25 used to join, venture there and have fun. And part of

1 it is still yet on NED. If you tell me there's no
2 ohanis there I will not believe you. Because when I
3 went there I had it. I had. I can feel. I'm very
4 sensitive to that kind of thing, cultural respect.
5 And I also wish that you folks think about it.

6 Maybe if you go further down away from that
7 area. I don't know how many acres you have. But the
8 sensitive area is right by the gate, all the way to
9 the pu'u that's there. They used to have horses and
10 cattle there.

11 The Silvas used to have that, they used to
12 raise that. But not enough grass would grow because
13 of the coral. So they had to relocate. And then when
14 the grass, rain, came green brought it back. And
15 that's how it was how it was utilized for farming.

16 But I looking at all of you, hopefully I can
17 touch your heart that this place is very sensitive.
18 And I thank my children and grandchildren for
19 reminding me about that. It's not the capital
20 dollars. It's the cultural Hawaiian respect that we
21 need to pass on to generations and generations.

22 These are not taught in school. You must
23 teach your family. And I'm glad I taught my family
24 that because they brought it back to me, "Granny,
25 cultural respect." Thank you.

1 CHAIRMAN DEVENS: Thank you for your
2 testimony. Questions? Any questions for this
3 witness?

4 THE WITNESS: Questions? No questions?

5 CHAIRMAN DEVENS: There being none, thank
6 you very much. Since that was our last witness we'll
7 take a 2 minute break for the court reporter. I'm
8 sorry, one more witness.

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

12 THE WITNESS: Yes, I do.

13 CHAIRMAN DEVENS: Give us your name and
14 address.

15 THE WITNESS: My name is Kyle Kajihiro. I'm
16 the program director for the American Friends Service
17 Committed Hawai'i Area Program. Address is 2426 O'ahu
18 Avenue, Honolulu, 96822. Thank you. I apologize for
19 being late and not getting in to sign up.

20 Our organization is a peace and social
21 justice organization that's worked with the Waianae
22 community for many years, since the 1970s, at least,
23 on issues of economic and environmental justice.

24 We know that Waianae is a community that has
25 been -- has suffered greatly because of the

1 exploitation, because of the dumping of military and
2 industrial toxins. And it's been deprived of
3 meaningful economic development. So it is a community
4 that deserves justice.

5 In our work with young people we also found
6 that one of the things that they were longing for, the
7 sadness that they had was that so much had been lost
8 of the quality of life that their kupuna once knew of
9 this community.

10 And that quality of life came from the
11 richness of the culture, the wealth of the 'aina, the
12 clean waters. And they're seeing that disappear
13 before their very eyes.

14 I think that economic development,
15 appropriate economic development is a good thing. And
16 I like the idea of an incubator. But I think that to
17 trade off this Project for the loss of the waiwai of
18 the land itself, the wealth of the land, is not a good
19 tradeoff.

20 Not all economic development is created
21 equal. And I'll use the example of fast food, if you
22 may. You can have McDonald's come into your
23 community. It provides affordable, abundant calories
24 that fill you up but in the end it can destroy your
25 health. We have an epidemic of diabetes and heart

1 disease and many other ailments.

2 On the other hand, 'ai pono may not give you
3 as much calories all at once, but it's a more balanced
4 and sustainable diet that builds up the health of the
5 body. And I would say that we have to look at what
6 kind of economic development we're talking about. If
7 it's just a quick fix that brings calories, empty, you
8 know, empty calories or empty dollars into the
9 community --

10 MR. DAVIDSON: 30 seconds, sir.

11 THE WITNESS: -- it could actually lead to
12 more disease in the future. On the other hand, the
13 development that's being proposed is based on the
14 waiwai, the wealth of this community such as Ma'o,
15 such as others that are looking for sustainable
16 alternatives.

17 I think that's something that contributes to
18 the long-term health and survival of the community.
19 So thank you very much. We oppose the Tropic Land
20 baseyard petition for rezoning. Thank you.

21 CHAIRMAN DEVENS: Thank you for your
22 testimony. Any questions for this witness?

23 MR. YUEN: No questions.

24 CHAIRMAN DEVENS: There being none, thank
25 you. We'll take a short break.

1 (Recess was held. 11:00 - 11:15.)

2 CHAIRMAN DEVENS: We're back on the record.
3 We concluded the public testimony. We're now moving
4 into the oral arguments. Mr. Yuen, do you want to
5 reserve any time for rebuttal?

6 MR. YUEN: Yes, I do.

7 CHAIRMAN DEVENS: Couple of minutes?

8 MR. YUEN: A few minutes, yes.

9 CHAIRMAN DEVENS: Parties are in agreement
10 that we can go 10 minutes as a closing to summarize
11 the points they want to make? Is that agreeable?

12 MR. YEE: Yes.

13 MR. YUEN: Yes.

14 CHAIRMAN DEVENS: Thank you. Go ahead,
15 Mr. Yuen.

16 MR. YUEN: Thank you very much.
17 Commissioners. The Tropic Land satisfies the
18 decision-making criteria that are set forth in HRS
19 section 205-17 and section 15-15-77 of your rules, as
20 well as the Urban District criteria.

21 I'll just briefly highlight the points in
22 terms of how we believe we have demonstrated
23 satisfaction with the decision-making criteria.

24 The first one: Conformance to the goals,
25 objectives, and policies of the Hawai'i State Plan,

1 its priority guidelines and functional plans.

2 We believe that this Project will further
3 the objectives and policies for the economy in
4 general, the State Employment Functional Plans and
5 particularly by expanding the level of economic
6 activity on the Waianae Coast, an area that has high
7 unemployment problems.

8 The lack of industrial land on the Waianae
9 Coast results or will result in a decline in business
10 activity. And the Department of Planning and
11 Permitting's prediction that the population will
12 increase while the level of employment decreases will
13 be a self-fulfilling prophecy.

14 The Urban District standards: First, is the
15 land characterized by city-like concentrations of
16 people, structure and level of services? We are in
17 close proximity to lands that is in the Urban
18 District.

19 The Pineridge Farms and a PVT Landfill are
20 large centers of employment, industrial employment at
21 Lualualei. And this Project is within a hundred feet
22 and is proximate to the center of employment -- within
23 800 feet of Pineridge Farms. Basic services such as
24 electricity and water and transportation are available
25 to the Petition Area.

1 And the Petition Area -- reclassification of
2 the Petition Area will provide a sufficient reserve
3 for foreseeable urban growth.

4 The Petition Area's topography is
5 satisfactory. The Petitioner has represented that it
6 will install a hundred foot-wide area that will
7 include both a rockfall mitigation measure as well as
8 a drainage swale to detain all excess rainfall from
9 the Petition Area in excess of rainfall generated by a
10 1-hour 50-year storm event.

11 As I stated before the land is in an
12 appropriate area for urban use being reasonably close
13 to the Pineridge Farms recycling center. It conforms
14 to the proposed Wai'anae Sustainable Community Plan
15 Update as well as the General Plan, City and County of
16 Honolulu General Plan that designates the economic
17 growth as a high priority.

18 The Waianae Sustainable Community Plan that
19 was adopted in the year 2000 is now 6 years overdue
20 for its 5-year revision. The Department of Planning
21 and Permitting has included the Petition Area within
22 the Community Growth Boundary and designates it as
23 part of the rural community area.

24 And the updated plan specifically mentions
25 and includes light industrial activities within the

1 Petition Area on the plan. The plan is presently
2 pending before the City Planning Commission.

3 To the extent the Project is consistent with
4 the Community Plan it will not contribute towards spot
5 zoning of the property.

6 Turning again to the other areas of the
7 decision-making criteria: There are no endangered
8 species on the property, either plants or fauna.

9 The maintenance of valued cultural and
10 historic or natural resources: This has been one of
11 the major areas of contention in this docket. The
12 Petitioner's primary cultural witness, Kamaki
13 Kanahale, he's the only Native Hawaiian cultural
14 practitioner who testified in this docket, was raised
15 in the vicinity of the Petition Area.

16 He testified that the Petition Area was used
17 as a pathway, was never used for gathering or for
18 cultural purposes. He testified that there was
19 nothing sacred about the Petition Area. And he
20 contradicted the Intervenors' claim that night
21 marchers frequented the Petition Area.

22 The Intervenors have claimed that Lualualei
23 Valley and certain features in Lualualei Valley
24 including Pohakea Pass, Ulehawa Stream, and
25 Pu'uheleakala played prominent roles in the mo'olelo

1 of Maui. We're not disputing this at all. But we
2 believe that the Supreme Court cases, particularly the
3 Ka Pa`akai O Ka `Aina case, which chided the Land Use
4 Commission for failing to consider the impact on
5 development of -- impact of development on customary
6 and traditional rights of Native Hawaiians, and the
7 PASH case which recognized the rights of Native
8 Hawaiians to exercise traditional and customary rights
9 over undeveloped land, both address traditional and
10 customary rights that are physical in nature: The
11 right to cross over undeveloped land to get to the
12 ocean for gathering of salt, of fish, to go fishing,
13 to worship, in mountain areas to go and gather flowers
14 for halau. These kinds of rights are the rights that
15 the Supreme Court recognized.

16 But the Supreme Court also said that the
17 rights of Native Hawaiians must coexist with and
18 cannot be used to completely stop all development,
19 particularly in the Pele Defense Fund case and the
20 Kalipi vs. Hawaiian Trust case the court suggested
21 that it would not be culturally appropriate for the
22 rights of Native Hawaiians claimants to take
23 precedence over the rights of others.

24 The court emphasized that the cultural
25 nature of the exercise of Hawaiian rights was to share

1 and to coexist. And in particular in recognizing
2 traditional rights it's one thing for the Commission
3 to say: There's a pathway or an area which has been
4 used to gather. Or there are a particular fishing
5 ground that you have to respect or heiau our burial
6 sites. Certainly in other dockets that I have
7 participated in that was a major factor.

8 But here we have a situation where claimants
9 are saying that the cultural landscape, which is more
10 of an ephemeral concept, it's not something that you
11 can go on the ground and say, "This is the exact spot
12 that Maui was born in." Or, "This is the exact route
13 of the path -- the path to Pohakea Pass."

14 So we're not in a position where we know
15 that we have to set aside a certain path. And for
16 that reason we believe that the Commission, while
17 taking cognizance of the cultural significance of the
18 area, cannot point to any one thing that it can set
19 aside and say, "Petitioner, you should allow a 10-foot
20 path along this route for gathering."

21 And we believe that the Commission is
22 well -- or it would properly be able to find that the
23 Petitioner should be entitled to develop the property
24 notwithstanding the cultural claims of the
25 Intervenors.

1 Turning to another major issue in this
2 docket, the impact of the property on agriculture. I
3 think the Commission has to separate the competing
4 claims of it's one thing for people to say, "Yes, this
5 is decent agricultural land," but let's look at what's
6 actually happened on this property.

7 First, the Arakis farmed this property
8 approximately 30 to 40 years ago. Our letter from
9 Mr. Araki indicated that he actually farmed only
10 approximately 17 acres of a 96-acre site. His letter
11 indicated that his experience was marginal at best.

12 Albert Silva, who ran cattle over the
13 remainder of the property, testified that the Arakis
14 did not do well. He testified that he left the
15 property because he found better land to pasture
16 cattle, which tells you that this is not the greatest
17 land in the valley.

18 John McHugh, our agriculture expert,
19 testified that the hot and dry climate results in a
20 high evapotranspiration rate which translates to
21 doubling the need for irrigation water to this
22 property.

23 And he also testified that there's no
24 readily available source of irrigation water. He
25 indicated that the route of Ulehawa Stream, which is

1 an itinerant stream, bisects the best farmland on this
2 property which is the reason why the Arakis could only
3 farm approximately 17 acres.

4 Dr. McHugh also testified that there's
5 sufficient agricultural land available, better
6 agricultural land available elsewhere on the island.
7 There is minimal impact on nearby agricultural
8 operations because of the landscape buffer.

9 Joe Lapilio, who operates an organic farm in
10 the same manner that Gary Maunakea Forth operates --

11 MR. DAVIDSON: Petitioner, you've used your
12 time.

13 MR. YUEN: Okay. I'll come back on
14 rebuttal.

15 CHAIRMAN DEVENS: City.

16 MS. TAKEUCHI-APUNA: DPP partially joined
17 Petitioner's proposed findings of fact, conclusions of
18 law and decision and order with a few recommendations.

19 Petitioner accepted the DPP's
20 recommendations but with some modifications which DPP
21 in turn is agreeable to. DPP takes no position on
22 this Petition for District Boundary Amendment but
23 provides the following two comments for the
24 Commission's consideration:

25 First, DPP would require that the Petitioner

1 have a signed agreement with the Navy for use of the
2 Lualualei Naval Road at the time of zone change
3 approval and not at the time of application for zone
4 change approval.

5 Secondly, although DPP has recommended a
6 change to the Wai'anae SCP to allow the proposed
7 industrial park, there's no guarantee that either the
8 Planning Commission or the City Council will support
9 this change.

10 For example, the North Shore SCP revisions
11 that DPP recommended were tweaked by both the Planning
12 Commission and the City Council. So major changes to
13 the Waianae SCP could easily be instituted by both
14 bodies. Thank you.

15 CHAIRMAN DEVENS: Mr. Yee.

16 MR. YEE: The Office of Planning has no
17 objection to the reclassification request by
18 Petitioner. We have, however, disagreed on the
19 particular Findings of Fact, Conclusions of Law and
20 even some of the Conditions.

21 We will, however, rest primarily upon our
22 pleadings regarding the specifics of those objections.
23 We only want to highlight four major concerns.

24 The first involves Lualualei Naval Access
25 Road. It is clear that Hakimo Road is unsuitable for

1 industrial-type traffic and that the TIAR is based
2 upon the assumption that access will be obtained
3 through Lualualei Naval Access Road. All the parties,
4 including Petitioner, agree that access through
5 Lualualei Naval Access Road must be obtained.

6 The disagreement comes as to what's the
7 appropriate condition. Petitioner says that they have
8 accepted the Navy's easement proposal. From the
9 Office of Planning's standpoint they have not obtained
10 an easement agreement.

11 That's because their acceptance of the
12 proposal is based upon resolution of several other
13 conditions or several other issues. These issues are
14 fairly important and are unresolved.

15 First is the time period of easement. Is it
16 going to be for 5 years? Is it going to be for 10
17 years? Is it going to be for 30 years? As we've
18 indicated we're expecting or looking for a 30-year
19 period of easement. The Navy has not yet agreed to
20 that time period.

21 Second: The upgrading and maintenance of
22 the road to city or state standards. Petitioner has
23 testified to you that they think they have already
24 satisfied this because there are no city or state
25 standards for the roads.

1 But if you examine Attachment 2 to
2 Petitioner's Exhibit 73, which is a letter from the
3 Navy to the City dated October 22, 2008, the letter
4 indicates that the Navy had offered to give the road
5 or to dedicate the road to the City. But that the
6 City had said that one of the conditions was that the
7 road conform to City standards.

8 Based upon that the Navy was unwilling to
9 make any improvements to the road and therefore
10 withdrew their proposal for dedication.

11 This indicates to the Office of Planning
12 that there are some standards that must apply and that
13 there must be some amount of money that will have to
14 be spent to improve the road.

15 Consequently, there's going to be at least
16 some issue still pending or that there was a real
17 issue still pending regarding the upgrading and
18 maintenance of the road to City or State standards.

