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## 10 TRANSCRIPT OF PROCEEDINGS

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12 The above-entitled matters came on for a Public  
 13 Hearing at Conference Room 405, 4th Floor, Leiopapa A  
 14 Kamehameha, 235 S. Beretania Street, Honolulu,  
 15 Hawai'i, commencing at 9:25 a.m. on April 21, 2011  
 16 pursuant to Notice.

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

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

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For the County: BOBBY JEAN LEITHEAD-TODD, ESQ.  
Planning Director

For the State:

BRYAN YEE, ESQ.  
Deputy Attorney General  
JESSE SOUKI, DRTR  
Office of State Planning

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1           CHAIRMAN DEVENS: (Gavel) This meeting is  
2 called to order. Today is April 21st, 2011. This is  
3 a meeting of the State Land Use Commission. We're  
4 here in Honolulu for today's meeting.

5           First item on the docket is adoption of our  
6 proposed minutes. Everyone has had a chance to review  
7 it. Any corrections or changes to the minutes?  
8 Hearing none is there a motion to adopt?

9           COMMISSIONER JENCKS: Move to approve.

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

12          COMMISSIONERS VOTING: Aye.

13          CHAIRMAN DEVENS: It's unanimous. Minutes are  
14 adopted. Dan, meeting schedule.

15          MR. DAVIDSON: Thank you, Chair. You have the  
16 tentative meeting schedule before you. Riley and I  
17 will be talking to all of you on the upcoming May  
18 meetings Kaua'i May 12, and Lana'i. Make sure we've  
19 got quorum for both, so we will be talking to  
20 everybody. Any questions contact either me or Riley.

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23 xx

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1           CHAIRMAN DEVENS: Thank you very much, Dan.  
2   Next item on the agenda is the Tropic Land matter.  
3   This is a deliberation and action meeting on Docket  
4   No. A09-782 Tropic Land, LLC. May we have the parties  
5   make their appearances starting with Petitioner,  
6   Mr. Yuen.

7           MR. YUEN: Good morning, Mr. Chairman and  
8   Commissioners. My name's William Yuen appearing on  
9   behalf of Tropic Land, LLC. With me are Arick  
10   Yanagihara, project manager and Michael Nekoba, one of  
11   the principals of Tropic Land.

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

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

20          MS. TOWNSEND: Aloha. Martha Townsend on  
21   behalf of The Concerned Elders of Waianae. With me is  
22   Alice Greenwood.

23          CHAIRMAN DEVENS: Good morning to you all.  
24   And also let me apologize for the late start. We were  
25   scheduled for 9:00 and there was some delay. I

1 apologize for that.

2           Let me update the record. On April 8th, 2011  
3 the Commission heard oral argument on this docket,  
4 took one vote and deferred further decision-making.  
5 Commissioners Chock, Heller, Jencks, Kanuha, Teves and  
6 Chair affirmed that they were prepared to deliberate  
7 on that date.

8           I'd like to at this time confirm that  
9 Commissioners Contrades and Lezy have had an  
10 opportunity to review the record, review the  
11 transcripts for any meeting that they may have missed.  
12 Commissioner Contrades, have you had that opportunity?

13           COMMISSIONER CONTRADES: Yes, I have.

14           CHAIRMAN DEVENS: Commissioner Lezy?

15           COMMISSIONER LEZY: Yes.

16           CHAIRMAN DEVENS: Yes. The goal today is to  
17 determine by way of motion, the Commission's decision  
18 on whether to grant Petitioner's request to reclassify  
19 the subject property or to deny the Petition. If a  
20 decision is reached today, based upon the Commission's  
21 guidance, staff will be directed to prepare Findings  
22 of Fact, Conclusions of Law, and Decision and Order  
23 reflecting the Commission's decision.

24           Before we move into that phase is there any  
25 public testimony?

1           MR. DAVIDSON: We have one sign-up, Chair.  
2 Candace Fujikane.

3           CHAIRMAN DEVENS: Candace, if we can swear you  
4 in.

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

8           THE WITNESS: Yes. I do.

9           CHAIRMAN DEVENS: If you can state your name  
10 and address for the record, please.

11           THE WITNESS: Candace Fujikane, 1733 Danagho  
12 Road, Honolulu, Hawai'i 96822. Good morning,  
13 Commissioners. I am opposed to Tropic Land's Petition  
14 to rezone agricultural land for urban use. I wanted  
15 to address a problematic perception that there's only  
16 minimum farming activity in Lualualei Valley, as the  
17 Petitioner has argued.

18           This is a partial map of the agricultural  
19 diversity of Lualualei Valley. And as you can see  
20 farming is key to the livelihoods of many people who  
21 live and work in that valley. You can see that  
22 there -- it's tiny, but pigs and hogs, chickens,  
23 goats, horses, lettuces, Chinese parsley, green  
24 onions, there are mangos, tropical fruit trees, guava,  
25 avocado, orchids and grass.



1           And when you drive through the valley it's not  
2 possible to see much of this farming because the farms  
3 are located behind the houses. The properties are  
4 very deep. Alice Greenwood, Lucy and I have spoken  
5 with at least 21 farmers and all of them were opposed  
6 to rezoning the agricultural land. Three of them  
7 testified yesterday at the city Planning Commission  
8 hearing on the Wai'anae Sustainable Communities Plan  
9 and they testified against rezoning.

10           The farmers we spoke to were mostly along  
11 Hakimo Road. And Hakimo Road, even if Tropic Land  
12 were to get a long-term -- I'm sorry, the Navy road,  
13 there will be no way to prevent people from  
14 improperly using Hakimo Road to and from the  
15 industrial park.

16           There are many farmers who -- I mean there are  
17 three farmers who testified yesterday and there are  
18 many more who would come out, but it is difficult for  
19 them to come here. The downtown area is very  
20 difficult to navigate. But also many of them have had  
21 past experiences where developers have won out over  
22 farming communities. So it's very hard for them to  
23 come and testify.

24           But there are -- we did speak with them and  
25 these are some of the farmers that we were able to

1 speak with. This is Ken Malin who owns Ken's Pig  
2 Farm. You see in the green area on the map that's his  
3 proximity to the Tropic Land's Petition Area and  
4 that's 70 feet. He has over 200 pigs on his farm.  
5 And what's really interesting about Ken is he says he  
6 takes a ton of food waste out of circulation every  
7 day. And he is -- he says give the farmers one spot.  
8 Let them have this valley.

9 This is Pearl Tavares who also lives 230 feet  
10 from -- I'm sorry -- I'm sorry, both Ken and Pearl are  
11 230 feet away from the Petition Area. And Pearl talks  
12 about how it's important to preserve the farmers'  
13 knowledge and experience, that that's not something  
14 that can be learned in a classroom.

15 And she argues for preserving agricultural  
16 land and protecting that kind of knowledge of the  
17 farmers who already practice farming have.

18 This is her mother, Pearl Tavares. And she  
19 was evicted from the Koko Head area in 1968 because  
20 Bishop Estate wanted to develop that land.

21 This is Darryl Booth who farms. He has  
22 40,000 square feet under a greenhouse roof. And he  
23 has invested heavily in farming, long-term farming  
24 equipment.

25 And he argues that if farmers begin to see

1 that the valley is becoming urbanized it will be  
2 difficult for them to invest in long-term farming  
3 structures and equipment.

4 And this is Astrala Cabunsug. And she has  
5 goats. And she also --

6 MR. DAVIDSON: Candace, if you could conclude  
7 in 30 seconds.

8 THE WITNESS: 30 seconds all right. Everett  
9 Nakata who has a tropical fruit farm. You see the  
10 young fruit trees behind him? He says it takes 10  
11 years to grow the mango trees.

12 Mr. Amagela's green onion and Mr. Konishi's  
13 green onions flank Pa'akea Road. The Lapenias are  
14 along the Navy road. And they are concerned about the  
15 traffic and the 500 vehicles per hour.

16 And the Higa's have tenants who grow grass.  
17 And this is Mr. Tawelker who's trying to bring back  
18 native plants and birds.