19 The third is a requirement to obtain an
20 agreement by all existing licensees to maintain and
21 repair the road according to a schedule. The
22 Petitioner has said that there are talks between these
23 licensees but no agreement.

24 According to Petitioner, in, again,
25 Attachment 9 to Petitioner's Exhibit 73, the estimated

1 current cost of maintenance is around \$57,000 a year.

2 We will say that although there are probably
3 going to be some increased costs to this maintenance
4 amount, we don't agree with Intervenor that the costs
5 is like the maintenance costs are likely to be
6 1.4 million. It very likely could be above 57,000 but
7 not approaching the Intervenor's proposed position.

8 Nevertheless, according to Petitioner's
9 exhibit, the \$57,000 figure is higher than the
10 existing license fees that are currently charged to
11 the existing users.

12 This would indicate that the existing users
13 would have to pay more money for their annual
14 maintenance than they are currently paying to maintain
15 their license.

16 This is not to say that these licensees are
17 unwilling or will not be willing to reach an
18 agreement. It's simply to indicate that there is a
19 significant issue that's not been resolved and that
20 there's no certainty of resolution. And that these
21 licensees will also have to pay or are likely to pay
22 for any cost to upgrade the road whose costs are
23 currently unknown.

24 Finally, there's also a requirement to pay a
25 fair market value for the easement. The amount has

1 not yet been determined. Because of this the easement
2 is not a certainty and the various parties have
3 submitted to you four different options as what to do
4 about the issue.

5 For Petitioner they have proposed that it is
6 the condition of the unilateral agreement that an
7 easement be obtained. No deadline, no requirement as
8 to when it will be obtained, just that it's a
9 requirement within the unilateral agreement.

10 The County wants an easement executed prior
11 to the actual County zone change.

12 The Office of Planning wants the easement
13 prior to the zone change application and within 5
14 years.

15 And the Intervenor wants one prior to the
16 LUC application. And therefore argues that the LUC
17 application should be denied.

18 For the Office of Planning, although we are
19 similar, I think, to the County's position the
20 difference is because for us the acquisition of
21 long-term access to Lualualei Naval Access Road was
22 central to our support.

23 The Petitioner says they can do it and OP is
24 willing to give them that opportunity. But conversely
25 a failure to get access would and should jeopardize

1 their classification and reversion should remain as a
2 real option for the Land Use Commission.

3 For us, therefore, the County entitlements
4 and the development of the Project should not proceed
5 until a long-term agreement with the Navy is executed.
6 And we have recommended the imposition of a condition
7 requiring that long-term easement prior to the
8 application of zoning.

9 We have also recommended imposing a 5-year
10 deadline to get the long-term easement. And if
11 Petitioner is unable to get that easement they should
12 come back to you to explain why.

13 If they're unable to get that easement in 5
14 years this will also jeopardize their obligation to
15 provide of the backbone infrastructure within 10
16 years. And therefore a larger question would also
17 arise, needs to be addressed to the Land Use
18 Commission.

19 Now, Petitioner does say that they're close.
20 They say that they are close to reaching an agreement.
21 OP is simply not prepared to opine as to
22 whether Petitioner is or is it not close. If they
23 are, great. These conditions should not be a problem.
24 But if they are not, then Petitioner takes the risks
25 and bears the consequences of moving.

1 The second issue for the Office of Planning
2 is the Department of Transportation or transportation
3 issues. OP is not asking for a condition
4 substantially different than any other condition we
5 have asked in any other case. Petitioners and the
6 Department of Transportation simply have not resolved
7 all of the issues in the TIAR.

8 We note that a mutually acceptable TIAR
9 would need to be completed that would require
10 agreement from all parties. And the TIAR will then
11 determine what are the mitigation impacts from the
12 Project and what's the appropriate division of
13 responsibility.

14 DOT has always disagreed that a fair-share
15 agreement for the improvements at Farrington Highway
16 is appropriate. They have always said that it is the
17 Petitioner's responsibility to do so. We have not
18 asked you to make that determination.

19 We have simply asked you to require the
20 parties reach a mutual agreement on the TIAR and that
21 then any and all mitigation requirements would flow
22 from that technical study.

23 The third issue is our Sustainable Community
24 Plan Amendment. The Petitioner is in agreement with
25 OP's proposed condition. We simply wanted to explain

1 this is an important issue for the Office of Planning
2 and that we note that the proposed Project is not
3 consistent with the current Sustainable Community
4 Plan. They would be consistent with the proposed
5 draft, but they are not consistent with the existing
6 one today.

7 As you've heard the various testimony there
8 are some people who are going to be opposed to this.
9 So it is not clear, it is not definitive, it is not
10 certain that the County Planning Commission will agree
11 with DPP's proposal.

12 Consequently, we have proposed a requirement
13 that they get that Sustainable Community Plan
14 amendment, that the Project be included within the
15 Rural Community Boundary within 5 years. If they
16 can't do so then really this Petition was premature.

17 We are willing to give them the opportunity,
18 however, to move forward from the LUC process because
19 of the recognition that the existing SUP has not been
20 amended for approximately 10 years and the County was
21 unwilling to include a single revision to the plan for
22 just this Project.

23 It's a perfectly understandable position by
24 the City since they're in the midst of revising their
25 Sustainable Community Plan, but it does create

1 problems for developers who are then waiting for that
2 Sustainable Community Plan process to be completed.

3 In balancing these factors the Office of
4 Planning has proposed to give them a time period to do
5 so.

6 Very quickly, the last issue is, of course,
7 our sustainable energy conservation low-impact
8 development design. We've made these arguments in the
9 past and won't belabor the issue.

10 We simply want to note that section 205-17
11 requires the LUC to consider the impacts of the
12 reclassification on the natural resources of the state
13 and that section 205-4 then allows the Land Use
14 Commission to impose conditions necessary to uphold
15 the intent of the criteria in 205-17, namely the
16 protection of natural resources.

17 The Petitioner is not happy with OP's
18 condition but does not propose any enforceable
19 condition which would then protect the natural
20 resources or mitigate their impact upon the ocean, the
21 air, the water and the land.

22 We simply note that even if you disagree
23 with OP's proposed condition, this is a valid concern
24 and is one that's not addressed by Petitioner's
25 proposal. For all these reasons we do recommend

1 reclassification with conditions. Thank you.

2 CHAIRMAN DEVENS: Thank you, Mr. Yee.
3 Ms. Townsend.

4 MS. TOWNSEND: We have a PowerPoint
5 presentation. To begin, the Intervenors, the
6 Concerned Elders of Wai'anae, would first like to
7 thank the Commission for the time that they've given
8 to this Petition.

9 We really appreciate all the attention and
10 patience that you've had with us. And we really feel
11 that this process has -- that we've gotten a very fair
12 shake. So thank you very much for your commitment and
13 your volunteering in this very important public
14 service.

15 Next slide please. The Concerned Elders
16 urge the Commission to deny this Petition basically
17 because we feel it is the wrong Project in the wrong
18 place. There are four basic arguments we'd like to
19 make.

20 We begin with the Petition fails to meet the
21 urban classification standards.

22 Next slide, please. As you recall from your
23 site visit as well as testimony on the record, the
24 Petition Area is not remotely city-like. It is
25 isolated and is surrounded by agricultural land.

1 Next slide, please. This is a picture of
2 the Navy road. As you remember from your site visit
3 as well as testimony that's been presented by the
4 public, by Petitioner and by Intervenors the Navy road
5 is not an urban road. It doesn't have the basic
6 services such as sidewalks, streetlights, bus service.
7 It is a rural road.

8 I think it's important to note here and in
9 your review of the record before making a decision
10 take a look at Petitioner's Exhibit 13 Exhibit E,
11 that's the traffic study.

12 And you will note not only does the proposed
13 Project double the amount of traffic at the
14 intersection of Farrington and the Navy road, but
15 quadruples the amount of traffic at the Petition Area.

16 So as you go farther up the road currently
17 there's only about a hundred vehicles that go up that
18 high. And the Petitioner recognizes that their
19 Project would probably result in at least 500 vehicles
20 per hour.

21 Next slide please. In addition, the
22 Petition Area does not meet the kind of topography and
23 natural conditions that would support an urban
24 classification.

25 You recall from your site visit that

1 Pu'uheleakala, that ridge that comes together, it
2 really is bowl-like and channels the water that comes
3 down from the rains in Waianae onto the Petition Area.

4 You heard testimony from the public, from
5 Intervenor as well as the Petitioner that there are
6 periodic and flash flood conditions at the Petition
7 Area and the surrounding area. Urbanizing this area
8 does not make sense, given those conditions.

9 Moreover, it doesn't make sense given the
10 expert the soil scientist testimony you received.
11 You'll recall that Dr. Deenik testified that the high
12 shrink-swell rate of the soil in the Petition Area,
13 means that extreme engineering solutions need to be
14 taken in order to build stable structures.

15 In actuality, given the choice between
16 agriculture and urban development, the Petition Area
17 is more suited for agricultural use than for
18 construction.

19 It's true that given enough time and money
20 engineers can overcome any problems. The question
21 here before you today is whether they should. Just
22 because they can doesn't mean they should in this
23 situation.

24 Next slide, please. This is a picture of a
25 draft land use map and a draft of the Waianae

1 Sustainable Communities Plan. And you will note the
2 purple spot that's located right there, that's the
3 Petition Area.

4 As you can see it's totally surrounded by
5 green. That's all ag land. So the Petitioner's
6 contention that it's somehow near or contiguous to
7 urban uses is misleading.

8 I'd like to also note that the Concerned
9 Elders' position is not there should be no industrial
10 park in Waianae but that the industrial park should be
11 along Farrington Highway. And if the Commissioners
12 can see there is a purple spot here.

13 That is the already-zoned industrial land
14 available at the Wai'anae wastewater treatment
15 facility. And there is -- it's unused. There's no
16 indication that given the kind of resources, that we
17 couldn't negotiate some sort of swap between City and
18 the Petitioner in order to use this unused industrial
19 spot before industrializing fresh agricultural land.

20 I would like to indulge the Commission just
21 for a second. I would like to educate you about what
22 the community's theory is, the Elders' theory is on
23 what's really going on here. So here we have the
24 purple spot, the Petition Area.

25 If this area is urbanized it actually makes

1 it much easier to urbanize at some future point this
2 parcel right here. This parcel right here is commonly
3 referred to as Nanakuli B.

4 Next slide, please. It's currently owned by
5 Leeward Lands. It's located right here. So it is our
6 contention, it's our concern, is our fear that when
7 you introduce the industrial park in this location it
8 will spread to encourage urbanization of the
9 surrounding area and actually will serve to justify
10 turning this area into a landfill at some future
11 point.

12 I'd like to note or counter the Petitioner's
13 contention that PVT and Pineridge should somehow be a
14 basis for further urbanizing this area. It shouldn't
15 be.

16 First, PVT and Pineridge are the results of
17 misused agricultural land in the past. They were
18 retroactively permitted only after the Land Use
19 Commission was established and we had actually sane
20 planning laws.

21 These themselves, Pineridge and PVT, are
22 examples of urban spot zoning, scattered urban
23 development in agriculture areas. And these two
24 industrial-type uses are being used as a justification
25 for urbanizing this area here. And we shouldn't

1 accept it.

2 We should draw a line in the sand now and
3 say, "No. There's going to be no further urbanization
4 of these agriculture lands."

5 More importantly, I think it's important for
6 the Commission to consider that the Petition Area and
7 the proposed industrial park is not actually minor.
8 For all the harm that PVT and Pineridge have brought
9 to the community these actually combined are only
10 40 acres.

11 The proposed industrial park is almost a
12 hundred. It will be a significant introduction of an
13 urban use into an agriculture district.

14 Next slide, please. I'd like to move on to
15 the Coastal Zone Management Act. I have one point,
16 although there are many in my pleadings and I would
17 like to direct you all to review that. My main
18 concern here is Ulehawa Stream.

19 Next slide, please. This is a picture from
20 the Petitioner's EIS of the culvert that drains into
21 the Ulehawa Stream.

22 Here in the picture you can see that this is
23 where Ulehawa Stream bisects the Petitioner's
24 property. The Petitioner's proposal is to funnel
25 stormwater runoff into Ulehawa Stream through this

1 culvert here.

2 The Petition will be, if approved, would
3 introduce new intense urban uses to the area and would
4 change the quality of stormwater runoff that currently
5 flows in through this culvert in Ulehawa Stream.
6 Ulehawa Stream connects to the ocean. You heard
7 testimony from the public that people do gather in
8 Ulehawa Stream and that muliwai, the brackish water
9 that connects the ocean to the stream.

10 So adoption of this Petition would actually
11 contribute to the degradation of our coastal
12 resources.

13 Next slide, please. Focus on areas of
14 concern. Next slide. You will recall that there are
15 many who consider this to be the profile of Maui.
16 Here is his forehead, his two lips and his neck and
17 shoulders.

18 The question of this being a culturally
19 significant landscape is not solely about whether you
20 see someone's face in the mountainside. It's actually
21 about the fact that this ridgeline and this area
22 documents the story of Maui. This is where he's born.
23 This is where he harnessed the sun. This is where his
24 mother dried the kapa. This is where he receives the
25 fire from the awalaula.

1 So this area does have cultural
2 significance. And you've heard considerable testimony
3 about that. Unfortunately, the 11-page cultural
4 impact assessment and the archaeological survey failed
5 to actually address that. It is a misstatement to say
6 that Kamaki was the only cultural practitioner that
7 you heard from.

8 You heard from Eric Enos, Walterbea
9 Aldeguer, Michael Lee as well as scholars Pu'ukea
10 Nogelmeir and Kehoalani Souza who all challenged the
11 Cultural Impact Assessment and Archaeological Survey.

12 And it's our contention that the
13 documentation that you have before you from Petitioner
14 cannot support a petition, cannot support a decision
15 by the Commission. You need to be able to satisfy the
16 Ka Pa'akai analysis. You can't even get past step one
17 because you can't assess what cultural resources and
18 practices are conducted there.

19 The next slide. The importance of
20 agriculture. You received considerable testimony
21 about how productive this land is to commercial farms
22 operating in recent history.

23 They provided significant produce to Times
24 Supermarket, Nakatani's and Tomura's. I encourage the
25 Commission to review Intervenors' Exhibit 20. It

1 helps provide some background and context to the
2 letter from Uncle Tadashi and suggests that perhaps
3 maybe that letter doesn't accurately reflect the
4 reality of his experience.

5 Next slide. So here you can see this is the
6 map that shows some of the farming that happens
7 directly across the street. Farms are closer to the
8 Petition Area than the industrial type uses of
9 Pineridge.

10 And introducing this huge urban use would
11 contribute to the impermanent syndrome that Lualualei
12 farmers are currently trying to overcome.

13 Next slide, please. On the question of
14 economy I would like the Commission to note that on
15 the agriculture side we are creating jobs.

16 You heard from to Gary Maunakea-Forth of
17 Ma'o Farms that he enjoys \$10,000 a week in sales and
18 has already started to employ at least 20 students
19 every year.

20 Following a similar timeline with the
21 Petition Area they have yet to employ anyone. And
22 there's no indication from their record that would
23 actually employ anyone.

24 Next slide, please. It's important for the
25 Commission -- next slide -- for the Commission to note

1 that the plan is not -- the Petition is not in
2 compliance with either Waianae Plan. I would
3 encourage you all to actually stand by the current
4 Wai'anae Plan that's in effect because there is
5 significant controversy surrounding it.

6 Next slide, please. I wanted to highlight
7 the Project-generated traffic on Hakimo Road. You
8 will recall testimony from Elizabeth Stack who owns
9 property next to Tropic Lands.

10 She said that she can't stop the public from
11 using her private easement; that she changes the lock
12 at least six times a year because it gets cut.

13 And if we encourage urban uses in this area
14 at the Navy road, there will be no way to prevent
15 people from using that bypass, and urbanizing Hakimo
16 Road, further contributing to the impermanence of this
17 agricultural district.

18 Next slide, please. So this is it. We're
19 basically urging you to stand with the young farmers
20 who have, who've stepped up to help the agricultural
21 district of Lualualei Valley rebound.

22 We were once a very healthy and productive
23 farming community and we can be again. And by you
24 respecting the integrity of this agricultural district
25 we can be there again. Thank you. (Applause).

1 CHAIRMAN DEVENS: Thank you. Mr. Yuen.

2 MR. YUEN: I just have a few points. First,
3 I just want to remind the Commission that the Petition
4 Area is permitted for a golf course. So the choice of
5 the Commission is between a golf course or industrial
6 park.

7 Second. With respect to the Lualualei Naval
8 Road Petitioner is willing to accept the condition
9 that would require the Petitioner to obtain a
10 long-term easement from the Navy within 5 years of the
11 date of the Commission's Decision and Order.

12 Similarly, with respect to the Waianae
13 Sustainable Community Plan we would accept a condition
14 that would require us to obtain an amendment to the
15 Waianae Sustainable Community Plan within 5 years of
16 the Commission's Decision and Order.

17 With respect to the improvements to
18 Lualualei Naval Road/Farrington Highway intersection,
19 Petitioner's position is that we should be required to
20 pay our fair-share of the intersection improvements
21 since the State Department of Transportation is making
22 similar improvements to two intersections at Nanakuli
23 Avenue and Haleakala Avenue that are less than 2 miles
24 from the Lualualei Naval Road intersection.

25 And 13 of the 19 signalized intersections

1 between Wai'anae Mall and Nanakuli already have the
2 kind of southbound left-turn storage lane that the
3 Petitioner's traffic consultant and Department of
4 Transportation agree needs to be provided.

5 I want to remind the Commission that the
6 U.S. Supreme Court in Dolan vs. Tigard describes a
7 2-part test against which any development condition or
8 exaction must be measured. First, there must be an
9 essential nexus between the state interests protected
10 and the permit condition.

11 There's no doubt that there's a nexus
12 between the requirement that we do something to
13 mitigate Farrington Highway traffic conditions.

14 Second, though, and more important, there
15 must be a rough proportionality between the condition
16 required and the projected impact of the Petitioner's
17 proposed development.

18 Randall Okaneku testified that present
19 traffic conditions warrant construction of a left-turn
20 storage lane now without any improvement to the Tropic
21 Land property.

22 He testified that moreover in the year 2020,
23 whether or not the Tropic Land Petition Area is
24 developed, the traffic condition at that intersection
25 will be at Level of Service F during the morning peak

1 hour. He believes that the traffic contributed by the
2 Project will be no more than 15 percent of any
3 increase to the traffic.

4 The Commission has in the past suggested
5 that other Petitioners bear a fair share of regional
6 traffic improvements. And we request that the
7 Commission do the same thing in this case.

8 Finally, with respect to the LEED
9 requirements, our witnesses have testified that
10 requiring LEED construction standards would increase
11 construction costs by approximately 10 to 15 percent.
12 There is only one warehouse in the state of Hawai'i
13 constructed to a LEED -- or that has obtained LEED
14 certification.

15 We understand that the Commission has been,
16 has consistently denied this kind of condition in
17 other dockets in which the state has suggested such a
18 condition.

19 In summary, we request that the Commission
20 approve the Petition subject to the conditions we have
21 suggested. Thank you very much.

22 CHAIRMAN DEVENS: Thank you, Mr. Yuen.
23 Commissioners have any questions for the parties?
24 Commissioner Heller.

25 COMMISSIONER HELLER: Can you give us an

1 update of exactly where you stand right now in terms
2 of the negotiation with the Navy for the easement?

3 MR. YUEN: We have met with the Navy on
4 several occasions. We've corresponded with them. And
5 we're awaiting a response to our last request for
6 clarification of some of the requirements on the, that
7 Navy has requested for the road.

8 COMMISSIONER HELLER: Thank you.

9 CHAIRMAN DEVENS: Commissioner Kanuha, you
10 had a question?

11 COMMISSIONER KANUHA: Thank you. Mr. Yuen,
12 you had suggested that that agreement with the Navy
13 for the easement for the road and also to get into
14 compliance with the Wai'anae SCP be conditioned to be
15 done within 5 years.

16 MR. YUEN: We would be willing to accept
17 that condition, yes.

18 COMMISSIONER KANUHA: What's your perception
19 of the Petition if either/or those conditions are not
20 complied with within 5 years?

21 MR. YUEN: The Commission could then file an
22 Order to Show Cause as to why we should not be
23 downzoned. If we can't get the Sustainable Community
24 Plan amended in this round, and the City maintains its
25 position of not considering independent improvements,

1 it's highly unlikely that we would be able to get
2 another opportunity to go back to the City within 5
3 years.

4 COMMISSIONER KANUHA: Then you also propose
5 to be allowed to go to the City to file an application
6 for a zone change.

7 MR. YUEN: We would like to be able to
8 continue to process the Project. Assuming the City
9 approves the amendment to the Wai'anae Sustainable
10 Communities Plan, we would like to then initiate a
11 zone change application. As the Commission is aware
12 the approval of a zone change is not instantaneous.

13 The Commission generally imposes a 10-year
14 requirement for construction of the infrastructure.
15 In order to get to that 10-year end date we need to
16 keep all the applications in the pipeline and work on
17 everything simultaneously.

18 And we would like to be able to process our
19 zone change application while we are still negotiating
20 with the Navy.

21 COMMISSIONER KANUHA: But didn't you just
22 say you need to resolve the consistency with the
23 Wai'anae SCP Plan first before you go for your zone
24 change?

25 MR. YUEN: We would not be able to apply for

1 a zone change before the Sustainable Community Plan is
2 amended. But assuming the Sustainable Community Plan
3 is amended before we have our final agreement in place
4 with the Navy, we would still like to be able to apply
5 for the zone change while we continue to work with the
6 Navy.

7 COMMISSIONER KANUHA: Okay. Thank you.

8 CHAIRMAN DEVENS: Any other questions?

9 There being none, the Commission wants to first thank
10 the parties for a very complete and thorough
11 presentation. There was presentations on behalf of
12 all the parties. And we wanted to thank you for that.

13 Having now concluded the oral argument the
14 Commission will now conduct the formal deliberations
15 concerning whether to grant or deny the Petition. If
16 the Commission decides to grant the Petition, it needs
17 to determine what Conditions of Approval to impose.

18 I would note for the parties and the public
19 that during the Commission's deliberations we will not
20 entertain additional input from the parties or the
21 public unless those individuals or entities are
22 specifically requested to do so. If called upon we
23 ask that any comments be limited to the question that
24 is asked.

25 The Commission has held hearings on the

1 meris of this Petition in 2010 on September 9th and
2 10th, December 2nd and 3rd and in 2011 on January 6
3 and 7, February 2nd and Oral argument Was concluded
4 today.

5 Commissioners, let me first confirm that
6 each of you have reviewed the record and read the
7 transcripts for any meetings they may have missed and
8 are prepared to deliberate on the subject docket.
9 After I call your name will you please confirm and
10 signify with an aye or nay that you are prepared to
11 deliberate on this matter.

12 Starting with Commissioner Chock.

13 COMMISSIONER CHOCK: Yes.

14 CHAIRMAN DEVENS: Commissioner Heller?

15 COMMISSIONER HELLER: Yes.

16 CHAIRMAN DEVENS: Commissioner Jencks?

17 COMMISSIONER JENCKS: Yes.

18 CHAIRMAN DEVENS: Commissioner Kanuha?

19 COMMISSIONER KANUHA: Yes.

20 CHAIRMAN DEVENS: Commissioner Teves?

21 COMMISSIONER TEVES: Yes.

22 CHAIRMAN DEVENS: I am also prepared to
23 deliberate on this matter. The goal today is to
24 determine by way of motion, the Commission's decision
25 on whether to grant Petitioner's request to reclassify

1 the subject property or to deny the Petition.

2 If a decision is reached today, based upon
3 the Commission's guidance, staff will be directed to
4 prepare appropriate Findings of Fact, Conclusions of
5 Law, and Decision and Order reflecting the
6 Commission's decision.

7 Does anyone have a motion on this matter?
8 Commissioner Jencks.

9 COMMISSIONER JENCKS: Thank you, Mr. Chair.
10 I spent a lot of time reviewing the file, listening to
11 all the testimony for and against this Project. And
12 going back to earlier this year a number of questions
13 have been posed to the Petitioner with regard to some
14 of the key issues that I think are really crucial in
15 regard to allowing this Project to go forward.

16 And I want to thank Mr. Yee for his clarity
17 and thought on identifying some of the concerns with
18 the Office of Planning. To be really honest it helped
19 me clarify some of my thoughts listening to his
20 summary.

21 So, Mr. Chair, given the fact that we have a
22 Project that's located 2 miles up a road that's
23 controlled by the United States Navy or the Department
24 of the Navy, we don't have another logical access to
25 and from the site other than through a residential

1 area, for all intents and purposes with a really
2 restricted right-of-way and pavement section, plus we
3 don't have, and we've asked for, information on
4 agreements with regard to maintenance, estimates on
5 construction, the design section, the standards for
6 construction.

7 And we still have an outstanding TIAR with
8 the State Department of Transportation on agreement
9 with regard to what it is the Petitioner agrees to do
10 or not do with regard to offsite transportation
11 improvements.

12 It seems to me that this Commission
13 shouldn't be in the business of awarding boundary
14 amendments to properties that have these kind of
15 issues associated with them that can't be clarified,
16 can't be straightened out.

17 So what I would suggest here I'm going to
18 move that the Commission with respect to A09-782
19 Tropic Land, LLC, that this Commission deny the
20 Petitioner's request for urbanization simply because
21 they have not provided adequate evidence that they
22 have got access to this property, and they have not
23 yet come to agreement with the State Department of
24 Transportation on key issues with regard to the
25 urbanization use of the property.

1 CHAIRMAN DEVENS: So Commissioner Jencks has
2 made a Motion to Deny the Boundary Amendment. Is
3 there a second to this motion?

4 COMMISSIONER HELLER: Second.

5 CHAIRMAN DEVENS: Commissioner Heller is a
6 second. Discussion? Commissioner Heller.

7 COMMISSIONER HELLER: I agree with
8 Commissioner Jencks that the critical issue, at least
9 to me, seems to be the access to or the easement for
10 the road.

11 And I think it's in a sense premature to
12 start defining all the other conditions before the
13 Petitioner demonstrates that they can actually get
14 access to the road on a long-term basis. At least in
15 my view I'm not necessarily saying that this Petition
16 should be denied forever.

17 I'm simply saying that I think the
18 Petitioner should get access to the road established
19 before they come to us to make this decision. That's
20 my comment at this point.

21 CHAIRMAN DEVENS: Any further discussion?
22 There being none, Dan, call for the vote.

23 MR. DAVIDSON: This is a Motion to Deny the
24 Petition in A09-782.

25 Commissioner Jencks?

1 COMMISSIONER JENCKS: Aye.

2 MR. DAVIDSON: Commissioner Heller?

3 COMMISSIONER HELLER: Aye.

4 MR. DAVIDSON: Commissioner Teves?

5 COMMISSIONER TEVES: No.

6 MR. DAVIDSON: Commissioner Kanuha?

7 COMMISSIONER KANUHA: No.

8 MR. DAVIDSON: Commissioner Chock?

9 COMMISSIONER CHOCK: No.

10 MR. DAVIDSON: Chair Devens?

11 CHAIRMAN DEVENS: No.

12 MR. DAVIDSON: The motion fails, Chair.

13 CHAIRMAN DEVENS: Are there any other
14 motions on this matter? (pause) Let me call for an
15 executive session to discuss our powers and
16 authorization. I'm going to move.

17 COMMISSIONER TEVES: Second.

18 CHAIRMAN DEVENS: Second. Any discussion?

19 All those in favor say aye.

20 COMMISSIONERS VOTING: Aye.

21 CHAIRMAN DEVENS: We'll try make this real
22 short. (12:15)

23 (Executive session recess was held. 12:17)

24 CHAIRMAN DEVENS: We're back on the record.

25 The Motion to Deny the Petition did not carry. At

1 least at this point in time there are no further
2 motions being made by the Commission. So at my
3 discretion I think it would make sense to defer this
4 matter to the next scheduled hearing, which I believe
5 is April 21st, Dan?

6 MR. DAVIDSON: Correct.

7 CHAIRMAN DEVENS: And at that time consider
8 any motions that the Commissioners may want to make at
9 that time. And hopefully the other Commissioners will
10 be present so we get a definitive decision one way or
11 the other. Commissioners have any objection to
12 deferral to the next available hearing date? Dan.

13 MR. DAVIDSON: Let me just add we anticipate
14 April 21. There would be a chance of April 20, just
15 to make the record clear, it's one of those two dates.

16 CHAIRMAN DEVENS: Whatever date we can first
17 accommodate this matter so that we can get some
18 resolution for all the parties. Parties have any
19 objection to that procedure?

20 MR. YUEN: No, Mr. Chairman.

21 CHAIRMAN DEVENS: City?

22 MS. TAKEUCHI-APUNA: No.

23 CHAIRMAN DEVENS: Mr. Yee?

24 MR. YEE: No.

25 MS. TOWNSEND: No objection but just some

1 information. The Planning Commission is meeting on
2 April 20th at 1:30 to consider the Wai'anae
3 Sustainable Plan. Just FYI. And I also know that
4 there are new Land Use Commissioners that are being
5 considered. And I'm not sure exactly the procedure
6 whether they would be seated as decision-makers by
7 April 21st or not. I don't know.

8 CHAIRMAN DEVENS: We are aware of that.
9 Unfortunately it's pretty much out of our control.
10 We're not sure of the timing but we appreciate the
11 highlight on that.

12 Given that there is no objections to what
13 I'm proposing I will defer this matter to the next
14 hearing. Hopefully we get a definitive motion at that
15 time.

16 MR. YUEN: Mr. Chairman --

17 CHAIRMAN DEVENS: Yes, sir.

18 MR. YUEN: -- I assume, or I should ask, at
19 the next meeting will there be opportunity for
20 argument or not?

21 CHAIRMAN DEVENS: I think we're done with
22 the argument portion. Of course Commissioners could
23 have questions for the parties. We always leave that
24 open. But other than that --

25 MR. YUEN: And public testimony.

1 CHAIRMAN DEVENS: Since it will be an
2 agendaed item. But other than that I think we want to
3 keep matters where they are as far as the evidence
4 being closed and taking any more witness testimony and
5 other evidence.