19 So I wanted to say that it's very important  
20 for farmers to see that there is, that agricultural  
21 land in Lualualei Valley has a future. They're not  
22 concerned about agriculture itself. They know that  
23 they can farm. They see themselves farming into the  
24 future. But if the land is rezoned in urban creep the  
25 Petitioner has argued that other urban uses in the

1 valley --

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

3 THE WITNESS: Thank you very much.

4 CHAIRMAN DEVENS: Thank you, Candace. Do the  
5 parties have any questions for this witness?

6 MR. YUEN: No questions.

7 MS. TAKEUCHI-APUNA: No questions.

8 MR. YEE: No questions.

9 CHAIRMAN DEVENS: Ms. Townsend?

10 MS. TOWNSEND: I'm fine.

11 CHAIRMAN DEVENS: Commissioners, any questions  
12 for this witness? There being none, thank you very  
13 much for your testimony.

14 There was one other item I need to note for  
15 the record, update the record. There was also written  
16 testimony received today by Harry Choi, president of  
17 the West County Farm Bureau. That will be made part  
18 of the record. That concludes the public testimony.  
19 Commissioners, any further questions for the parties?  
20 Commissioner Teves.

21 COMMISSIONER TEVES: I have a question --

22 CHAIRMAN DEVENS: Yes, sir.

23 COMMISSIONER TEVES: -- to the Petitioner. At  
24 our last meeting there was concern about the road  
25 easement from the Navy. Has any real developments

1 happened since then? Or have you approached the Navy  
2 again? Can you give us an update?

3 MR. YUEN: Yes, Commissioner Teves. We have  
4 had further discussions with the Navy, the last of the  
5 discussions being this past Monday. The Navy has  
6 changed its direction slightly and would like to  
7 dedicate the road Lualualei Naval Road to the city.

8 What the Navy is willing to do is give Tropic  
9 Land and the other licensees of the road an easement  
10 under which the licensees would make the necessary  
11 improvements to dedicate the road to the Navy -- I'm  
12 sorry -- make the improvements necessary to dedicate  
13 the road to the city. And following the making of  
14 these improvements then dedicate the road to the city,  
15 thereby assuring public access to the road.

16 The Navy has provided me with a letter setting  
17 forth these terms, if the Commissioners would like to  
18 see the letter.

19 CHAIRMAN DEVENS: Any further questions from  
20 the Commissioner?

21 COMMISSIONER TEVES: No, that's all. Thank  
22 you.

23 CHAIRMAN DEVENS: Commissioner Kanuha followed  
24 by Commissioner Jencks.

25 COMMISSIONER KANUHA: Thank you, Mr. Chairman.

1 So what's the Petitioner's position on the offer by  
2 the Navy?

3 MR. YUEN: We are willing to accept the Navy's  
4 terms.

5 COMMISSIONER JENCKS: What's different about  
6 what you just reported compared to what has been  
7 represented to the Commission in the past?

8 MR. YUEN: In the past the Navy was going to  
9 issue a long-term lease of an easement to Tropic Land  
10 with the intent of keeping the road in Navy hands.  
11 The Navy now desires to basically transfer ownership  
12 and get out of the road ownership business. And  
13 that's the significant change in its previous  
14 position.

15 COMMISSIONER JENCKS: Did they not attempt  
16 that in the past and the city and county rejected it?

17 MR. YUEN: They did attempt it in the past and  
18 the Navy was -- I guess the best way to say it is  
19 there was a disagreement of the terms under which the  
20 city would accept the road from the Navy. And the  
21 Navy basically, before we got involved in discussions  
22 with the Navy, the Navy just dropped its efforts to  
23 dedicate the road to the city.

24 Apparently our request for a long-term  
25 easement changed the Navy's thinking. And the Navy

1 now desires to pursue that dedication and use Tropic  
2 Land and the other road users as the vehicle to pursue  
3 that dedication.

4 COMMISSIONER JENCKS: Mr. Chairman, may I ask  
5 the city and county a question?

6 CHAIRMAN DEVENS: Of course.

7 COMMISSIONER JENCKS: In order for you to  
8 accept the right-of-way it needs to be improved to  
9 some standard. Am I correct?

10 MS. TAKEUCHI-APUNA: Yes.

11 COMMISSIONER JENCKS: So you'd have to  
12 determine what the improvements would be working with  
13 the Petitioner. He'd have to make the improvements,  
14 then request dedication to the city.

15 MS. TAKEUCHI-APUNA: Yes.

16 COMMISSIONER JENCKS: Thank you.

17 CHAIRMAN DEVENS: Any further questions?  
18 Commissioner Kanuha?

19 COMMISSIONER KANUHA: So for the city. Are  
20 you aware of this new proposal?

21 MS. TAKEUCHI-APUNA: No. No, not until just  
22 now.

23 COMMISSIONER KANUHA: Okay. If the road is  
24 improved to dedicatable standards and it's offered to  
25 the city, what options does the city have?

1           MS. TAKEUCHI-APUNA: I don't think I could  
2 speak to that right now. I'd have to go back to -- I  
3 think we'd have to discuss that.

4           COMMISSIONER KANUHA: Okay. Thanks.

5           CHAIRMAN DEVENS: Commissioner Lezy.

6           COMMISSIONER LEZY: Thank you, Chair. A  
7 couple of questions, Mr. Yuen. I guess my first  
8 observation is I question the import of this new  
9 information because at this juncture the record is  
10 closed. You'd agree with that, right?

11          MR. YUEN: Yes.

12          COMMISSIONER LEZY: Assuming, however, things  
13 go as -- things go as they seem now to be conceived,  
14 has Tropic Land come up with any sort of a timeline as  
15 to when the necessary improvements could be made, the  
16 road could be put into the condition necessary for it  
17 to be offered to the city and county for dedication?

18          MR. YUEN: No, we have not.

19          COMMISSIONER LEZY: Do you have any sort of  
20 estimate of what the total expense would be in order  
21 to make the improvements that would be necessary to  
22 bring the Naval Road into dedicatable standards?

23          MR. YUEN: No.

24          COMMISSIONER LEZY: Thank you.

25          CHAIRMAN DEVENS: Any further questions from



1 the Commission?

2 COMMISSIONER JENCKS: Mr. Chairman.

3 CHAIRMAN DEVENS: Commissioner Jencks.

4 COMMISSIONER JENCKS: Perhaps you mentioned it  
5 and I didn't hear it. Is it still the Navy's position  
6 that everyone would have to participate in the  
7 improvement or just the Petitioner?

8 MR. YUEN: The Navy would be looking at its  
9 current licensees in addition to us. It would be  
10 Pacific Mall, the shopping center at Farrington  
11 Highway and Lualualei Naval Road, PVT and Pine Ridge  
12 Farms.

13 COMMISSIONER JENCKS: And they've committed to  
14 that?

15 MR. YUEN: They have not committed to the  
16 latest proposal. But, frankly, we just have not had  
17 time to discuss this proposal with them.

18 COMMISSIONER JENCKS: Okay. Thank you.

19 COMMISSIONER LEZY: Chair?

20 CHAIRMAN DEVENS: Commissioner Lezy.

21 COMMISSIONER LEZY: Sorry for the piecemeal  
22 questioning. One other question, Mr. Yuen, then. Do  
23 I understand correctly that the Navy is no longer  
24 interested in discussing the long-term lease option?

25 MR. YUEN: Well, they would give us a

1 long-term lease to take up, to take the time period  
2 necessary to complete the improvements and for us to  
3 amortize those improvements. The term of the lease  
4 would depend on the cost and how long it takes to  
5 amortize the improvements.

6 But the intent of the Navy is that we have a  
7 sufficiently long term to make both the improvements  
8 and amortize them, following which time the Navy would  
9 dedicate the road to the city and the lease would end.

10 COMMISSIONER LEZY: But what it sounds like to  
11 me, then, is this circumstance is gone from the  
12 negotiate simply for a long-term lease for use of the  
13 road to now adding a new condition that as part and  
14 parcel of that lease the Navy will expect that the  
15 road be dedicated.

16 MR. YUEN: That is a wrinkle in the  
17 negotiations. But the benefit to us is it would give  
18 us basically permanent -- us and our buyers --  
19 permanent access. It wouldn't be a term of years and  
20 then uncertainty.

21 COMMISSIONER LEZY: But assuming that the city  
22 and county accepts it.

23 MR. YUEN: Assuming the city and county  
24 accepts it, yes.

25 COMMISSIONER LEZY: Thank you.

1           CHAIRMAN DEVENS: Any other questions from the  
2 Commission? City, do you want to add anything to the  
3 record?

4           MS. TAKEUCHI-APUNA: No.

5           CHAIRMAN DEVENS: OP?

6           MR. YEE: Only to recognize that if you do  
7 approve -- the conditions would need to be changed or  
8 at least provided for since we don't know how the road  
9 would be, how public access to the road would be  
10 achieved. That's something we can submit to you after  
11 your vote.

12          CHAIRMAN DEVENS: Did you have something in  
13 mind now or you want to address that later?

14          MR. YEE: No, I have nothing in mind now. I  
15 guess the only technical issue would raise is whether  
16 the Commission would like to or -- I'm going to  
17 express and I apologize 'cause I'm not quite sure I've  
18 worked it out in my mind.

19          The evidentiary hearing obviously is closed.  
20 This is introduction of new evidence, quite frankly.  
21 It's irrelevant certainly. And I'm not sure that I  
22 would oppose letting Petitioner make the case.

23          But it does create, then, a technical issue  
24 that you, maybe you should consult with your attorney  
25 as to how, if you chose to, how you would incorporate

1 this into the record. But I guess that's all. Thank  
2 you.

3 CHAIRMAN DEVENS: Did you want time to respond  
4 to this or you're satisfied with the representations  
5 being made?

6 MR. YEE: No. We're not -- we don't need more  
7 time to-- we don't need more time.

8 CHAIRMAN DEVENS: Ms. Townsend, you want to  
9 add anything to the record?

10 MS. TOWNSEND: Yes, thank you. First I feel  
11 like this significantly changes the playing field in  
12 terms of what the Commissioners' considering. And  
13 that if this is offered into evidence it would seem  
14 to me that the Petitioner would have to request for an  
15 extension and the parties being given an opportunity  
16 to respond.

17 I'd like to draw the Commission's attention to  
18 the Petitioner's Exhibit 73 attachment 2. I'd like to  
19 read a very short paragraph. This is a letter from  
20 the Navy to the City October 2008. And the Navy says,  
21 "The Navy understands that the city requirements have  
22 changed and has requested that the General Services  
23 Administration formally withdraw its offer of the deed  
24 to the city. The Navy's disappointed to have had  
25 spent six years on this issue at the request of the

1 Navy (sic) only to reach this point."

2 I raise this because as the Petitioner has  
3 testified it's due to change of administration whether  
4 the city pursues dedication of this road or not. And  
5 the Commission really can't rely on that kind of  
6 ephemeral electoral province in order to be able to  
7 make a decision that's going to have long-term land  
8 use implications. Really what should happen is this  
9 road should be -- the final disposition of this road  
10 should be decided first. And then the Commission  
11 decide whether there should be a boundary amendment  
12 related to that. Thank you.

13 CHAIRMAN DEVENS: Just a comment. The  
14 Commission would give whatever weight each individual  
15 Commissioner thinks it appropriate to the  
16 representations being made by the Petitioner. And  
17 frankly I don't know how much weight anyone would  
18 really give to what has been presented.

19 But given that that's just my own personal  
20 comment, what would you want to add to the record to  
21 respond to that if more time was given? 'Cause I'm  
22 not quite sure where you would go with this. He said  
23 what he said. Is there anything more that you would  
24 want to add or try and rebut? He's made a  
25 representation which I'm not quite sure what it means.

1           MS. TOWNSEND: I guess I'm in the same  
2 position. I don't exactly know what it means. I  
3 would like opportunity to read the letter that he says  
4 the Navy has written. I have found in my own review  
5 of the evidence that there are times when the  
6 Petitioner interprets the Navy's intentions. And I  
7 read the letter and I find a different interpretation.  
8 So reading the letter would be one thing. Past that  
9 there's no way I can anticipate what kind of evidence  
10 we'd be able to present in opposition. It all depends  
11 what that says.

12           CHAIRMAN DEVENS: You understand up to now  
13 he's only made statements. He's not even offering us  
14 the letter so don't even have a letter to look at  
15 either. And that's going to go to the weight of the  
16 evidence. Given that do you still want an opportunity  
17 to get into the issue or are you comfortable with us  
18 proceeding and ruling on this matter at this point?

19           In other words, we don't -- we don't know what  
20 he's looking at. We don't have it.

21           MS. TOWNSEND: Okay. Yes.

22           CHAIRMAN DEVENS: But I want to make sure that  
23 you've had a fair opportunity to respond because he  
24 has made the statement. We want to be fair to all the  
25 parties. So you tell me what your comfort level is at

1 this point.

2 MS. TOWNSEND: I would prefer the Commission  
3 did not consider this as part of their -- part of  
4 their decision-making simply because it's such a  
5 significant departure from the evidence that's already  
6 been presented. It's hard for me to say whether I'm  
7 comfortable or not because I don't actually know  
8 what's on the table.

9 CHAIRMAN DEVENS: Well, what's on the table is  
10 what he has said. That's all that's on the table.

11 MS. TOWNSEND: Okay. Fine. We're comfortable  
12 then.

13 CHAIRMAN DEVENS: You want to consult with  
14 your clients first?

15 COMMISSIONER LEZY: Chair?

16 CHAIRMAN DEVENS: Commissioner Lezy.

17 COMMISSIONER LEZY: You know, I think we can  
18 give Intervenors some time because actually I'd like  
19 to call for an executive session.

20 CHAIRMAN DEVENS: You made the motion.

21 COMMISSIONER CHOCK: Second.

22 CHAIRMAN DEVENS: There's a second.

23 Discussion? There being none, all those in favor say  
24 aye.

25 COMMISSIONERS VOTING: Aye.

1           CHAIRMAN DEVENS: Take a short break.

2                       (Recess was held. 10:00)

3           CHAIRMAN DEVENS: All right. We're back on  
4 the record. I'm sorry we took a little longer than  
5 expected. Ms. Townsend, did you want to add anything  
6 to the record after consulting with your client?

7           MS. TOWNSEND: I've consulted with the Elders  
8 and we've opted to keep the record as it is. So we  
9 would not be asking for any kind of extension or any  
10 additional evidence.

11          CHAIRMAN DEVENS: You know, given the fact  
12 that the evidence was closed and all the parties had a  
13 fair and full opportunity to present any evidence and  
14 argument they wish, it's the Chair's inclination not  
15 to accept the representations made by the Petitioner  
16 as evidence. They have made the comments on the  
17 record. The parties have all been given an  
18 opportunity to respond to those comments.

19          But I am inclined not to accept those  
20 representations as evidentiary representations.  
21 Commissioners have any thoughts on that inclination?  
22 Anyone oppose that inclination?

23          There being none, that's going to be the  
24 ruling on the representations made by Tropic Land,  
25 that shall not be considered part of the evidentiary



1 record and shall not be considered by the Commission  
2 during the deliberation, decision-making process.

3           Given that, Commissioners, is there a motion  
4 on this matter? Commissioner Kanuha.

5           COMMISSIONER KANUHA: Thank you, Chair Devens.  
6 Actually the timing was good. I was going to ask for  
7 a short break just to make sure that I was able to  
8 read the latest testimony that just recently came in  
9 regarding this particular Petition.

10           What I did want to say is I think whenever we  
11 have more participants in the process I think it adds  
12 a lot to the decision-making. So from that standpoint  
13 I as well as the Chair and I think the rest of the  
14 Commissioners appreciate the participation by the  
15 Intervenors in this matter.

16           In going through the proposed Findings of  
17 Facts and all the different parties and responses to  
18 those, I actually would have hoped that in certain  
19 cases that the Intervenor would have provided some  
20 alternative thoughts.

21           In other words, your position was not to  
22 approve this particular request. But I think it would  
23 have been helpful for me, particularly, if there were  
24 some indication that, "Well, if it was approved would  
25 you please consider this...." for example.