6 MR. YUEN: Thank you very much.

7 CHAIRMAN DEVENS: Thank you for your
8 patience. Thank you. This matter will be adjourned.

9 (Recess was held 12:35. Commissioner Chock no
10 longer present. Commissioner Lezy now present)

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2 CHAIRMAN DEVENS: We're back on the record.
3 This is an action meeting on the Bridge 'Aina Le'a
4 matter, docket No. A87-617. There are several items
5 on this agenda. And I think the order in which we're
6 going to take them is we're going to take argument, or
7 take up first the Motion to Reconsider and to Defer
8 Entry of Final Findings of Fact, Conclusions of Law,
9 and Decision and Order; then hear the DW 'Aina Le'a's
10 Motion to Amend Conditions 1, 5, 7.

11 The last item will be the oral argument on
12 the exceptions and objections to the Proposed Findings
13 of Fact, Conclusions of Law, and Decision and Order.

14 If the parties are okay with that that's the
15 order we'll proceed with today. We'll start by having
16 the parties make their appearances first. Mr. Voss.

17 MR. VOSS: Good morning, Chair -- I guess
18 afternoon, Chair. Bruce Voss and Mike Carroll for
19 Bridge 'Aina Le'a.

20 CHAIRMAN DEVENS: Good afternoon.

21 MR. OKAMOTO: Good afternoon, Mr. Chairman.
22 Alan Okamoto for DW 'Aina Le'a.

23 MR. BRILHANTE: Good afternoon, Mr. Chair.
24 William Brilhante, County of Hawai'i deputy
25 corporation counsel.

1 CHAIRMAN DEVENS: Good afternoon to you.

2 MR. YEE: Good afternoon. Deputy Attorney
3 General Bryan Yee on behalf of the Office of Planning.
4 With me is Jesse Souki, director of the Office of
5 Planning.

6 CHAIRMAN DEVENS: Good afternoon to you all.
7 If I may I'd like to update the record. On March 10,
8 2011 the Commission voted to adopt Proposed Findings
9 of Fact, Conclusions of Law and Decision and Order for
10 Docket No. A87-617 Bridge 'Aina Le'a LLC and DW 'Aina
11 Le'a Development, LLC. The Order was filed and mailed
12 to the Parties on March 10, 2011.

13 On March 17, 2011 the Commission received
14 Petitioner DW 'Aina Le'a's Motion to Reconsider and to
15 Defer Entry of Final Findings of Fact, Conclusions of
16 Law, and Decision and Order, and Request for Hearing.

17 On March 21st, 2011, the Commission received
18 OP's Statement of No Objection to Proposed Findings of
19 Fact, Conclusions of Law, and Decision and Order
20 Reverting the Petition Area.

21 On March 22nd, the Commission received
22 Petitioner Bridge 'Aina Le'a's Joinder in DW 'Aina
23 Le'a's Motion to Reconsider and to Defer Entry of
24 Final Findings of Fact, Conclusions of Law, and
25 Decision and Order; Memorandum in Support of Motion

1 and Request for Hearing.

2 On March 24th the Commission received: OP's
3 Statement of No Position to Motion to Reconsider and
4 to Defer Entry of Final Findings of Fact, Conclusions
5 of Law, and Decision and Order; DW 'Aina Le'a's
6 Amendment to Motion to Amend Conditions 1, 5 and 7; DW
7 'Aina Le'a's Objections and Exceptions to the Proposed
8 Findings of Fact, Conclusions of Law, and Decision and
9 Order Reverting the Petition Area to Parties;
10 Petitioner Bridge 'Aina Le'a LLC's submittal of
11 Proposed Findings of Fact, Conclusions of Law, and
12 Order; Bridge 'Aina Le'a LLC's Exceptions and
13 Objections to the Proposed Findings of Fact,
14 Conclusions of Law, and Decision and Order Reverting
15 the Petition Area.

16 On April 4th the Commission received written
17 correspondence via fax from a Raymond Wong.

18 On April 5th the Commission received written
19 correspondence via email from Larry Paiton.

20 In addition, on April 8th, 2011 the
21 Commission received correspondence via email from
22 George H. Robertson, Dean Uchida of SSFM, and Jeffrey
23 Burger.

24 At this time we'll take public testimony.
25 And the public testimony can relate to any of the

1 actions that we will be considering here today. Dan.

2 MR. DAVIDSON: Alethea Lai followed by Lance
3 Yoshimura.

4 ALETHEA LAI

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

7 THE WITNESS: I do.

8 CHAIRMAN DEVENS: Give us your name and
9 address, please.

10 THE WITNESS: My name's Alethea Lai. And I
11 live at 66-1455-B Ala Kahakai. That's Kamuela, 96743.
12 Hi. My name's Alethea. I'm a homeowner in Puako and
13 the board president of the Puako Beach Condominium
14 Association. In the 13 years I've lived in Puako I've
15 witnessed many changes in South Kohala due to
16 continued double digit population increases.

17 MS. ERICKSON: Could you please slow down
18 for the court reporter.

19 THE WITNESS: Yes. There are many people
20 who want to deny that population growth is going to
21 continue in our area, or try to stop every new
22 development in an attempt to stop the change and the
23 people from coming. However, this is not a realistic
24 way to manage population growth.

25 What we need is sustainable development that

1 meets the current pressing needs in our community
2 while promoting a well-planned future for our
3 children.

4 CHAIRMAN DEVENS: Ma'am, if you can just
5 slow down. The court reporter's going to have a hard
6 time.

7 THE WITNESS: These needs in South Kohala
8 identified in the South Kohala Community Development
9 Plan include affordable housing, community facilities
10 and environmental stewardship and better
11 transportation circulation improvements.

12 I have witnessed the hodgepodge ways
13 development is often conducted in Hawai'i with the
14 resultant poorly planned infrastructure facilities to
15 support population growth, along with the degradation
16 to our natural resources that make Hawai'i unique.

17 I am here today in support of the Villages
18 of 'Aina Le'a because this development is trying to
19 meet the real needs of the South Kohala community.
20 They are addressing the need for affordable housing.

21 They are addressing the need for community
22 facilities and providing a retail center with medical
23 and professional services, 32 acres for a DOE school
24 site, pedestrian and biking trails, a community center
25 and a 24/7 public park. They are addressing the needs

1 for environmental stewardship in development by
2 planning one of the largest solar arrays in the state.

3 And perhaps, most importantly, is the
4 planning of a new type of wastewater treatment that
5 will ensure the reef is not affected by the wastewater
6 from this development.

7 In Puako our condominiums boasts the only
8 wastewater treatment plant. Most people's cesspools
9 lead straight to the reef and this causes serious
10 environmental problems. This development is also
11 meeting the need for better transportation
12 improvements by installing connector roads, sidewalks,
13 trails and the construction of a much-needed
14 intersection with traffic light.

15 The previous developer, Bridge 'Aina Le'a,
16 was hugely unpopular in my community. These are new
17 owners. They have worked hard to plan a livable
18 development that meets the needs of the population of
19 South Kohala without detracting from the future needs
20 of its residents.

21 As such I urge the LUC to let the
22 development continue as planned with the original
23 entitlements being honored. Thank you.

24 CHAIRMAN DEVENS: Thank you for your
25 testimony. Parties have any questions for this

1 witness? There being none, Commissioners? There
2 being none, thank you. Next witness. Next witness,
3 Dan.

4 MR. DAVIDSON: Lance Yoshimura followed by
5 Wilits Buford. We are going to try to do a 3-minute
6 rule for the witnesses.

7 CHAIRMAN DEVENS: I'll swear you in, Lance.

8 LANCE YOSHIMURA
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: Yes.

12 CHAIRMAN DEVENS: State your name and
13 address, please.

14 THE WITNESS: Lance Yoshimura, 1311
15 Houghtailing Street. I represent the Hawai'i
16 Carpenters Union. And we're here to actually ask for
17 a second chance for this Project.

18 The reason is we have presently 83 percent
19 of our members out of work in Kona. Some of these
20 members have been out of work for over two years
21 already. Yeah? And the good thing about the Project
22 is it's affordable components that's going to be
23 built.

24 Photovoltaic panels will be attached to
25 these units that will eventually sustain the whole

1 development. And also the specialized medical
2 facility that's planned in the future. Basically this
3 development will be the commercial core for South
4 Kohala residents that would create, you know,
5 permanent jobs for these and long-term construction
6 for our workers.

7 It's just sad to see that, you know what,
8 outside, out-of-state developers come here. They
9 don't know our culture. I don't know if 'Aina Le'a
10 was one of 'em or is one of 'em.

11 You know, in Hawai'i when you commit to
12 something, you say you're gonna do some something you
13 do it. It's sad to see that lesson that they're gonna
14 learn might be detrimental to the residents of Kohala.
15 To have them suffer for somebody's lesson learned and
16 maybe 'Aina Le'a learned a lesson and maybe you guys
17 can consider giving them a second chance. Thank you.

18 CHAIRMAN DEVENS: Lance, let me see if
19 there's any questions for you from the parties. There
20 being none, Commissioners? Thanks, Lance.

21 THE WITNESS: Thanks.

22 MR. DAVIDSON: Buford followed by Gretchen
23 Lambeth.

24 CHAIRMAN DEVENS: Swear you in.

25 WILITS BUFORD

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

3 THE WITNESS: I do.

4 CHAIRMAN DEVENS: Give us your name and
5 address, please.

6 THE WITNESS: Wilits Buford, 54-27A,
7 Waila'au Road, Koloa, Hawai'i. I'd like to speak on
8 behalf of Truestyle Pacific Builders. And we would
9 just like to see the Project go forward because, you
10 know, the jobs that it's going to create and generate
11 for the local economy. And that's it.

12 CHAIRMAN DEVENS: Thank you. Any questions
13 for this witness? There being none, thank you.

14 MR. DAVIDSON: Lambeth followed by Tracy
15 Takano.

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

19 THE WITNESS: I do.

20 CHAIRMAN DEVENS: Name and address.

21 THE WITNESS: Gretchen Lambeth, P. O. Box
22 5076 Kailua-Kona, Hawai'i 96745.

23 CHAIRMAN DEVENS: Thank you.

24 THE WITNESS: I have my testimony written
25 out. And I sat here all morning listening to the

1 previous plaintiff (sic) and I found great irony in
2 the fact that in their situation they had a population
3 with no work and all houses. And we have the
4 opposite. We have places for people to work and
5 nowhere for them to live out in South Kohala if
6 they're part of the working class.

7 So I think all of Hawai'i is struggling with
8 some of these issues. And today we have a chance to
9 actually fix one of them.

10 DW 'Aina Le'a has put millions and millions
11 and millions of dollars into this Project to get it
12 done. Yes, they're late.

13 But the flip side is they've even considered
14 to make progress while they're waiting for you guys to
15 consider their future. They've still continued to go
16 ahead with things.

17 And I think that they need and deserve a
18 chance to finish it. If you don't you're going to
19 leave us with half-built buildings in South Kohala
20 like tombstones sitting upon on that hillside.

21 That's not what we need. We don't need to
22 scare off any more of the economics in West Hawai'i.
23 We need to invite them in. They need to be part of
24 our community.

25 Like that gal from Puako was saying,

1 they're doing it right for one chance. Let's
2 celebrate that and not whack their fingers with a
3 ruler because they missed the dates.

4 We need to be inviting, we need to be
5 accommodating. Construction. I helped build Waiohai
6 Resort, I helped build Hokulia Resort. We all miss
7 deadlines. There's nothing that gets done in Hawai'i
8 on time. That's the joke in the construction
9 industry. Nobody ever makes it.

10 And here we are saying, "Oops, sorry, you
11 missed the date, can't build anymore. We're going to
12 revert it to ag land." What're we gonna grow? Rocks?
13 Because that's all that's out there. It's a straight
14 barren lava field. There isn't anything that's
15 agricultural in that area. Never has been, never will
16 be.

17 It's a shame to see the opportunity to build
18 workforce housing in the right location for the right
19 people be denied because of a deadline was missed. I
20 urge the council to reconsider their decision. Think
21 about the people of West Hawai'i. We need the jobs.
22 You heard the carpenters union.

23 You've heard the builders. They're going
24 photovoltaic which is huge to us on our island. We
25 need more. We have gigantic fields of sunshine that

1 could be harvested to run our island instead of oil
2 that's now a hundred dollars+ a barrel.

3 We need people that think like these guys.
4 Don't run them off. Help us keep them. Partner with
5 them. Embrace them. Make this work for us. We need
6 them. Thank you.

7 CHAIRMAN DEVENS: Any questions for this
8 witness?

9 MR. OKAMOTO: We have.

10 CHAIRMAN DEVENS: Go ahead, Mr. Okamoto.

11 MR. OKAMOTO: Ms. Lambeth, as far as those
12 who work in this area, the Waikoloa/South Kohala
13 Resort area, where are they living?

14 THE WITNESS: Hawaiian Ocean View Estates or
15 Puna.

16 MR. OKAMOTO: Hawaiian Ocean View Estates is
17 south of --

18 THE WITNESS: Two hours away. They drive at
19 least two hours to get to their jobs or longer. I
20 have some of them that are actually down in Ka'u.
21 Just so you know, as part of my testimony I've sold
22 over 200 houses as a realtor in West Hawai'i in the
23 last 7 years. The buyers are not stopping coming.
24 They're still coming. And we added like 4,000 people
25 in the last census to South Kohala.

1 If we don't build houses, supply and demand
2 says the prices are going to go through the roof. If
3 we don't get these 400+ units the economics of housing
4 in South Kohala buy today, guys because it's going to
5 be really expensive in a couple years because there's
6 nobody out there building houses for the workforce.
7 Nobody.

8 CHAIRMAN DEVENS: Any other questions,
9 Mr. Okamoto?

10 MR. OKAMOTO: No.

11 CHAIRMAN DEVENS: Parties have any follow-up
12 questions? Hearing none, Commissioners? There being
13 none, thank you for your testimony.

14 MR. DAVIDSON: Tracy Takano followed by Dean
15 Uchida.

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

19 THE WITNESS: Yes.

20 CHAIRMAN DEVENS: Name and address.

21 THE WITNESS: My name is Tracy Takano. My
22 address is 451 Atkinson Drive, Honolulu. Actually I'm
23 here today to present testimony on behalf of Isaac
24 Fiesta, Jr. who's the president of the ILWU Local 142
25 Union which represents 20,000 members statewide

1 working in a variety of industries from agriculture to
2 tourism.

3 Mr. Fiesta also served on the Land Use
4 Commission and was involved in some of the decisions
5 affecting this Project.

6 Our testimony today is to request the Land
7 Use Commission allow Bridge 'Aina Le'a another
8 extension to fulfill its commitment to build
9 affordable housing.

10 We also request that the Land Use Commission
11 reconsider its proposal to redesignate the land from
12 urban to agriculture.

13 Our reason is simple. The Big Island needs
14 affordable housing. Redesignating the lands from
15 urban to agriculture will only further limit the
16 availability of land for affordable housing.

17 Economic activity on the island is gradually
18 rebounding, particularly on the west side. Workers
19 are needed for this revitalization. So is affordable
20 housing. Many of our members on the Big Island work
21 on the west side at resorts along the Kohala Coast.
22 They eagerly anticipated the development hoping they
23 could qualify and purchase a home.

24 These homeownership dreams will dissipate
25 entirely if the Land Use Commission decides to

1 redesignate the land and stop this Project. The
2 Project will also offer construction jobs to many of
3 our brothers and sisters in the building trades.

4 Many union members in the construction
5 industry have been on the bench for far too long. Any
6 support for construction projects on all islands would
7 be most welcome.

8 As for the proposal to redesignate the land
9 from urban to agriculture, the island of Hawai'i
10 already has thousands of acres designated for
11 agriculture.

12 And we can't understand the need for this
13 particular parcel to be designated for agriculture
14 when affordable housing is so desperately needed.

15 The ILWU respectfully requests the State
16 Land Use Commission to reconsider its proposal to
17 redesignate the lands for Bridge 'Aina Le'a from urban
18 to agriculture and consider providing another
19 extension to allow the developer to complete the
20 Project. Thank you very much for your consideration.

21 CHAIRMAN DEVENS: Thank you for your
22 testimony. Questions for this witness? There being
23 none, thank you.

24 THE WITNESS: Thank you.

25 MR. DAVIDSON: Dean Uchida followed by Pua

1 Correa.

2 DEAN UCHIDA

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

5 THE WITNESS: I do.

6 CHAIRMAN DEVENS: Address?

7 THE WITNESS: My name is Dean Uchida, 501
8 Sumner Street, Honolulu, Hawai'i 96817. I'm here
9 representing SSFM International. We were the lead
10 civil designers on the 'Aina Le'a Project doing all
11 the site work. We're working with Goodfellow Brothers
12 on a design/build.

13 And from the start of the Project when they
14 began starting I think we have accomplished a lot from
15 September to about April of last year. And there's
16 houses coming up as a result of that. I guess there's
17 some concern about how fast or how quickly the Project
18 was moving forward.

19 I think if you look at the history of the
20 development in Hawai'i, you look at what was
21 accomplished from September through April it's pretty
22 significant. There was a lot of effort put forward.
23 The Project provided a lot of job opportunities for a
24 lot of people on the island. And we believe that the
25 Project should continue.

1 We hope that the Commission would see fit to
2 grant, continue construction and full development of
3 the 'Aina Le'a Project. Thank you.

4 CHAIRMAN DEVENS: Thank you for your
5 testimony. Any questions for this witness? There
6 being none, thank you.

7 MR. DAVIDSON: Pua Correa followed by Kapua
8 Kamai.

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

12 THE WITNESS: Yes, I do.

13 CHAIRMAN DEVENS: Name and address.

14 THE WITNESS: Pua Correa, P.O. Box 55,
15 Kamuela, Hawai'i. I first want to say thank you to
16 all you Commissioners for taking the time. 'Cause
17 this is the first time I ever heard that Commissioners
18 actually don't get paid for this job. You folks are
19 here on behalf of the community. So I really
20 appreciate that and that's why I'm here.

21 Secondly, I'm really glad 'cause listening
22 to this whole Land Use Commission board earlier there
23 was a lot of turmoil between the Hawaiians versus
24 their own opinion about the land base.

25 That's why I'm really glad to request that

1 you folks give that extension that's granted or needed
2 for Bridge 'Aina Le'a. I'm here in support of Bridge
3 'Aina Le'a or actually DW 'Aina Le'a, for them to
4 build what is not only necessary in the building
5 structure, as the realtor earlier stated, but there's
6 parks, you know. There's a real community that would
7 be built there.

8 I'm here on behalf of sports for all of our
9 communities. I actually represented the state of
10 Hawai'i in Canton, Ohio for the NFL for football. And
11 we have 3,000 kids. And right now we're actually
12 formulating with the County of trying to get more
13 parks for our kids to actually play just sports on.

14 And in this economic woe that we're in right
15 now and a lot of the turmoil that parents face in
16 everyday life with not having a job or whatever it is,
17 the kids have an outlet. They need an outlet. They
18 need to shed whatever they have at the home-base to do
19 in a sport.

20 So I'm so glad that this company is willing
21 to extend and expand their facilities in a park, a
22 27-acre park, a football field, you know, simple
23 things that we need in our County and yet using their
24 monies which I'm glad for.

25 Because you know our County, as you know, we

1 really don't have that. So I'm here in support of it.
2 And I'm really, really happy that they're willing to
3 do that.

4 I noticed in the first Land Use Commission
5 you folks asked the question, "Are you paid" what was
6 that word that was used -- the people that were
7 speaking up on behalf of their company, consultant.
8 Okay. I'm not a paid consultant. I just wanted that
9 for the record.

10 But I'm here on behalf of our children in
11 the state of Hawai'i from Puna to Ka'u to Kamuela to
12 Waikoloa, to Kona, to Kohala: We represent the whole
13 entire island not just one particular part of our
14 community, but all the communities of our youth. So
15 that's what I'm here for. Okay. A hui hou. Any
16 questions? Sorry.

17 CHAIRMAN DEVENS: Any questions for this
18 witness? There being none, thank you for your
19 testimony.

20 THE WITNESS: Okay.

21 MR. DAVIDSON: Kapua Kamai. I think that
22 might be a signup from this morning. Also Polly
23 Granny Grace. She was also this morning. Okay.
24 Bansemer is the last one.

25 CHAIRMAN DEVENS: Swear as you in, sir.

1 JOHN BANSEMER

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

4 THE WITNESS: Yes.

5 CHAIRMAN DEVENS: Name and address.

6 THE WITNESS: John Bansemer, 78-7190
7 Keliopapa Street, No. 29, Kailua-Kona, Hawai'i. I'd
8 like to read a letter here to the Chairman,
9 Mr. Davidson, and the Commissioners. I have 20 copies
10 here as well that can be distributed and the original.

11 "Dear Executive Director of the Land Use
12 Commission. As the holder of the power of attorney
13 for 734 Big Island landowners from Singapore, Hong
14 Kong, Malaysia and Australia, I'm writing to request
15 to the Land Use Commission not alter the zoning on the
16 Villages of 'Aina Le'a and recognize the work, effort
17 and investment made by DW 'Aina Le'a Development, LLC
18 in moving forward under your Decision and Orders.

19 "We, like the Commission, hoped that DW
20 'Aina Le'a would be able to complete the affordable
21 housing by the end of 2010. However, we are fully
22 aware of the challenges to obtain state of Hawai'i
23 permits encountered by DW 'Aina Le'a.

24 "We are fully aware of DW 'Aina Le'a's
25 request for a time extension and relocation of school

1 and water/waste service and we support your request.
2 We are very supportive of the DW's commitment to build
3 quality homes for the Big Island and to sell those
4 homes under the affordable housing regulations.

5 "It's important to each of our landowners
6 that DW 'Aina Le'a be empowered to build the entire
7 community to which it is committed.

8 "We respectfully request that you approve a
9 time extension in which DW 'Aina Le'a may meet its
10 commitments. Very truly yours, Winston Yao." Thank
11 you.

12 CHAIRMAN DEVENS: Thank you. Our chief
13 clerk will make copies or will distribute those.

14 THE WITNESS: I have them here.

15 CHAIRMAN DEVENS: Okay. Any questions for
16 this witness? There being none, thank you for your
17 testimony. There are no other witnesses signed up for
18 this agenda. So we'll take oral argument then. The
19 first motion will be the Motion to Reconsider and to
20 Defer Entry of Final Findings of Fact, Conclusions of
21 Law, and Decision and Order and Request for Hearing.
22 Mr. Okamoto.

23 MR. OKAMOTO: Mr. Chairman, if I could I
24 would like to have Mr. Wessels give the Commission a
25 very brief statement relating to the financing

1 difficulties that we expect should the Commission
2 complete the process and revert this property top
3 agriculture.

4 I understand this is a bit -- it's something
5 I'm asking the Commission to allow me to do. It will
6 be very brief, but I think it's important this
7 particular issue be addressed.

8 CHAIRMAN DEVENS: Can you just make it part
9 of your oral argument?

10 MR. OKAMOTO: I'd prefer if he could just
11 speak to you directly. My oral argument on Motion for
12 Reconsideration is short. I don't propose to take a
13 whole lot of the Commission's time on the argument
14 portion of this motion.

15 CHAIRMAN DEVENS: Why don't we just take up
16 your oral argument first.

17 MR. OKAMOTO: All right. DW brought this
18 motion in light of what we found out after the
19 Commission's January 20th meeting. At that meeting
20 the Commission voted to revert the property to
21 agriculture.

22 What we have found out is if this action is
23 taken to completion, property is reverted, we are
24 expecting an extreme effect not only on this Project
25 but on the availability of financing for other major

1 projects in the state of Hawai'i.

2 We've brought this motion in the hope that
3 we would at least be heard out as to the Motion to
4 Amend Conditions. I would like to speak to that at
5 the appropriate time because we feel that is an
6 appropriate way to address the concerns that have come
7 up before this Commission in terms of the length of
8 time it's taken this Project to get going; in terms, I
9 think, of some of the changes, perhaps, that have been
10 made as far as conditions over the years. We think
11 that should be addressed and handled.

12 And, therefore, if you would allow us we'd
13 like to address the Motion to Amend Conditions. As I
14 understand your agenda that, in fact, has happened.
15 That's why we filed this motion. We feel that the
16 effect of the reversion is going to be quite severe
17 not only on this Project but also on other projects.
18 And that's a concern for all of us.

19 CHAIRMAN DEVENS: Is that all the argument
20 you want to make on this particular motion?

21 MR. OKAMOTO: Yes.

22 CHAIRMAN DEVENS: Okay. Mr. Voss.

23 MR. VOSS: Thank you, Chair.

24 CHAIRMAN DEVENS: Actually, let me go back
25 to Mr. Okamoto. What you're offering Mr. Wessels to

1 make a statement on is it different any way from the
2 affidavit that he's -- that you've submitted as part
3 of your moving papers?

4 MR. OKAMOTO: I think there's another
5 financing source that he's heard from that hasn't been
6 submitted as public testimony today. Other than that,
7 Mr. Chairman, when DW started out to do this in 2009
8 they fully intended to get this done, to get the
9 affordable units done, get certificate of occupancy.

10 CHAIRMAN DEVENS: I'm just trying to clarify
11 what additional statements did you -- are you offering
12 Mr. Wessels to make.

13 MR. OKAMOTO: That's really what I want him
14 to address to you is what happens with financing.

15 CHAIRMAN DEVENS: Is that in addition to his
16 affidavit?

17 MR. OKAMOTO: I believe so, yes, because
18 there have been discussions since then.

19 CHAIRMAN DEVENS: How much do you have on
20 this?

21 MR. OKAMOTO: Less than 5 minutes.

22 CHAIRMAN DEVENS: Okay. Mr. Wessels, we
23 have to swear you in since you're going to be making a
24 statement.

25 xx

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

4 THE WITNESS: Yes.

5 CHAIRMAN DEVENS: If you can state your
6 name.

7 THE WITNESS: My name is Robert Wessels.

8 CHAIRMAN DEVENS: We have your affidavit.
9 So if there's anything in addition to that we're
10 willing to hear that out. You need not repeat what's
11 already in the affidavit because we do have that.
12 That's already part of the record.

13 THE WITNESS: Right. I know that. I
14 understand that. Basically what I want to do is
15 apologize to the Commission for the turmoil that we've
16 created in the financial markets here.

17 When we came and when I spoke to you and you
18 gave the approval to go forward, I had a --
19 commitments from many contractors and engineers that
20 we could make the time, the 385 units by the end of
21 November.

22 A number of people on this Commission were
23 very sceptical. And it turned out in retrospect that
24 we did not have control of enough of the items to be
25 able to complete that.

1 And we, therefore, have filed and asked for
2 an extension of time to be able to complete our
3 commitments both to this Commission and to the
4 contractors and the buyers that have signed up for
5 reservations on the units which we have in the
6 construction.

7 The ramifications of your Proposed Decision
8 and Order is viewed, at least by the lenders that
9 we've talked to -- and we've had a couple of
10 conversations with members of the Legislature that
11 have said that it has an impact from some of the
12 funds -- is that if you were to follow through on your
13 Decision and Order to convert this back to agriculture
14 it would basically limit, if not prohibit, most
15 construction lending to private businesses in the
16 state of Hawai'i. Because they would look at it as no
17 project was ever safe.

18 CHAIRMAN DEVENS: Mr. Wessels, that's pretty
19 much part of paragraph 10 of your affidavit.

20 THE WITNESS: Okay.

21 CHAIRMAN DEVENS: You have a chance to add
22 anything new, anything new.

23 THE WITNESS: It was only confirmed by
24 further conversations. And that's really the extent
25 of the newness. We would ask that we be allowed to

1 finish what we committed to.

2 CHAIRMAN DEVENS: Okay. Appreciate your
3 testimony. Thank you. Mr. Okamoto, you want to add
4 any further argument?

5 MR. OKAMOTO: Not on the motion.

6 CHAIRMAN DEVENS: Because we'll get to the
7 other items as well. Mr. Voss.

8 MR. VOSS: Thank you, Chair and members of
9 the Commission. I really appreciated Lance Yoshimura
10 coming out and speaking today 'cause that's the first
11 time we've heard from him.

12 In three minutes Mr. Yoshimura asked the
13 questions that I think is really or should be on the
14 minds of all of us here is: Who are we going to
15 punish for the lesson learned here? Are we going to
16 punish the carpenters on the Big Island who need the
17 jobs?

18 Are you going to punish the ILWU workers who
19 work at the Waikoloa Resort who don't have anywhere to
20 live?

21 Are you going to punish the kids or the
22 parents of those families that that real estate agent
23 talked about who have to drive two and a half, three
24 hours to jobs 'cause there's nowhere to buy a house in
25 South Kohala? Who are we punishing here?

1 That kind of does get to the point we made
2 in our joinder to this motion which is: The purpose
3 of this Commission established by the Legislature back
4 in 1961 enabling act said "The Land Use Commission's
5 purpose is to preserve and promote the development of
6 lands in the state of Hawai'i for the uses to which
7 they are best suited."

8 The reason for that was, if we all
9 remember -- I was actually just being born in '61 --
10 the reason this Commission was created was there was
11 tremendous uncertainty, turmoil in the early '60s as
12 to what was going to happen as we changed from an
13 agricultural economy, sugar and pineapple, to
14 primarily tourism, other based economy, a
15 manufacturing base to the extent we have it.

16 This Commission was created to figure out in
17 long-term planning where is the best place to put
18 urban lands, long-term land use planning.

19 And it is ironic, I think, that by this
20 decision that you're about to adopt, if you adopt the
21 Proposed Decision and Order, that you would, as Mr.
22 Wessels said, effectively stop the financing not just
23 for this Project but for many other projects, fewer
24 jobs for carpenters, fewer homes for ILWU workers,
25 fewer dollars in our tax base for everyone.

1 So I would really request that you think
2 hard about this motion because it does have an
3 important purpose: To defer the draconian action that
4 you're contemplating and ask the Office of Planning
5 and DW and the County to work together and come to you
6 at the next meeting with a proposal to Amend Condition
7 1 of the affordable housing so you can consider that
8 and decide whether it's an appropriate way to keep
9 this Project alive before, quite frankly, you do
10 tremendous damage not just to the State's economy but
11 the purpose of this Commission. So I respectfully
12 request that this motion be granted. Thank you.

13 CHAIRMAN DEVENS: Thank you for your
14 argument. Mr. Brilhante.

15 MR. BRILHANTE: Thank you very much,
16 Mr. Chair. At this time the County takes no position
17 as it relates to the Petitioner's Motion for
18 Reconsideration.

19 However, as the County has held pretty
20 steady in the past, it feels that the classification
21 for this parcel of land to urban is the most
22 appropriate classification and it should remain as
23 urban classification. Thank you very much.