1           So that being the case staff had prepared a  
2 matrix. And I've looked at all of the documents  
3 regarding the different proposed Findings of Fact,  
4 Conclusions of Law and Proposed D&O for the matter.  
5 What I find is that there's not that much of a  
6 different position between the other three parties,  
7 the Office of Planning, the City and Petitioner. For  
8 that reason in the matter of Docket No. A09-782 Tropic  
9 Land, LLC to amend the agricultural land use district  
10 boundaries into the urban land use district for  
11 approximately 96 acres in Lualualei, Wai'anae District  
12 I move to approve the Petition subject to a number of  
13 conditions:

14           First, a condition related to the Lualualei  
15 Naval Road. And my proposed condition would say that:  
16 "Within five years of the effective date of the  
17 Decision and Order the Petitioner shall enter into a  
18 long-term agreement with the U.S. Navy granting the  
19 Petitioner an easement, a right-of-way or other  
20 long-term authorization for not less than 30 years to  
21 use Lualualei Naval Road for access purposes between  
22 the Petition Area and Farrington Highway.

23           "Execution of the long-term agreement shall be  
24 a precondition to any unilateral agreement entered  
25 into by the Petitioner as a condition to approval by

1 the City and County of Honolulu of an ordinance  
2 rezoning the Petition Area."

3 A condition related to transportation  
4 improvements: I recommend that we take the  
5 Petitioner's wording on that condition.

6 On the established access rights protected I  
7 recommend we take the Petitioner's wording or any  
8 other standard condition that the LUC has for that  
9 item.

10 On the matter of stormwater management and  
11 drainage I suggest we take the Petitioner's wording  
12 or, again, any other standard condition that the  
13 Commission has in dealing with that issue.

14 For energy conservation I suggest we take the  
15 Petitioner's language to address that particular  
16 condition.

17 On the concern for restrictions on land use I  
18 suggest we take the Petitioner's language for that,  
19 provided that the proposed use restrictions via the  
20 CC&R's are not to be enforced by the county.

21 On the area of Notice to Change of Ownership  
22 Interest I suggest we take our standard language for  
23 that area.

24 On the condition relative to the annual  
25 reports I recommend that we take the wording suggested

1 by OP in that matter.

2 And on the release of conditions I suggest,  
3 again, that we take the wording presented by OP. And  
4 consideration should be made, should be given to that  
5 wording as perhaps some standard language that the  
6 Commission issues.

7 In addition, any other standard conditions and  
8 language normally inserted as part of a land use -- as  
9 part of the Commission's Findings of Fact, Conclusions  
10 of Law and D&O shall also be inserted. That's my  
11 motion, Mr. Chairman.

12 CHAIRMAN DEVENS: Commissioner Kanuha has made  
13 a motion. Is there a second to his motion?

14 COMMISSIONER CONTRADES: Second.

15 CHAIRMAN DEVENS: There's a second.  
16 Discussion? (pause) No discussion. Commissioner  
17 Kanuha, I wanted to ask you what protections are you  
18 seeking with this proposal of this 5-year requirement  
19 for the use of the Naval Road?

20 COMMISSIONER KANUHA: What I was thinking  
21 there, and again there's evidence on the record in  
22 terms of discussions and proposed Findings, is that we  
23 normally look at these petitions as having a 10-year  
24 implementation phase. So the thought was there.

25 Again, given the uncertainty of the

1 negotiations with the Navy in that regard and also  
2 taking into account the 5-year timeframe was a  
3 proposal that was advanced by both OP and seemed to be  
4 okay with the Petitioner. But that was the intent  
5 there that they'd have 5 years from the effective date  
6 of the D&O to enter into this agreement that they've  
7 been talking about.

8 CHAIRMAN DEVENS: If I heard your motion  
9 correctly you articulated this as a precondition.

10 COMMISSIONER KANUHA: Correct.

11 CHAIRMAN DEVENS: Correct.

12 COMMISSIONER KANUHA: Correct.

13 CHAIRMAN DEVENS: So nothing happens until  
14 this precondition is satisfied? Or maybe I'm  
15 misunderstanding it.

16 COMMISSIONER KANUHA: I think I -- if that's  
17 the case then it wasn't a precondition. It was just a  
18 condition that they have 5 years to secure this, to  
19 secure the agreement. The precondition would be that  
20 the agreement had to be secured before they could get  
21 any kind of further zoning approval by the city and  
22 county.

23 CHAIRMAN DEVENS: Okay. I understand. I'm  
24 sorry, I misunderstood what you said earlier.

25 COMMISSIONER KANUHA: Because what they wanted

1 was the ability to also go ahead and do that. But the  
2 precondition is they had to get this agreement before  
3 they can get approval for any zoning, et cetera, from  
4 the county. And I think that was also wording that  
5 was suggested by the city.

6 CHAIRMAN DEVENS: Thank you. Thank you for  
7 that clarification. Any further discussion on this  
8 matter?

9 COMMISSIONER LEZY: Chair?

10 CHAIRMAN DEVENS: Commissioner Lezy.

11 COMMISSIONER LEZY: Thank you, Chair. First,  
12 I join Commissioner Kanuha in thanking the parties for  
13 their very well-presented cases. You know, I don't  
14 think it's any secret that the concern that I've had  
15 all along with this Petition is this issue of the  
16 access to Lualualei Naval Road.

17 It's been my general opinion that that is an  
18 issue that Petitioners should have had reconciled  
19 prior to the filing of the Petition because I think  
20 it's fundamental to the decision-making criteria  
21 that's before us on a variety of levels, not the least  
22 of which is whether or not the Project is financially  
23 viable.

24 When I was reading through the transcript from  
25 the last proceeding, I noted that when the issue came

1 up of what the remedy would be in the event that the  
2 Petitioner was unable to obtain the long-term easement  
3 for use of Lualualei Naval Road, the response from the  
4 Petitioner was, "Well, the Commission then has the  
5 right to revert the property."

6           And I don't think we need to look any further  
7 than to the next docket matter to know what sort of  
8 Pandora's box you open up when the most viable remedy  
9 that you can come up with is reversion.

10           And that kind of goes hand in hand with the  
11 concern that I have about the current condition that's  
12 being proposed. Because I question whether or not the  
13 Commission has the actual power to restrict the City  
14 and County's discretionary -- granting of  
15 discretionary entitlements. I'm not sure about that.  
16 But what I have seen, again, in the next docket matter  
17 it certainly gives a party, a petitioner, fruit for  
18 argument that there's been a taking or some sort of  
19 equitable estoppel type situation.

20           And so I guess what I would ask, and I'm  
21 certainly not trying to put anybody into a difficult  
22 position here, but I would ask any Commissioners who  
23 are inclined to support the motion as stated if you  
24 could provide me with some sort of, I guess,  
25 explanation as to why I should take comfort in the

1 condition that's been offered on this road access  
2 issue; that this is going to work and that this is  
3 going to accomplish the goals of the Commission in  
4 meeting the criteria that are imposed upon us in  
5 deciding a district boundary amendment.

6 CHAIRMAN DEVENS: Thank you, Commissioner  
7 Lezy. Any further discussion or response to what  
8 Commissioner Lezy's comments have been? Commissioner  
9 Jencks.

10 COMMISSIONER JENCKS: Thank you, Mr. Chair.  
11 Thinking about what Mr. Lezy said and what was  
12 discussed at the last meeting, I'm reiterating some of  
13 the points that I made at the last meeting. I  
14 strongly believe that access is one of the key  
15 elements to any process, to any entitlement process.

16 And I don't think it makes good sense in terms  
17 of making public policy or creating public policy or  
18 awarding a district boundary amendment to a piece of  
19 property, which is a significant value added to that  
20 property, without at least addressing the issue of  
21 access.

22 In most jurisdictions you can't even get a  
23 building permit without having access, legally  
24 established access to your property. It's a very  
25 fundamental issue in my opinion. And I just don't



1 think it's a good idea for this Commission to be  
2 awarding amendments like this when it isn't clearly  
3 established from the beginning as to how this is going  
4 to be accomplished. That is the acquisition on  
5 this -- securing of the access to the property.

6           With regard to the cultural issues, with  
7 regard to the agricultural issues, the civil  
8 engineering aspects of this application I'm  
9 comfortable with them. I really don't have any  
10 problems with those portions of the discussion.