24 CHAIRMAN DEVENS: Thank you for your
25 argument. Mr. Yee.

1 MR. YEE: The Office of Planning takes no
2 position on the Motion for Reconsideration.

3 CHAIRMAN DEVENS: Commissioners, any
4 questions for the parties on this particular motion?
5 Hearing none, we'll now take oral argument -- actually
6 I think the plan is to take all the arguments today.
7 and I think we're going to defer any decision-making
8 on any item until the next meeting.

9 MR. OKAMOTO: Mr. Chairman, could I speak to
10 that?

11 CHAIRMAN DEVENS: Yes.

12 MR. OKAMOTO: It's crossed my mind. I
13 understand that this Commission will change three
14 Commissioners very shortly. Is that correct? If we
15 address the Commissioners today -- I mean I'm hearing
16 that there will be three new Commissioners the next
17 time we're looking at this. Is that wrong?

18 CHAIRMAN DEVENS: I don't know about three.
19 I can't comment on that. Not that I know of.

20 MR. OKAMOTO: Okay. My problem is this:
21 We've all been through this. The Commissioners have
22 listened to a lot of stuff coming in. If I'm going to
23 submit an oral argument on some of these issues I
24 would very much like to address personally the
25 Commissioners who will actually be making the

1 decisions.

2 CHAIRMAN DEVENS: Hoping it's the ones
3 you're looking at right now.

4 MR. OKAMOTO: Okay.

5 CHAIRMAN DEVENS: Obviously I don't have
6 control over who the governor wants to bring on and
7 take off.

8 MR. OKAMOTO: That's my concern.

9 CHAIRMAN DEVENS: I completely understand
10 that. I don't have anything to report to you.

11 MR. OKAMOTO: Okay.

12 CHAIRMAN DEVENS: If we're told we gotta
13 leave then we'll leave, at least I will. Haven't been
14 told that yet. Let's move to the next item. DW 'Aina
15 Le'a's Motion to Amend Conditions 1, 5, 7 and the
16 Amendment to the Motion to Amend Conditions 1, 5, 7.
17 If I may, just to update the record on that particular
18 item:

19 On March 9th, 2011 the Commission received
20 Petitioner's Motion to Continue Hearing on Motion to
21 Amend Conditions 1, 5, and 7 and Defer Action on
22 Adoption of Proposed Findings of Fact, Conclusions of
23 Law, Decision and Order and Request for Hearing.

24 On March 10, 2011 the Commission granted
25 Petitioner DW 'Aina Le'a's oral Motion to Continue

1 Hearing, Petitioner's Motion to Amend Conditions 1, 5,
2 7.

3 On March 24th, 2011 the Commission received
4 DW 'Aina Le'a's Amendment to Motion to Amend
5 Conditions 1, 5, and 7. That updates the record on
6 this particular matter.

7 Mr. Okamoto, your oral argument on this
8 motion.

9 MR. OKAMOTO: Thank you, Mr. Chairman. I
10 think the issue that's before the Commission today,
11 which will come up after this, is in terms of entering
12 the final findings on the reversion of this property
13 to agriculture.

14 We brought this motion -- I've maintained
15 this motion because I strongly feel that this is a
16 reasonable way for the Commission to address the
17 various problems that have come up on this docket.

18 I think it's pretty clear at this point that
19 DW is responsible and has gone forward with the
20 development with the construction of this Project.
21 Bridge is out of it. Okay.

22 We obviously did not make the November 2010
23 deadline. We are still struggling to get permit
24 approvals such as the one from DOT. But if we can
25 proceed, then we will be able to keep the land in the

1 classification to which it belongs.

2 The County has been very consistent that
3 this property really should be urban. If we can work
4 something out, then the benefits will go to the
5 community.

6 This is not just about DW or any other
7 developer. You've heard from people in this community
8 about what they want. That's only going to happen if
9 can finish the housing, get it out to residents. It's
10 only going to happen if we can proceed past that and
11 get the parks and the road connections.

12 This has been a long time coming. And what
13 we're looking at at this point is that in looking at
14 the reversion statute, which is 205-4(g) yes, you are
15 given the power to revert the property.

16 There is a reference to a more appropriate
17 classification. The lawyers would say, well, you know
18 there is only four classifications. What I'm here to
19 ask you today is to consider revising the conditions
20 so you get a functional equivalent. If you have the
21 land in urban, we bring up the conditions to current
22 standards, not 20 years ago.

23 In those terms the Commission's statutory
24 options as far as reversion are limited. I think
25 Commissioner Heller put it quite well. It's not a

1 fine instrument. It's an all or nothing instrument.

2 The conditions, on the other hand, are not.
3 What we did in amending the conditions is I think to
4 make it clear that we want to work with the
5 Commission, work with the Office of Planning and the
6 County to get these conditions to where they should
7 be.

8 DW has made its commitment to the community
9 as far as the affordable housing. We have told
10 everybody we're looking at building not less than 385
11 affordables. And that's what DW wants to do. They
12 gave the community their word. They can't back out on
13 that.

14 It wasn't possible to get it done by last
15 November, but that's really where DW is still going.
16 They have buildings up. They have infrastructure
17 going.

18 As I think you have heard in today's
19 testimony there is still a need for affordable housing
20 in Waikoloa. It's just not there. Under current
21 conditions this is the only Project going that has any
22 chance to build that housing in this area short of
23 government subsidies. As you know government
24 subsidies right now are very limited.

25 DW also has the strongest incentive to

1 continue. They have over \$20 million into this
2 Project from investors and from themselves. They're
3 not going to get any of it back until they move this
4 Project along, get the units out there to residents.
5 And then they will have the ability to proceed to the
6 next phases.

7 Part of what we are asking in the amended
8 motion is that that be the focus. That should the
9 Commission decide to allow us to do this, we're going
10 to get this stuff, we'll get our house in order on
11 that. That's the focus of the development.

12 Until we get that affordable housing program
13 going we don't look at doing other parts of this
14 Project. That's what we need to focus on. And that's
15 what the community expects. If we don't do that the
16 credibility of DW in this community is nothing.

17 They do need community support. That's very
18 clear. And I think you've heard enough that there are
19 people in this community who live there, work there,
20 they want this to happen.

21 Now, there are difficulties with
22 construction financing which is why we're very --
23 we've learned to be very careful about promising too
24 much to too many people. However, the Capital Asia
25 program has continued to produce money.

1 If the Commission can see its way clear not
2 to revert this property, we feel that that would be a
3 very solid base. That's a minimum base. At this
4 point we're not too far away from having units that
5 can actually go out to market.

6 Once that starts to happen the construction
7 financing, I think, will follow because we'll have
8 cash flow on this property.

9 The other portion that you've heard from
10 Ms. Correa is the other benefits of the Project. It
11 takes time to get some basic services into this
12 community.

13 The community started as a resort community,
14 which is fine. I mean it provided jobs. But the
15 problem is the folks who work there don't have a place
16 to live. They have got to go far, far away. The
17 short commute's North Kohala. The long commute's
18 Hawaiian Oceanview Estates. I mean that's a long
19 ways. And it cuts into the ability of the families to
20 enjoy their lives.

21 We'd like to put this Project going forward
22 so we can meet those needs. The delays, yes, my
23 client would be very upset in the length of delay, but
24 if you look at it from the standpoint of these
25 families, for them the effect is even worse.

1 They're going to have to continue that
2 2-hour commute. They won't be able to take their kids
3 to after-school activities because both of 'em work
4 and they're driving a long ways to get to and from
5 work.

6 As we've heard from other witnesses like
7 Lance, reverting the property is also not going to
8 help those who work in the construction industry.
9 They need the work. This is good work. The initial
10 phases we're gonna produce affordable housing.

11 So it's a double win. We'd like to put
12 those folks back to work. Those people make a pretty
13 good living when they're workin'. DW would hope that
14 at least some of 'em would be interested in buying
15 some of these units. That would be a great thing to
16 have happen.

17 I have come to realize that we need to be
18 careful, although I'm asking you for this help, that
19 we really need to watch about deadlines, the problem I
20 foresee as we go along because this Project has now
21 started.

22 There are people who have invested money in
23 it. There are people who are going to buy units. We
24 need to give them a means of feeling secure that if
25 they buy, they put their money in, that they're

1 reasonably secure. Okay? They're gonna get what they
2 expect. For the families, they buy the property, the
3 unit, they sign up for a 30-year mortgage.

4 As long as they pay the mortgage they should
5 end up owning the property and living there for that
6 period of time.

7 We have, therefore, suggested in our Amended
8 Motion, that what the Commission direct us to do is
9 update the master plan, get it circulated to the
10 parties. We do need to discuss this with the Office
11 of Planning and the Planning Department, make
12 adjustments to conditions that would address any
13 potential impacts the agencies see, bring it back to
14 you for review. And if it makes sense to you then
15 hopefully you'll approve it. If it doesn't we'll have
16 to revise it.

17 This would get this Project on a parity with
18 those which were more recently given approvals by the
19 Land Use Commission. It would allow us to continue
20 and get the benefits out there to the community.
21 Until that part of it is done then DW is fine. We'll
22 limit the activities. Let's get the affordable units
23 ready for people to buy.

24 Once we get that going I think for everyone,
25 everybody can see how this is all working out, how

1 many units can be moved, if there are any impacts that
2 come up that are not expected at this point.

3 The alternative, of course, is, yes, the
4 Commission reverts the land. And I guess we'll be
5 dealing with that next on the agenda. But we really
6 strongly would ask the Commission consider this as an
7 alternative. Thank you.

8 CHAIRMAN DEVENS: Thank you. Mr. Voss.

9 MR. VOSS: Thank you, Chair. Bridge does
10 not object to DW's Motion to Amend Conditions with the
11 understanding that the Commission would work with the
12 Office of Planning and DW to establish reasonable
13 conditions and timeframes to help this Project become
14 a success.

15 I do want to address briefly the issue that
16 Alan raised about the appropriateness of arguing the
17 adoption of the Proposed Findings of Fact as it ties
18 into this motion.

19 Governor Abercrombie has nominated three
20 replacement members to this Commission. And the
21 Legislature is pau at the end of April.

22 Those Commissioners will be confirmed far
23 more likely than not by the Legislature. So we're
24 facing a situation where three Commissioners would be
25 on the Commission to vote on a matter, an

1 unprecedented action, reclassification reversion
2 without having heard the entire record. And I
3 respectfully don't think it's appropriate for that to
4 happen.

5 Conversely, this Commission can act on these
6 first two motions appropriately. You have the record
7 before you. You have the public testimony. You have
8 the basis. And, most importantly, this Project and
9 this problem doesn't get any better with age.
10 Deferring it is not helpful.

11 By granting this motion today, which you can
12 do, you can direct DW and OP and the County to go back
13 and get to work and start developing some conditions
14 that they can bring back to you that you might find
15 acceptable.

16 So I would respectfully endorse this motion
17 and ask that it be ruled upon, granted today. And we
18 defer argument on the reversion or Findings of Fact
19 reclassifying the land because I don't think that's
20 appropriate. Thank you, Chair.

21 CHAIRMAN DEVENS: Thank you. Mr. Brilhante.

22 MR. BRILHANTE: Thank you, again, Mr. Chair.
23 Again, the County takes no position as it relates to
24 the Petitioner's request to Amend Conditions 1, 5 and
25 7. Thank you.

1 CHAIRMAN DEVENS: Okay. Thank you.

2 Mr. Yee.

3 MR. YEE: The Motion to Amend is obviously
4 tied in with the Motion for Reconsideration. So
5 consistent with the Office of Planning's position on
6 the Motion for Reconsideration we also take no
7 position on the Motion to Amend except for the request
8 to change the condition with respect to Department of
9 Education's facilities.

10 Their desire to place the school facilities
11 out of the Petition Area onto what's basically
12 agricultural classified lands is opposed by the
13 Department of Education and the Office of Planning.

14 Schools are an urban use and needs to be
15 placed onto urban classified lands. Therefore we
16 oppose any request to place the school outside of the
17 Petition Area because that would then place the school
18 or allow the school to be placed onto agricultural
19 classified lands.

20 And that makes it difficult, if not
21 impossible, for the Department of Education to move
22 forward with the construction of the educational
23 facility.

24 I did want to add one further clarification
25 with respect to the proposal to work with the Office

1 of Planning on the conditions. Certainly if the
2 Petitioner or DW 'Aina Le'a submits proposed
3 conditions, the Office of Planning will be consulting
4 and collaborating with them providing them with our
5 views prior to any hearing.

6 We want to be clear that the Office of
7 Planning is not proposing conditions. It's a proposal
8 from DW 'Aina Le'a for which the Office of Planning
9 will provide comments and collaboration. Thank you.

10 CHAIRMAN DEVENS: Commissioner Kanuha.

11 COMMISSIONER KANUHA: Yes, Mr. Chairman.

12 One clarification if I may. Did you just say that the
13 Office of Planning is taking no position on the Motion
14 to Amend?

15 MR. YEE: Yes. Except for the Request to
16 Amend the Condition with respect to the Department of
17 Education school facilities.

18 COMMISSIONER KANUHA: But at the last
19 meeting didn't you -- the position you take that that
20 was moot?

21 MR. YEE: Thank you for the question. I
22 think what that flows from is I, frankly, had a
23 certain concept of how the process would be working
24 here. And I envisioned what would be happening is
25 that there would be a Final Order from the Commission

1 followed by a Motion for Reconsideration and a new
2 Motion to Amend which would be tied in to the
3 specifics of the Motion for Reconsideration.

4 So in my mind what I anticipated is that the
5 old Motion to Amend really wasn't relevant at that
6 point. It should be moot. It was, frankly, I was
7 thinking denied without prejudice. And they would
8 come in and file a Motion for Reconsideration and a
9 new Motion to Amend subsequently.

10 What they did is they filed the Motion for
11 Reconsideration before you issued your Final Order.
12 And they amended their Motion to Amend to be something
13 different than what they had before.

14 So I clearly had -- I had in my mind a
15 certain process this was going to follow. And that's
16 just not the way the process went. What you decide to
17 do, how you decide to deal with the process, the
18 Office of Planning is not taking a position on.

19 COMMISSIONER KANUHA: Thank you.

20 MR. OKAMOTO: Mr. Chairman, could I address
21 the DOE matter Mr. Yee brought up about the site?

22 CHAIRMAN DEVENS: Sure.

23 MR. OKAMOTO: Okay. What we understand from
24 the Department of Education is that DOE will only take
25 the site if it is entitled. That is it has to be

1 urban classified. That's our understanding. Given
2 everything else that's going on, at this point as far
3 as that condition is concerned I think we'd be okay
4 just to withdraw the request on that.

5 We'll work it out at a future time, if we're
6 able to, with DOE and come back in. Until then we'll
7 just have to set aside the 16 acres in the urban
8 classified area.

9 I don't want that to become a major thing
10 because we are thinking that if we were to have that
11 land, the 32 acres in what is now in ag area turned
12 over to DOE, we would have to get it classified to
13 urban because of DOE's requirements. It may have been
14 premature for me to include that in this Motion to
15 Amend Conditions.

16 CHAIRMAN DEVENS: Any questions for the
17 parties on this particular motion? There being none,
18 we'll take oral argument on the last time on the
19 Exceptions and Objections to the Proposed Findings of
20 Fact, Conclusions of Law, and Decision and Order
21 Reverting the Petition Area.