11           But I keep coming back to this issue of access  
12 being a key issue for me. And I would just -- I would  
13 be more comfortable with the motion made by  
14 Commissioner Kanuha if, perhaps, he could consider  
15 tightening up his timeframe and maybe making it two  
16 years from the date of approval to really establish  
17 whether or not this can be accomplished. And I would  
18 be inclined to support that as opposed to extending it  
19 out to a longer period of time.

20           CHAIRMAN DEVENS: Commissioner Kanuha.

21           COMMISSIONER KANUHA: Thank you, Chair. I  
22 think the record would show that I was one of the  
23 initial Commissioners that raised this issue. In fact  
24 in my mind when it became apparent that this was a  
25 significant issue that I thought it was, that I even

1 suggested that perhaps this Petition itself was  
2 premature that had not been granted.

3           That being the case the Petition was accepted  
4 and we've continued processing with it. I actually --  
5 I actually don't have any strong reservations about  
6 tightening up the timeframe. And if it's legally  
7 permissible I also don't have an issue with the whole  
8 condition being a precondition, so to speak. I just  
9 don't know if that's legally allowable by the  
10 Commission. I don't know if we have ever done that  
11 before. Those are my thoughts on the matter.

12           CHAIRMAN DEVENS: Any further discussion? So  
13 the motion has been made by Commissioner Kanuha and  
14 seconded by Commissioner Contrades. Dan, if you can  
15 call for the vote.

16           MR. DAVIDSON: This is a motion to grant  
17 A09-782 with the conditions as set forth by  
18 Commissioner Kanuha.

19           Commissioner Kanuha?

20           COMMISSIONER KANUHA: Yes.

21           MR. DAVIDSON: Commissioner Contrades?

22           COMMISSIONER CONTRADES: Yes.

23           MR. DAVIDSON: Commissioner Teves?

24           COMMISSIONER TEVES: Yes.

25           MR. DAVIDSON: Commissioner Lezy?

1 COMMISSIONER LEZY: No.

2 MR. DAVIDSON: Commissioner Jencks?

3 COMMISSIONER JENCKS: No.

4 MR. DAVIDSON: Commissioner Heller?

5 COMMISSIONER HELLER: No.

6 MR. DAVIDSON: Commissioner Chock?

7 COMMISSIONER CHOCK: Yes.

8 MR. DAVIDSON: Chair Devens?

9 CHAIRMAN DEVENS: Yes.

10 MR. DAVIDSON: Chair, pursuant to  
11 Administrative Rule 15-15-13 which requires 6  
12 affirmative votes, this motion fails.

13 CHAIRMAN DEVENS: Any other motions on this  
14 matter? There being none, this concludes the hearing  
15 in this matter. As stated earlier, staff is directed  
16 to draft the D&O in accordance with the Commission's  
17 decision. Parties want to put anything else on the  
18 record? There being nothing else we'll take a short  
19 break for the next matter.

20 (Recess was held. 10:30)

21

22 XX

23 XX

24 XX

25 xx

1           CHAIRMAN DEVENS: We're back on the record.  
2 This is a deliberation and action meeting on docket  
3 A87-617. This is a Petition of Bridge 'Aina Le'a, LLC  
4 and DW 'Aina Le'a Development, LLC regarding the  
5 following: DW 'Aina Le'a, LLC's Motion to Amend  
6 Conditions and Amendment to Motion to Amend  
7 Conditions, 1, 5, and 7.

8           DW 'Aina Le'a, LLC's Motion to Reconsider and  
9 Defer Entry of Final Findings of Fact, Conclusions of  
10 Law and Decision and Order.

11           The third item is action on whether or not  
12 to adopt Proposed Findings of Fact, Conclusions of Law  
13 and Decision and Order reverting the Petition Area as  
14 Final Findings of Fact, Conclusions of Law, and  
15 Decision and Order Reverting the Petition Area.

16           Appearances by the parties starting with the  
17 Petitioner.

18           MR. VOSS: Good morning, Chair and Members of  
19 the Commission. Bruce Voss on behalf of Co-Petitioner  
20 Bridge 'Aina Le'a, LLC.

21           MR. OKAMOTO: Good morning, Mr. Chairman,  
22 members of the Commission. Alan Okamoto representing  
23 DW 'Aina Le'a Development, LLC.

24           MS. LEITHEAD-TODD: Good morning,  
25 Commissioners. Bobby Jean Leithead-Todd, planning

1 director representing the county.

2 MR. YEE: Good morning. 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 morning to you all.  
7 Oral argument was concluded on April 8, 2011 on these  
8 three matters and decision-making was deferred at this  
9 time 'til today. Having concluded Oral Argument, the  
10 Commission will now conduct formal deliberations on  
11 these three matters.

12 Let me confirm with the Commissioners that  
13 everyone has had an opportunity to review the record  
14 and read the transcript for any meetings that they may  
15 have missed and are prepared to deliberate on the  
16 subject docket.

17 When I call your name if you can signify with  
18 an aye or nay as to whether or not you're prepared to  
19 deliberate on this matter.

20 Commissioner Chock?

21 COMMISSIONER CHOCK: Yes.

22 CHAIRMAN DEVENS: Commissioner Contrades?

23 COMMISSIONER CONTRADES: Yes.

24 CHAIRMAN DEVENS: Commissioner Heller?

25 COMMISSIONER HELLER: Yes.

1 CHAIRMAN DEVENS: Commissioner Jencks?

2 COMMISSIONER JENCKS: Yes.

3 CHAIRMAN DEVENS: Commissioner Kanuha?

4 COMMISSIONER KANUHA: Yes.

5 CHAIRMAN DEVENS: Commissioner Lezy?

6 COMMISSIONER LEZY: Yes.

7 CHAIRMAN DEVENS: Commissioner Teves?

8 COMMISSIONER TEVES: Yes.

9 CHAIRMAN DEVENS: And I myself am also  
10 prepared to deliberate.

11 To update the record, we received written  
12 testimony today from Frank Snow which will be made  
13 part of the record. Before we go into formal  
14 deliberations, are there any public witnesses who wish  
15 to testify in this matter, Dan?

16 MR. DAVIDSON: We have nine people signed up  
17 to testify. The first is Pane Meatogee followed by  
18 Brian Yee.

19 PANE MEATOGEE, JR.  
20 being first duly sworn to tell the truth, was examined  
21 and testified as follows:

22 THE WITNESS: Yes.

23 CHAIRMAN DEVENS: Name and address please.

24 THE WITNESS: Pane Meatogee, Jr. 55-040  
25 Lanihula Street, Laie, Hawai'i.

1           Mr. Chair a Vice-Chair, Commissioners, my name  
2 is Pani Meatogee, Jr. I'm the district representative  
3 for Operating Engineers Local Union No. 3. We're here  
4 to testify on behalf of Docket A87-617.

5           We have over 50 members that started this  
6 Project and have put in a lot of hard work to move  
7 affordable housing forward. We strongly urge your  
8 support in allowing time for compliance.

9           I also stand here representing the Hawai'i  
10 Construction Alliance which is a coalition of the  
11 Carpenters, Masons and Laborers Union, collectively  
12 over 18,000 members. So we aggressively ask you to  
13 move this Petition forward in allowing our members to  
14 finish the job that they started and to allow the  
15 local residents to have affordable housing. Thank  
16 you.

17           CHAIRMAN DEVENS: Thank you very much, sir.  
18 Any questions for this witness, Commissioners? There  
19 being none, thank for your testimony. Next witness.

20           MR. DAVIDSON: Brian Yee followed by Althea  
21 Cazimero-Kahai.

22           CHAIRMAN DEVENS: Mr. Yee if we can swear you  
23 in.

24                               BRIAN YEE  
25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: Yes, I do.

3 CHAIRMAN DEVENS: If we could have your name  
4 and address for the record.

5 THE WITNESS: Brian Yee, 515 Kamake'e Street  
6 Honolulu, 96813. Aloha. Good morning, Commissioners.  
7 I'm with the Gas Company. My title there is project  
8 manager. We have been working with -- we'll we're  
9 here in support of Bridge 'Aina Le'a Docket A87-617.  
10 And we would like to urge the Commission to go ahead  
11 and approve this Project.

12 We do have -- we have been working with the  
13 'Aina Le'a representatives and we do have time and  
14 some material invested in the Project. We'd like to  
15 see it go through. We believe that -- right now we  
16 have 15 employees in our Kona office.

17 And with the size of this Project it would  
18 definitely help our employees with jobs, possibly even  
19 with the servicing of the eventual Project, the entire  
20 Project even adding jobs to our workforce in Kona. So  
21 we ask that we move forward with this, with this  
22 Project. Thank you.

23 CHAIRMAN DEVENS: Thank you for your  
24 testimony. Any questions from the parties for this  
25 witness? Hearing none, Commissioners? There being



1 none thank you for your testimony. Next witness.

2 MR. DAVIDSON: Althea Cazimero-Kahai followed  
3 by Michael Riehm.

4 ALTHEA CAZIMERO-KAHAI  
5 being first duly sworn to tell the truth, was examined  
6 and testified as follows:

7 THE WITNESS: Yes, I do.

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

10 THE WITNESS: My name is Althea  
11 Cazimero-Kahai. And I am -- my address locally here  
12 is 89-090 Kihanua Place, Wai'anae, Hawai'i 96792.

13 I'm here on behalf of Charles Nahale. He's  
14 the president of Big Island Pop Warner Commission.  
15 And he is in favor -- he presented me with a letter to  
16 read to the Commission.

17 "Aloha distinguished members of the Land Use  
18 Commission. I am submitting written testimony in  
19 support of DW 'Aina Le'a Development and of House  
20 Resolution 204 regarding the Villages of 'Aina Le'a.

21 "I have been involved with youth supports here  
22 in Hawai'i and on the western region level for the  
23 last 25 years. I've seen an increase in the demand  
24 for sports infrastructure and resources grow each  
25 year. Unfortunately, the pace of available lands and

1 parks keeps falling despairingly short of meeting the  
2 demands of our population growth.

3           "We cannot depend on our county and state  
4 government to expend monies that they do not have. As  
5 a community organizer we find it increasingly  
6 favorable to partner our efforts with private entities  
7 and developers who are willing to build needed  
8 infrastructure that support athletic, civic and  
9 community needs.

10           "More importantly, the Villages of 'Aina  
11 Le'a's master plan provides an opportunity for  
12 citizens of the Big Island who commute on a daily  
13 basis across the island to work in Waikoloa. A chance  
14 to purchase a home and live in the same proximity of  
15 their jobs with their families.

16           "I have many family and friends who are  
17 looking at this great opportunity to have a home, a  
18 job, school, a park, shopping center, all within  
19 minutes of each other.

20           "Lastly, economic times and opportunities  
21 dictate where we are today. No one is exempt from  
22 hardships and missed opportunities. DW 'Aina Le'a's  
23 present commitment and investment to the Villages of  
24 'Aina Le'a will provide opportunities with continued  
25 employment through construction of homes and

1 infrastructure improvements adding housing benefits  
2 and much needed boost to our economy.

3 "Therefore I humbly ask that you grant an  
4 extension to DW 'Aina Le'a's development and for your  
5 support of House Resolution 204 in favor of the  
6 Villages of 'Aina Le'a. Mahalo nui loa, Charles L.  
7 Nahale, president Big Island Pop Warner Football  
8 Conference."

9 CHAIRMAN DEVENS: Thank you. Do you want to  
10 make the written testimony part of the record?

11 THE WITNESS: Yes. I do have copies of the  
12 letter.

13 CHAIRMAN DEVENS: We'll have our chief clerk  
14 make copies and we'll make it part of the record. Any  
15 questions for this witness from Commissioners?  
16 Hearing none, thank you for your testimony.

17 THE WITNESS: Thank you.

18 CHAIRMAN DEVENS: Next witness.

19 MR. DAVIDSON: Michael Riehm followed by  
20 Edward Brown.

21 CHAIRMAN DEVENS: Michael, if we can swear you  
22 in.

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

1 THE WITNESS: I do.

2 CHAIRMAN DEVENS: Give us your name and  
3 address, please.

4 THE WITNESS: My name is Michael Riehm. I  
5 live at 75-128 Kamilo Street in Kailua-Kona. I'm with  
6 the firm of Riehm Owensby Planners and Architects.  
7 I've had my practice on the Big Island for over 20  
8 years. In that time I can count on one hand the  
9 number of affordable housing projects proposed and  
10 actually built in West Hawai'i.

11 I've also seen the cost of housing escalate to  
12 where families even making six figure incomes cannot  
13 afford the average market rate house in that area.

14 Due the lack of affordable housing not being  
15 located close to the major employment centers,  
16 families are being forced to live in the more outlying  
17 areas.

18 This has resulted in extremely long driving  
19 times of 2 to 4 hours per day, increased traffic  
20 congestion on our major roadways and a diminished  
21 quality of life for our local residents.

22 This trend cannot continue without major  
23 social consequences and a deterioration in the fabric  
24 of our society as a whole. I know there are specific  
25 issues with allowing this Project to move forward,

1 some which are due to failed commitments by the  
2 developers. Under ordinary circumstances I would say  
3 some of these issues may be justified.

4           However, these are not ordinary times. And,  
5 in fact, many of our working families are being  
6 stressed to the limits with their obligations.

7           I would ask how many of us have friends or  
8 know people in our community that have not been able  
9 to meet some of their commitments in these difficult  
10 times.

11           This Project offers to provide 385 units of  
12 affordable housing. With an average household size of  
13 2.9 people this Project would provide housing for over  
14 1,000 local residents. How can we not find a way to  
15 make this happen and provide for a more enriched and  
16 balanced way of life for our community?

17           More importantly, this Project will help our  
18 youth and younger families so they may be encouraged  
19 to stay in Hawai'i and offer their talents here versus  
20 losing them to the mainland.

21           Projects like this only come along every 10 to  
22 20 years. And we cannot afford to lose this  
23 opportunity. I respectfully ask that you allow this  
24 Project to move forward. It may appear that you will  
25 be doing this for the developers. But I would say the

1 real beneficiaries are the average hard-working local  
2 families in West Hawai'i. Thank you for your  
3 consideration.

4 CHAIRMAN DEVENS: Sir, do you have written  
5 testimony that you want to make part of the record?

6 THE WITNESS: Yes.

7 CHAIRMAN DEVENS: Okay. We'll get copies made  
8 and make it part of the record. Any questions for  
9 this witness? Hearing none, Commissioners? Thank you  
10 for your testimony.

11 MR. DAVIDSON: Edward Brown followed by Nicole  
12 Kanda.

13 CHAIRMAN DEVENS: Edward, can I swear you in?

14 EDWARD BROWN

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

17 THE WITNESS: Yes.

18 CHAIRMAN DEVENS: Name and address.

19 THE WITNESS: My name is Edward Brown, 68-3554  
20 A'aka Place, Waikoloa on the Big Island. My name's  
21 Edward Brown. I'm the regional manager for Goodfellow  
22 Brothers for the last 20 years on the Big Island. We  
23 were chosen as the design/builder for this Project for  
24 all the infrastructure.

25 We have made quite a bit of progress with our

1 design and construction. We're in very support of  
2 this Project. We'd like to see the Project go. At  
3 the time we were employing about 50 employees. Based  
4 on some of their future plans it could increase those  
5 employees by quite a bit. There's not really much  
6 happening on the Big Island. And we would just like  
7 to show our support and hopefully the Commission will  
8 reconsider and let the Project move on.

9 CHAIRMAN DEVENS: Thank you. Any questions?  
10 Hearing none, thank you for your testimony.

11 MR. DAVIDSON: Nicole Kanda followed by Kelly  
12 Wakayama.

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

16 THE WITNESS: Yes.

17 CHAIRMAN DEVENS: Name and address.

18 THE WITNESS: My name's Nicole Kanda. My  
19 address is P. O. Box 1898 Kailua-Kona, Hawai'i, 96745.  
20 I first wanted to say good afternoon, Commissioners.  
21 And I'm here to ask on behalf of small businesses in  
22 Kailua-Kona. I come from the Big Island and I reside  
23 in Kailua-Kona. And I have a small business. I'm  
24 currently a woman-owned president of a construction  
25 company there that has been working with DW 'Aina Le'a

1 and has been very blessed to be able to work with them  
2 on their Project.