22 Mr. Okamoto, you want to start?

23 MR. OKAMOTO: Yes. If I can have just about
24 30 seconds.

25 CHAIRMAN DEVENS: Sure.

1 MR. OKAMOTO: What we did in looking at the
2 Proposed Findings is we went through the whole
3 document. Then we tried to come back in our
4 exceptions in many, many pages to cover what we felt
5 was omitted from the Findings as well as a few areas
6 in which we had disagreements as to the nature of the
7 Findings or the language.

8 What I'd like to do, rather than go through
9 the whole thing, is try to address what I think are
10 the more significant areas. I can refer to pages if
11 need be as far as the more detailed stuff.

12 CHAIRMAN DEVENS: Mr. Okamoto, if I may just
13 ask how much argument do you have? Just trying to
14 gauge how much time you need.

15 MR. OKAMOTO: About 20 minutes. I tend to
16 go shorter than Mr. Yee. So I think 20 minutes?

17 CHAIRMAN DEVENS: Mr. Voss, do you have
18 about the same amount of argument?

19 MR. VOSS: I would say probably closer to 25
20 minutes, in that range 20 to 30 minutes.

21 CHAIRMAN DEVENS: Okay. Let's take a short
22 recess right now. (1:30)

23 (Recess was held. (1:40))

24 PRESIDING OFFICER KANUHA: Let the record
25 show Chair Devens had to leave for another

1 appointment. We were on oral argument. I believe the
2 Petitioner had started its presentation. At this time
3 we'd like to ask if there's any objections if we take
4 the County out of turn.

5 Mr. Brilhante has another appointment that
6 he needs to get to. Are there any objections from the
7 parties?

8 MR. OKAMOTO: No, sir.

9 MR. YEE: No objection.

10 MR. VOSS: No objection.

11 PRESIDING OFFICER KANUHA: Okay. Fine.
12 County.

13 MR. BRILHANTE: Thank you, Chair Kahuna. At
14 this time the County would like to put on the record
15 it takes no position as to the Proposed Findings of
16 Facts, Conclusions of Law as well as the Decision and
17 Order proposed in this matter.

18 PRESIDING OFFICER KANUHA: Okay. Thank you.
19 Commissioners, any questions? All right. We'll go
20 back to you, Mr. Okamoto.

21 MR. OKAMOTO: What I would like to start
22 with is by addressing the statutory standards of
23 section 295-(h) and by its terms that subsection
24 applies to an amendment of a land use district.

25 Changing the classification from one

1 district to another such as from urban to agriculture
2 is an amendment regardless of the procedure by which
3 the change occurs. It applies to a Petition to
4 reclassify the land, and it applies to the reversion
5 action being contemplated by this Commission.

6 Section 205-(h) refers to section 16 and 17.
7 And those sections require specific findings be made
8 concerning the Hawai'i State Plan, Functional Plans,
9 conformity with district standards, and impacts on
10 areas of statewide concern such as employment,
11 economic development and housing opportunities.

12 These findings are absent in the Proposed
13 Findings. The evidence as developed during the
14 various hearings that were held in the OSCs does not
15 support reversion based on these standards. The land
16 is not suited to agriculture.

17 That is supported by the County General Plan
18 designation, the physical characteristics of the land,
19 basically lava flow, and the absence of resources such
20 as water to support agriculture on the land.

21 The evidence does show that the land is
22 suited for urban use. And that has been the
23 consistent position of the County of Hawai'i.
24 Reversion of this land will not obviously further
25 employment, economic development, or housing

1 opportunities. These factors will be advanced if DW
2 is allowed to continue with the construction and will
3 further be advanced as the Project goes past Phase I.

4 Whatever the Commission's conclusions are as
5 far as the OSC, the findings need to provide a
6 complete and accurate recitation as far as those
7 standards and others used by the Commission. It
8 should include a description of specific actions taken
9 by the Commission during the various proceedings.

10 And we've pointed those out in some detail
11 in the written submissions and evidence that was
12 presented during the course of the proceedings. This
13 would allow for a meaningful review of the
14 Commission's actions in the future to see if the
15 conclusions are supported by evidence and that it
16 correctly applied the statutory standards.

17 One item we noted that really should be
18 included is the precise bases for the Commission's
19 actions when it started the OSC. That was not cited
20 in the Findings.

21 The specific Findings are critical in
22 determining just what representations as far as the
23 use of the land were being relied upon for the
24 reversion action. And in particular looking at the
25 substantial commencement of use of the land in

1 accordance with such representations. That is the
2 statutory language that the Commission uses for this
3 type of proceeding.

4 I would note, and I've noted before, that
5 what DW has done and proposed to the Commission that
6 it will do is essentially the same as that which was
7 proposed by its predecessor.

8 This is a residential Project with
9 supporting active recreational facilities and
10 supporting neighborhood commercial uses. That has
11 not changed.

12 The affordable housing component as proposed
13 by DW when carried out is for onsite housing. The
14 development is for not less than 385 affordable
15 housing units, the same number described in Condition
16 1.

17 These really are the key representations as
18 far as I can determine concerning the use of the land
19 and should be included in the Findings.

20 The specific Findings of Fact, which should
21 be included, are also important in determining whether
22 estoppel applies to this Project. We have noted in
23 the written submission that DW began submitting
24 information to this Commission at the end of May 2009.
25 There were then status reports from DW, from Bridge,

1 and there was evidence presented in the August 2009
2 hearing.

3 After the Commission took action at the
4 August meeting, DW then put its efforts and funds to
5 expedite permits, complete the EIS and begin prepping
6 the Phase I site and working on the supporting
7 infrastructure.

8 These items were all presented to the
9 Commission at various times in the proceedings and
10 should be included in the Findings. We have also
11 noted that there are particular Findings that we
12 described on pages 16 through 21. They relate to
13 details concerning substantial commencement of the
14 Project and the background on which estoppel should be
15 considered in Findings.

16 We had also noted specific objections to
17 certain Findings, being Findings of Fact 64, related
18 to the representations of DW. That's found starting
19 on pages starting 15 through 16.

20 We believe strongly that the pertinent
21 representations that the Commission should be looking
22 at are those relating to those made when the boundary
23 change was sought.

24 As far as the statements of DW I believe
25 when the record is examined there aren't

1 misrepresentations as such. There were statements of
2 DW's intentions and efforts. Even if those were not
3 successful in whole or part there is no indication
4 that DW ever sought to mislead this Commission.

5 DW has presented to the Commission that the
6 plans that it had done and presented to the Commission
7 may have to be changed. And, in fact, there were some
8 changes that had to be made. Those changes were
9 reported to the Commission as the work went on.

10 One of those had to do with the location of
11 the wastewater treatment plant. The initial planning
12 was to put it outside the urban area. That was going
13 to create some real problems, first of all, because
14 the condition is not for that, it has to be inside.
15 And secondly because of the additional processing
16 time.

17 So the wastewater plant, if we can ever put
18 it in, is going to be in an area that's already
19 classified urban. Those are the types of adjustments
20 that took place. They were not done with any view to
21 mislead anyone. It's just what happens when you're
22 trying to get a project going.

23 With respect to Conclusions of Law I have
24 objections to those. And I will try to cover those
25 fairly briefly.

1 For Conclusion of Law 2 we feel that the
2 wording does not correctly state the authority of the
3 Commission under section 205-4(h). That section
4 applies if there's a failure to substantially commence
5 the use of the land in accordance with representations
6 made.

7 It does not empower the Commission to revert
8 land for any misrepresentation. It's in that context
9 that the power exists.

10 We have also noted and it's in -- of course
11 it's in the statute that the authority as far as the
12 enforcement of Chapter 205, rests with the counties
13 and not with this Commission. On Conclusion of Law
14 3 -- I'm sorry. I'm having a bit of a lapse here.

15 On Conclusion of Law 3 I would simply note
16 that DW had applied to the Land Use Commission seeking
17 amendment to Condition 1 on August 30. This is quite
18 a bit before the November 2010 deadline.

19 It was not heard, but it was not ignored.
20 The DW is aware that conditions exist. It does
21 everything it can to comply with them. It sought to
22 have the Commission hear that condition before we came
23 to the deadline.

24 On Conclusion of Law 4, this conclusion is
25 not supported by the record in this proceeding. We

1 have noted the various matters that we feel are
2 procedural violations both of the statute and of the
3 rule during the course of the proceedings.

4 And this is not an easy thing to say to the
5 Commission. But looking at the record we believe that
6 it does show that there has been some arbitrary action
7 mainly because the character of this development has
8 not changed nor have we changed any of the key
9 elements of this development since we presented it to
10 this Commission back in 2009.

11 We also note that this action is totally
12 inconsistent with the treatment of other similar
13 projects in which no development has taken place. And
14 that singling out this Project for this type of
15 treatment is violative of DW's equal protection
16 rights.

17 With respect to Conclusion 6 we feel that
18 the record, if it is cited in the Findings, will fully
19 support the application of estoppel. DW showed the
20 Commission what it intended to do before August of
21 2009 and it explained in some detail how it intended
22 to do it.

23 When the Commission took action in August of
24 2009, DW then proceeded to follow up on its plans.
25 That included putting up the buildings that stand

1 there today.

2 In doing so it spent more than \$20 million
3 by March of 2010 and it has kept spending money to
4 carry out those same plans. There have been no
5 deviations. We've just been slow. We just haven't
6 gotten as far as we had hoped to get.

7 Lastly, we object to the proposed Order. We
8 cited that the Motion to Revert received the
9 appropriate number of votes. We feel that 205-(4) (H)
10 requires 6 affirmative votes, not 5 for approval of a
11 reversion action. And the Commission did not have 6
12 affirmative votes on January 20th.

13 That's what I have to say, Mr. Chairman.
14 Thank you very much.

15 PRESIDING OFFICER KANUHA: Thank you very
16 much. Bridge.

17 MR. VOSS: Just a minute, Chair. We will
18 set up our visual aids and commence in just a second
19 here. May I proceed, Chair Kahuna?

20 PRESIDING OFFICER KANUHA: Yes, go ahead.

21 MR. VOSS: Thank you. Members of the
22 Commission, thank you for the opportunity to speak to
23 you today and to listen to me today. While I know
24 that some of you don't agree with all I have to say,
25 some of you strongly disagree with what I'm about to

1 say. It's important that we continue to have these
2 conversations because, quite frankly, the alternative
3 is very costly, not just for everyone in this room but
4 for people and projects around this state.

5 Before I get to my specific objections
6 somewhat similar to what Alan did, I want to cover
7 three general points. First, the key question: What
8 are we doing here? And I don't mean that in some
9 metaphysical sense.

10 But what is the specific action the
11 Commission is about to take by adopting the Proposed
12 D&O? The reason that question is so important is
13 because, as Alan said, the language of 205-(4) (h)
14 which I've put up on the board for all of you to see:

15 "No amendment of a land use district
16 boundary shall be approved unless the Commission finds
17 upon the clear preponderance of the evidence that the
18 proposed boundary is reasonable, not violative of
19 section 205-2 and part III of this chapter and
20 consistent with the policies and criteria established
21 pursuant to sections Chapter 205, 16 and 17."

22 So based on that language if the action you
23 are contemplating taking through the D&O is an
24 amendment of a land use district boundary, you must
25 comply with all the requirements of 205-(h).

1 Compliance with the statute is not optional.
2 It's not something you can avoid doing if it's
3 inconvenient. It is mandatory. That's the plain
4 language of the statute. And in the Hawai'i Supreme
5 Court Rather In Re Terminal Transportation said "The
6 language of this statute 250 is strictly construed."

7 This proposed D&O would amend the land use
8 district boundaries of the 'Aina Le'a property from
9 urban use to agricultural use. To say that the
10 proposed action does not amend land use district
11 boundaries, quite frankly, is just not an honest and
12 credible position. Maybe the best way to see that is
13 by looking at the Commission's own maps. This is a
14 blowup of the boundary map in the Commission's own
15 website.

16 You can see the land use boundaries of the
17 'Aina Le'a property shown in pink designating urban
18 use. The arrow and the words there are not on the
19 Commission's map. I added those. But everything else
20 is taken straight from your map on the website. If
21 you adopt this proposed D&O, the map's land use
22 boundaries would be changed such that the 'Aina Le'a
23 property would be shown in white for agriculture use.
24 That is a boundary amendment as a matter of law and as
25 matter of common sense.

1 I hear the argument from some people, "Well,
2 you know, we're calling this a reversion so 205-(h)
3 doesn't apply. To that I'd say if you call a pig a
4 goat that doesn't make the animal a goat. It's still
5 a pig.

6 It is the substance of your actions that
7 dictates your legal obligations, not the legal label
8 you put on it or the legal label your counsel puts on
9 it.

10 As Professor Callies concludes in his
11 report, quote, "A boundary amendment is a boundary
12 amendment regardless of the alleged basis therefor.
13 There is nothing in the LUC's statutory authority for
14 considering and issuing a Show Cause Order that grants
15 the LUC the authority to change a State Land Use
16 classification by a shorter process than which is
17 required in the same statute in the very next
18 subsection." End of quote.

19 So this is in substance, in fact and in law
20 an amendment of a land use district boundary subject
21 in 205-(h).

22 And the next obvious question is: Does this
23 proposed D&O comply with the statute? The answer is
24 no it doesn't. The plain and painful truth is it
25 doesn't even try to. All of you have looked at the

1 proposed D&O when you voted on it and discussed it.

2 You know what it contains.

3 You follow along with the statute here, the
4 requirements, you can see exactly how your proposed
5 D&O doesn't comply with the statute. It does not find
6 by a clear preponderance of the evidence that changing
7 the land use classification to agriculture use is
8 reasonable.

9 It doesn't find that the property is
10 suitable for agriculture use under section 205-2. It
11 doesn't consider the factors required by section
12 205-16 and 17.

13 In particular it doesn't determine that the
14 land use boundary complies with the Hawai'i State
15 Plan. It doesn't consider the provision of employment
16 opportunities created by this Project. It doesn't
17 consider the benefits of economic development created
18 by this Project.

19 It doesn't consider the provision of housing
20 opportunities for all employment groups provided by
21 this Project. And it doesn't consider the Hawai'i
22 County General Plan which designates the area for
23 urban expansion.

24 All of those requirements, every single one
25 of them, are taken straight from the statute. And

1 this proposed D&O ignores each and every one of them.
2 And this disregard of the statute is particularly
3 troubling in light of the prior Findings of this
4 Commission.

5 Mike, if you could put up for the 1991
6 Decision and Order. This is a quote from Page 49 of
7 the July 9th, 1991 Decision and Order of this
8 Commission.

9 And while those were obviously other members
10 of the Commission, this is the Findings of Commission.
11 Quote, "The property is not suitable for agriculture
12 and there are no agricultural activities on the site."
13 That remains the finding of this Commission today.

14 This proposed D&O doesn't try to change that
15 Finding. The Commission couldn't anyway because
16 there's no evidence in the record to support such a
17 change.

18 This proposed D&O would change the
19 property's land use classification to a use the
20 Commission has expressly found the property is not
21 suitable for. And that is a plain violation of the
22 law.

23 Lastly, there's the issue of the number of
24 votes. Could you put up the last.... If this action
25 does, in fact amend a land use district boundary and

1 with all due respect there's no question it does --
2 then the statute says, quote, "6 affirmative votes of
3 the Commission shall be necessary for any boundary
4 amendment under this section."