3           My family also owns two other businesses in  
4 Kona that's also is stressing for, you know, decrease  
5 of job opportunities, employment. And we currently  
6 need the work. We need to be able to support our  
7 families. I've had family and friends move away from  
8 Kona due to the lack of work.

9           Also I currently am coaching on the AYSO  
10 soccer team. And we have no parks available for our  
11 kids in Kona. And this is a great opportunity to have  
12 more parks, more facilities for our youth. And, you  
13 know, it's so sad.

14           We were just there last week. And our kids  
15 couldn't even play on the weekend because the fields  
16 were already taken. So we had to switch our kids over  
17 to the weekdays, you know? And parents can't be  
18 present.

19           And so I really urge and I ask everybody here  
20 to please support our Project. These people are  
21 trying their hardest. They've educated a lot of us on  
22 what they're trying to do, what they're trying to  
23 contribute to the Big Island.

24           And if you guys would just really see the  
25 effort that all of us are putting together as a



1 community to make this happen, I think you guys would  
2 really be happy with the success of this Project. So  
3 please consider it, Commissioners. Thank you.

4 CHAIRMAN DEVENS: Thank you. Any questions  
5 for this witness? Hearing none, thank you very much.

6 MR. DAVIDSON: Kelly Wakayama followed by Kirk  
7 Izawe.

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

11 THE WITNESS: I do.

12 CHAIRMAN DEVENS: Name and address.

13 THE WITNESS: Kelly Wakayama, P. O. Box 384694  
14 Waikoloa, Hawai'i, 96738. Good morning. I apologize.  
15 I'm just coming off of laryngitis so hopefully my  
16 voice stays with me.

17 I actually am doing a community outreach for  
18 'Aina Le'a. I just recently came to be working with  
19 the Project. For my background I could probably speak  
20 to you on a number of levels. I've lived on the Big  
21 Island my whole life. I've been active as a volunteer  
22 with the DOE. I've coached soccer, little league.  
23 There are many levels I could speak to you on.

24 What I'm going to speak to basically is what  
25 I've learned as a person that's basically lived in

1 Kona on the west side of the Big Island my whole life.  
2 Except for a couple years on O'ahu, I've seen, many,  
3 many changes there over the years. Change does not  
4 happen quickly on the west side of the Big Island.  
5 But change does come. We've seen a lot of change and  
6 it's inevitable. It will come and things will change.

7           My kupuna taught me that the only thing we can  
8 do with the change is be stewards to the land and make  
9 sure whatever change comes that we can be involved in  
10 what is best for the land and best for the people that  
11 live there.

12           If you've lived on the Big Island for many  
13 years you've seen the cyclical changes. And you'll  
14 know in terms of crises that the first island to go  
15 down in the state of Hawai'i is the Big Island of  
16 Hawai'i especially on the west side and we're the last  
17 to recover.

18           A lot of this is because we're based on  
19 tourism. And until travel picks up it trickles down  
20 to the Big Island. Its people come last.

21           Economic diversity is very, very important at  
22 this point. Business opportunity is very important at  
23 this point on the Big Island. We need on the west  
24 side opportunities for people to bring new business  
25 ideas, new types of ways to bring economic income to

1 the Big Island. Projects like this which are going to  
2 bring commercial aspects in the future as part of  
3 their Project and potential for other services that  
4 are not in that area are very important.

5 I lived in Kona basically my whole life. I've  
6 lived in Waikoloa Village for 16 years. Almost \$5 a  
7 gallon for gas to have to go to Kona for everything  
8 for many families that are struggling just to pay  
9 their rent and --

10 MR. DAVIDSON: Excuse me, 30 seconds to  
11 conclude.

12 THE WITNESS: Thank you. It's very difficult.  
13 So I basically ask you to consider this Project and  
14 allow these people, DW 'Aina Le'a to complete this  
15 Project and make their commitment to the area and to  
16 our community a reality.

17 CHAIRMAN DEVENS: Thank you. Any questions  
18 for the witness? Hearing none, thank you very much.

19 THE WITNESS: Thank you.

20 MR. DAVIDSON: Kirk Izawe followed by Jack  
21 Holshu.

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

25 THE WITNESS: I do.

1 CHAIRMAN DEVENS: Name and address?

2 THE WITNESS: Kirk Izawe, 200 Akamanui Street,  
3 Mililani, 96789. I'm the director of operations at  
4 Oceanic Time Warner Cable. We've been working with  
5 'Aina Le'a for the last 3 years trying to design and  
6 plan infrastructure and so forth. Eventually we want  
7 to serve the community with all of our services from  
8 home security to video data, voice, everything.

9 They have a great vision. That's why we  
10 partnered with them. They believe in affordable  
11 housing, this master community, also green sustainable  
12 which Oceanic believes in tremendously. So they will  
13 be developing, I think, LEED scanners so forth. So we  
14 want to support their vision and needs.

15 For Oceanic's behalf basically we're going to  
16 have to increase our manpower. So it will be a great  
17 stimulus to both the Kona community and Oceanic as a  
18 whole. So hopefully you guys will consider their  
19 Petition to extend term. Thank you.

20 CHAIRMAN DEVENS: Thank you, Kirk. Any  
21 questions for this witness? Hearing none, thank you  
22 for your testimony. The last witness.

23 MR. DAVIDSON: Jack Holshu.

24 JACK HOLSHU

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

1 and testified as follows:

2 THE WITNESS: I do.

3 CHAIRMAN DEVENS: Your name and address.

4 THE WITNESS: Jack Holshu, 555 Waikoloa Beach  
5 Drive in Waikoloa, Hawai'i. And it's kind of nice  
6 that I'm the last one to come up here because I'm also  
7 the manager of the Home Depot in Kona.

8 And I can tell ya when I first moved here six  
9 years ago we were busing in employees just to get  
10 employees in our location. I live in Waikoloa Beach  
11 area. I watch the buses come in every day from Hilo  
12 which is a two-hour drive.

13 So from a personal aspect it only makes sense  
14 to have affordable housing on the Hawai'i side. As  
15 the manager of Home Depot I've seen businesses or  
16 developments try to succeed. And for one reason or  
17 the other they did not succeed, or the businesses or  
18 developments that were in development.

19 From an aspect of a business owner I have 135  
20 employees that would benefit from this Project not  
21 only now but also in the long run 10 years down the  
22 road, 20 years down the road.

23 The money that comes over to the Waikoloa area  
24 now goes back to the Hilo side. It's not necessarily  
25 stays on our side.

1           And then also just the benefit of the  
2 development what Aina Le'a is trying to do, which is  
3 to make an affordable housing area for the community,  
4 only makes sense.

5           And, you know, as a business owner I just ask  
6 you how could we allow this not to succeed. Who would  
7 win if this did not succeed? Nobody would win. So  
8 that's all I have to say.

9           CHAIRMAN DEVENS: Thank you for your  
10 testimony. Questions for this witness? Hearing none,  
11 thank you for your testimony. That concludes the  
12 public testimony portion on this matter.

13 Commissioners have any further questions for the  
14 parties? There being none, Commissioner Kanuha?

15           COMMISSIONER KANUHA: Thank you, Mr. Chair. I  
16 note that Planning Director Todd is here today. She  
17 wasn't at the last Commission meeting where we had  
18 oral arguments. So I was just wondering if she had  
19 anything more to add.

20           MS. LEITHEAD-TODD: I think the position of  
21 the county has been fairly consistent. We believe  
22 that the land is appropriately in the urban  
23 designation. To a great extent because of its  
24 juxtaposition between the Village of Waikoloa and the  
25 resort area it is appropriate for urban designation

1 and development.

2           It's consistent with the County's General  
3 Plan. And I think we looked at the consistency. And  
4 our General Plan basically envisions that we have a  
5 concentration of urban development along the coast  
6 from Anaeho'omalu Bay up mauka to Waikoloa Village.

7           And it's always been in our plans that this  
8 would be an area where a working population that could  
9 provide a workforce for the resort development in this  
10 area would be housed.

11           One of the beauties of the area is that it's  
12 mauka of the tsunami inundation zone. So it's  
13 actually a better place, in our mind, for a  
14 residential population because then we don't have to  
15 worry about evacuation issues.