5 We all know there were only 5 affirmative
6 votes in favor of the motion made on January 20th.
7 Yet this proposed D&O does not mention anywhere,
8 anywhere in it in the Findings or in the Conclusions
9 that only 5 affirmative votes were cast in favor of
10 the motion as if the Commission could just ignore the
11 issue and it would go away by omission. I find that
12 deeply troubling. I hope some of you do too.

13 In sum, on its face this proposed D&O
14 violates at least a half dozen statutory requirements.
15 And that really should be the end of this proceeding.

16 The second general point I want to make is a
17 takeoff on something a Commissioner said at the
18 January 20th meeting. In support of his vote one
19 Commissioner cited something that his father once told
20 him. I want to tell you something my father once told
21 me.

22 My father said, "You treat people fairly.
23 Doesn't matter if they're rich or poor. Doesn't
24 matter if they're black, white or green. Doesn't
25 matter if they have power, influence or friends or if

1 they have no friends at all. You treat people fairly.
2 And part of treating people fairly is treating people
3 equally. You don't play favorites.

4 I want to show you all a headline from the
5 March 31st, 2011 "Star-Advertiser". Some of you may
6 have seen this. The headline reads "Turtle Bay
7 Project pared down." This is between the time you
8 adopted the Proposed D&O and today's hearing. This
9 story goes on to say, "There's a new plan for the
10 Turtle Bay Project, also known as the Kuilima Project,
11 that reduces the number of units to 1155." This
12 Turtle Bay Project, Kuilima, was approved by this
13 Commission in 1986, Docket A85-595.

14 This plan, this is now the fourth or fifth
15 version of the Kuilima Project. No hotel rooms have
16 been built. No affordable housing has been built. No
17 construction is underway. The Project has no
18 financing.

19 After 25 years nothing has been built at
20 Kuilima. So since nothing's been built has this
21 Commission moved to change the land use classification
22 of the Kuilima land back to agriculture? No. In fact
23 you deferred a Motion for an Order to Show Cause
24 against the Kuilima Project.

25 Can any of you sitting here today honestly

1 tell me that you have treated the 'Aina Le'a Project
2 the same as you have treated the Kuilima Project? The
3 answer is no. Because you, the Commission here, has
4 deliberately treated the 'Aina Le'a Project
5 differently to try to make a point.

6 Some of you feel and probably still do feel
7 very strongly that you were justified in treating
8 'Aina Le'a differently because of the frustration,
9 irritation you felt with the Project and, yes, with my
10 client Bridge. But frustration and irritation does
11 not justify unequal treatment under the color of law.
12 It just doesn't, not here, not anywhere.

13 The third general area I want to discuss is
14 the report of the University of Hawai'i law school
15 Professor David Callies. We have attached a copy of
16 Professor Callies' opinions to our objections. I hope
17 and trust you all have read it. And if you haven't I
18 beg of you to read it before the decision-making on
19 this motion.

20 With all due respect, no one in this room
21 has the experience and expertise in land use law that
22 Professor Callies has. He's one of the nation's
23 leading experts in this area of law, written 17 books.

24 He reviewed the entire record of this
25 proceeding and concluded the Commission's proposed D&O

1 here violates principles of equitable estoppel, due
2 process, equal protection and the limitation of land
3 development conditions made by the U.S. Supreme Court.
4 His opinions are clear, concise, to the point. And
5 any Commissioner who reads them knows that he or she
6 should not be adopting this Proposed Order.

7 If you think that Professor Callies came to
8 those conclusions because Bridge retained him,
9 respectfully you don't know Professor Callies. Nobody
10 tells Professor Callies what to say. Professor
11 Callies' conclusions are particularly important
12 because this is not just some academic exercise. This
13 is the real world of money and liability.

14 There's another headline I want to show you.
15 It's actually from today's paper. "Committee kills
16 GET hike."

17 This is the Senate backing off on the gambit
18 to raise the excise tax by a full percentage point.
19 While we're sitting here in this room, just down the
20 street not more than 200 yards away our Legislature is
21 desperately trying to figure out how to close an \$800
22 million budget shortfall.

23 If you kill this Project based on this
24 Proposed D&O, you will create monetary liability for
25 the state of Hawai'i.

1 I mean for goodness sakes this Project has
2 County subdivision approval. There are completed
3 buildings on the property. All of you got the County
4 of Hawai'i's update report this week showing all the
5 progress, all the construction that has been done on
6 this Project.

7 Even if you knew nothing about vested rights
8 law does anyone here really think that a government
9 agency can kill a project at this point in the
10 development and not incur any liability? Of course
11 there will be liability. The only question is what
12 the final price tag will be. DW submitted an
13 affidavit saying it's invested more than \$26 million.
14 Bridge and its predecessors in interest have invested
15 more than \$10 million.

16 I can't say because I don't know what the
17 final price tag will be. But very likely it will be
18 in the eight figures. And that price tag, whatever it
19 ends up being, will be an additional bill that this
20 Commission will have given to the state during the
21 worst budget crisis in the state's history.

22 This kind of recalls the old decision-making
23 adage that I've heard many times. "If this were my
24 money would I stand behind this decision with my own
25 checkbook?"

1 When you're going to deliberate, and when
2 hopefully you reread Professor Callies' reports, I ask
3 you to ask yourselves that question. Because you know
4 what? It is your money. It's my money. It's all of
5 our money when you're talking about creating liability
6 for the state of Hawai'i.

7 As Commissioners you took an oath to make
8 prudent and responsible decisions. You can't make a
9 legally or financially reckless decision just to make
10 a point. You can't say, "Oh, the lawyers will deal
11 with it." You're the ones responsible for the
12 consequences of this decision, this unprecedented
13 decision.

14 Now, I want to briefly review some of the
15 specific objections to the proposed D&O. Findings 6
16 through 15 regarding the 2005 proceedings before the
17 Commission regarding the amendment of Condition 1.

18 Those Findings are incomplete and full of
19 half truths. Bridge never asked this Commission to
20 reduce the affordable housing requirement to a
21 specific number by a specific date.

22 Bridge asked the Commission to amend the
23 condition so it could comply with the County's
24 affordable housing condition.

25 A request that had been granted by this

1 Commission in at least seven other major project
2 documents, a request that was supported by the County
3 of Hawai'i and a request that at that time was
4 supported by the Office of State Planning. This
5 Commission said no.

6 Instead, for the first time in its history
7 imposed a requirement that all the Project's
8 affordable housing units be completed by a specific
9 date, 5 years after that date.

10 In that respect this Project is a class of
11 one.

12 Finding 7 of your Proposed Findings of Fact
13 states that "Mr. Paoa represented that the homes would
14 be built in 3 years." Respectfully that is patently
15 false. That's not what the record says.

16 We cited to the Commission the portions of
17 the record where Mr. Paoa testified that the projected
18 timeframe was subject to factors beyond Bridge's
19 control including County permits, state reviews,
20 including environmental reviews and the financing
21 markets.

22 And speaking of environmental reviews
23 Finding 15 inexplicably fails to mention that state
24 environmental law changed in 2007 following the
25 SuperFerry decision.

1 Following that decision, as a result the
2 'Aina Le'a Project was now required to do a costly and
3 time-consuming EIS that was not required when the
4 condition was amended back in 2005.

5 And if the Commission is making a Finding
6 regarding the discretionary approvals for this
7 Project, why in the world did the Commission's
8 Findings deliberately fail to mention a significant
9 change in law that required additional discretionary
10 approval?

11 Findings 39 through 44, these Findings are
12 incomplete. There's no Finding by the Commission
13 about the adverse affect the Order to Show Cause has
14 had on DW's ability to obtain long-term construction
15 financing.

16 The evidence in the record is uncontested
17 that that 2 year-old Order to Show Cause has hindered
18 DW's ability to secure financing. And under an
19 administrative agency law, with all due respect the
20 Commission cannon just simply ignore that testimony as
21 it is uncontroverted in the record.

22 Finding 45 stating Petitioners have had a
23 full and fair opportunity to present their case, I
24 won't repeat everything we said but obviously we
25 strongly disagree with that Finding. And I don't know

1 how as a matter of fact the Commission can make that
2 conclusion.

3 Finding 51 stating that Petitioners have
4 made no showing of prejudice as a result of the
5 procedural violations. That statement, with all due
6 respect, is also false.

7 One of the procedural violations that we've
8 cited to this Commission is the fact that the
9 Commission has kept this Order to Show Cause
10 proceeding pending for more than 800 days in violation
11 of the 365-day limit. And, again, as I just said, the
12 evidence is uncontroverted that that long delay has
13 affected DW's ability to get financing.

14 Finding 54 regarding equal protection says,
15 quote, "None of the cases cited by Bridge involve
16 facts and circumstances similar to this case." I
17 don't know who wrote that or who drafted that portion
18 of the Proposed Findings, but if they had been to the
19 Commission and looked through your Findings they would
20 know that that is false.

21 We cited seven major projects that have been
22 pending before this Commission for at least 15 years:
23 Kaloko Heights, Wailani, Royal Kunia Phase 2,
24 Honua'ula, Waikoloa Heights, Kohanaiki, and Kuilima.
25 Four of those projects are even older than 'Aina Le'a.

1 Two of those projects, Royal Kunia and
2 Waialani on Kaua'i, have had their affordable housing
3 requirements changed based on expressed
4 representations to this Commission.

5 All of those projects at various times have
6 proposed development timeframes to the Commission and
7 none of these timeframes have been met. All told,
8 those projects propose more than 7,000 housing units.
9 Do you know as of today how many affordable housing
10 have been built in those projects? Zero. Not...one.
11 Yet the Commission never moved to reclassify any of
12 those projects to agricultural use.

13 I went down to the Commission and actually
14 looked through almost all of these files, opened some
15 files that, quite frankly, hadn't been opened probably
16 in years.

17 Do you know that some of those projects
18 don't even bother to submit annual reports to the
19 Commission? Yet no action is taken against them. And
20 respectfully, compare that with the treatment that
21 'Aina Le'a has received from the Commission in these
22 proceedings.

23 Finding 56 states quote, "As of January
24 20th, 2011, over 22 years since reclassification was
25 granted, Petitioners have failed to obtain a

1 certificate of occupancy for at least one affordable
2 dwelling unit."

3 Again, that statement, with all due respect,
4 is just plain false. The Commission's own files in
5 this case, the annual reports submitted in this docket
6 shows the original Petitioner in this docket, Puako
7 Hawai'i Properties, built 107 affordable housing units
8 offsite to comply with the Commission's affordable
9 housing requirements for the Project. Those units
10 which are located in Waikoloa Town over in Ouli, are
11 now being rented by lower income Big Island residents.

12 You may choose not to count those 107 units
13 for its compliance with the 2005 Order, but that
14 doesn't mean that those units weren't built. They
15 were. And you can't say in an order and as a Proposed
16 Finding of Fact it is false based on your own files.

17 Conclusions of Law 2 through 6. These
18 Conclusions say, as Alan stated, that the "Commission
19 has the authority to revert a Petition Area to its
20 original land use classification for failure to comply
21 with the conditions imposed by the Commission.

22 Alan was very polite. He said that's not
23 quite a correct statement of law. But the more blunt
24 way to say it is that is a false statement of law.
25 And that is the statement of law that this Commission

1 relies upon in the Conclusions of Law to take the
2 draconian action you're proposing.

3 Even assuming the Commission had followed
4 all the statutory and administrative requirements for
5 this action, which I don't think it did, under section
6 205(g) of the statute, the Commission must first find
7 that the Petitioner has failed to make substantial
8 commencement of the use of the land in accordance with
9 the representations made in securing the boundary
10 change. That is the plain language of the statute.

11 Nowhere in this D&O does the Commission find
12 the Petitioners have failed to make substantial
13 commencement of the use of the land. And the reason
14 is I presume you can't make that statement in good
15 faith.

16 Look at what's been done: 16 units have
17 passed final inspection from the County of Hawai'i; 24
18 more units are near completion. The foundations have
19 been poured for 56 more units.

20 If that is not substantial commencement of
21 the use of the land, then why hasn't this standard
22 been applied to the Kuilima Project? Why hasn't this
23 standard been applied to the Royal Kunia Project? Why
24 hasn't it been applied to the Kaloko Heights Project?
25 Why? Why is this Project being treated differently?

1 Bridge has submitted Proposed Findings of
2 Fact as has DW. And the statute and your rules do
3 require the Commission to make a ruling on each
4 Proposed Finding presented by a party. Bridge
5 respectfully requests that you do so.

6 I know that some of my comments here today
7 have offended some of you. I want to assure you that
8 my purpose here today is not to offend. My purpose
9 here is to provoke you to think long and hard about
10 what you're about to do.

11 Don't just accept what some other Commission
12 Member tells you or what your counsel tells you about
13 this situation. Look for yourself at the statute.
14 Look for yourself at the rules. Look for yourself at
15 the record. Look for yourself at Professor Callies'
16 opinions.

17 And think about the consequences of your
18 actions not just for this Project but for projects
19 around the state, for those carpenters who don't have
20 jobs on the Big Island, for the people who don't have
21 homes to live in in South Kohala.

22 And really at the end of the day for some of
23 you the question really is is the point you're trying
24 to make worth the financial catastrophe this ruling
25 would create? Some of you may think this train has

1 gone to far down the track, there's no way out. And
2 there is a way out. We talked about that earlier
3 today.

4 If the Commission has additional ideas on
5 how Condition 1 of the Amended Decision and Order
6 should be amended, I'm sure all of us sitting here at
7 this table would welcome listening to those.

8 The Office of Planning no doubt has good
9 ideas. It has a new director. We would be very
10 willing to hear what he has to say about how the
11 condition should be amended.

12 The guiding principle I think here should
13 be, though, that the Commission works with DW, not
14 against DW, to establish reasonable conditions and
15 timeframes for the Project to help make it a success.

16 In conclusion, Bridge respectfully requests
17 the Commission adopt its Proposed Form of Order so we
18 all can move on and this Project can provide the jobs
19 and the affordable housing the community desperately
20 wants and needs. Thank you again for taking the time
21 to listen to me today.

22 PRESIDING OFFICER KANUHA: Thank you,
23 Mr. Voss. Office of Planning, Mr. Yee?

24 MR. YEE: The Office of Planning has no
25 objection to the form of the Proposed Order. Thank

1 you.

2 PRESIDING OFFICER KANUHA: Commissioners,
3 any questions? Comments? Okay. If not, that
4 concludes the oral argument section on the exceptions
5 and objections to the Proposed Findings of Fact,
6 Conclusions of Law and Decision and Order Reverting
7 the Petition Area as stated by the Chair earlier.

8 The Commission will defer action on the
9 Proposed Findings of Fact, Conclusions of Law and
10 Decision and Order reverting the Petition Area.

11 We also will defer action on the Motion to
12 Reconsider and defer entry of Final Findings of Fact,
13 Conclusions of Law and Decision and Order and also
14 defer action on the Amendment, the Motions to Amend
15 Conditions 1, 5 and 7.

16 Any other questions? Is there anything else
17 before the Commission? If not then we're adjourned.
18 Just for clarification purposes: Speaking with the
19 executive director he anticipates rescheduling this
20 for the Commission's action on April 21st. If not,
21 we're adjourned. Thank you.

22 (The proceedings were adjourned at 2:20 p.m.)

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C E R T I F I C A T E

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

That I was acting as court reporter in the
foregoing LUC matter on the 8th day of April 2011;

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

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

DATED: This _____ day of _____ 2011

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