16           At full buildout it would provide some of the  
17 amenities that we think are important to this area.  
18 And I think, you know, just a side note -- the county  
19 has its own affordable housing project. Frankly,  
20 trying to mandate 385 units coming all on board at one  
21 time right now the market can't absorb it. You have  
22 to build it out over a period of years.

23           Part of that is because at this point you're  
24 going to have difficulty with people qualifying for  
25 mortgages and being able to get into the units. So I

1 think some of the requests have been reasonable. But  
2 basically whether it's Bridge or a subsequent property  
3 owner or DW 'Aina Le'a, we still believe that this is  
4 appropriate for urban development. It's consistent  
5 with the County's long-range plans for the area.

6 And we think it should retain its urban  
7 designation. And I have discussed this with the  
8 mayor. And he agrees that urban is the appropriate  
9 designation.

10 CHAIRMAN DEVENS: Thank you. Commissioner  
11 Jencks.

12 COMMISSIONER JENCKS: Ms. Leithead-Todd, is  
13 the entire area zoned now by the county or just  
14 portions of this area?

15 MS. LEITHEAD-TODD: It's zoned. Some of it's  
16 ag, some of it's residential, some of it was  
17 envisioned as golf course. But it was -- it's not  
18 like a little rectangle that's zoned. It kind of  
19 weaves in between the rest of the ag designation --

20 COMMISSIONER JENCKS: Like a project district.

21 MS. LEITHEAD-TODD: -- but it's been fully  
22 zoned by the county pursuant to the underlying urban  
23 classification. For those areas that were granted  
24 urban classification it has been zoned by the county.

25 COMMISSIONER JENCKS: Has the EIS been



1 finalized and accepted?

2 MS. LEITHEAD-TODD: I believe Mr. Okamoto can  
3 speak to that. We signed off on the Final. And I  
4 think that was January 7th was the last date to file  
5 anything on it?

6 MR. OKAMOTO: I believe, the county would  
7 process it as part of the anticipated project district  
8 application. So, I believe the Planning Department  
9 gave Final back in, I think it was October.

10 MS. LEITHEAD-TODD: I think the January 7th  
11 was the last day to file any type of appeal from our  
12 Final on it.

13 COMMISSIONER JENCKS: Okay. Thank you.

14 CHAIRMAN DEVENS: Any other questions for the  
15 parties? There being none, Commissioner Kanuha?

16 COMMISSIONER KANUHA: Mr. Chairman, I move we  
17 go into executive session for the purposes of  
18 consulting with our attorney on questions and issues  
19 pertaining to our powers, duties, privileges  
20 immunities and liabilities.

21 CHAIRMAN DEVENS: Second. Any discussion?  
22 There being none, all those in favor say aye.

23 COMMISSIONERS VOTING: Aye.

24 CHAIRMAN DEVENS: Unanimous. Take a short  
25 recess.

1 (Executive session recess was held.)

2 CHAIRMAN DEVENS: (11:10) All right. We're  
3 back on the record. If there's no further questions  
4 for the parties the first motion we'll take up is DW  
5 'Aina Le'a, LLC's Motion to Amend Conditions and  
6 Amendment to Motion to Amend Conditions 1, 5, and 7.

7 Is there a motion on this matter?  
8 Commissioner Kanuha.

9 COMMISSIONER KANUHA: Thank you, Mr. Chairman.  
10 The Motion to Amend Condition 1 on the D&O as amended,  
11 which is the affordable housing requirement, and that  
12 condition comes in, I believe, three parts.

13 Condition 5 relates to the requirement for  
14 wastewater treatment I believe, sewage treatment.

15 And Condition 7 relates to the school site  
16 within the area.

17 I believe the Applicant is proposing several  
18 modifications to the first condition, the housing  
19 condition, which if amended would provide a  
20 requirement for an updated master plan for the Project  
21 for the Commission's review and approval; that the  
22 phasing will then be adjusted to that; that the  
23 Petitioner will complete the affordable housing units  
24 and not proceed with the development of the remainder  
25 until the master plan is reviewed and approved, et

1 cetera.

2           And then another -- the last component is that  
3 the current conditions of approval would be amended to  
4 be consistent.

5           I believe on Conditions 5 and 7 both  
6 conditions which they're asking to be allowed to place  
7 the respective facilities, the wastewater treatment  
8 plant and the school site outside of the urban area  
9 into the Urban District.

10           In consideration of the proposed amendments to  
11 the various conditions I move that Conditions 5 and 7  
12 be retained as is in the D&O and that Condition 1(b)  
13 of the existing D&O and Condition 1(c) of the existing  
14 D&O be deleted in their entirety.

15           CHAIRMAN DEVENS: That completes your motion,  
16 Commissioner?

17           COMMISSIONER KANUHA: Yes, Mr. Chairman.

18           CHAIRMAN DEVENS: Is there a second to  
19 Commissioner Kanuha's motion?

20           COMMISSIONER TEVES: Mr. Chairman, I second  
21 Mr. Kanuha's motion.

22           CHAIRMAN DEVENS: There's a second. Any  
23 discussion?

24           COMMISSIONER KANUHA: Yes, Mr. Chairman. Let  
25 me go ahead and try and articulate for the Commission

1 where I'm kinda heading with this. I think it's  
2 kinda, kinda ironic that seven years ago the first  
3 meeting that I attended as a member of this Commission  
4 was on this particular docket. And this is my last  
5 meeting on the Commission seven years later and this  
6 Petition is still on our docket.

7           That being the case, I was in the process of  
8 purging all of the Commission's files from my  
9 conference room. And in the process of doing that I  
10 eventually ended up at the file box that contained  
11 everything that's related to this for the past seven  
12 years, rather extensive, lots of recyclables in there.

13           But in the process of doing that what I did  
14 end up doing was picking up bits and pieces of it  
15 through the years, how it's progressed actually  
16 working going backwards from where we are now back to  
17 the proceedings of '08 and then back to the initial  
18 hearings that I attended in '05 regarding the initial  
19 amendment to the original D&O which goes back some  
20 time.

21           So in the process of doing that and because as  
22 a former county administrator it just really concerns  
23 me a lot where how this Petition has ebbed and flowed  
24 between, like a football, between the Commission and  
25 the county and, you know, all of these different ways.

1           So what I did was I kinda went back and I  
2    tried to reconstruct my own timeline. Given the items  
3    that are on the agenda, my thought process was this  
4    Motion to Amend the Conditions was filed sometime ago.  
5    And we never disposed of it before we started to move  
6    and take action on the reversion of the D&O.

7           So what I did was I took a look, I started to  
8    take a look at this first to see exactly where that  
9    one fit in. And if the Commission will bear with me  
10   I'd like to go through some of the thoughts that I  
11   shared.

12          Today there's just Commissioner Contrades and  
13   I that were there from that original hearing.  
14   Commissioner Piltz was also at that hearing and he's  
15   no longer with us. And Commissioner Judge is absent  
16   today.

17          So believe me, in terms of what we heard from  
18   the standpoint of representations, you know, we were  
19   there from day 1. And I think some of the, some of  
20   the background has not really come out in terms of our  
21   proposed decision. And I think a lot of it will flow  
22   back to the history as it relates to the original  
23   Petition, the amendment in 2005.

24          To begin with, over the life of this Petition  
25   there have been four -- one, two, three, yeah, there

1 have been four. There's an original Petition and been  
2 four assignees to this. Signal Puako brought the  
3 first D&O. This was back in 1989. Then they were  
4 succeeded by Puako Hawai'i Properties. They came in  
5 for amendment in 1991.

6           Then following that was Bridge 'Aina Le'a who  
7 in '05 came back to the Commission to amend the  
8 housing condition to reduce that from 60 percent to  
9 20 percent. And they in turn have been succeeded, in  
10 the process of being succeeded I guess wholly by DW  
11 'Aina Le'a Development.

12           But one component that I thought was quite  
13 interesting that has been referred to kind of  
14 obliquely but never, never really placed on the  
15 record, was the fact that in 1993 that the area was  
16 rezoned by the county. Okay. It was rezoned by the  
17 county as Ordinance No. 93-1 which reclassified the  
18 area to be consistent with the '91 D&O.

19           As you know that rezoning process is also  
20 rather lengthy, rather extensive. It goes through the  
21 County Planning Commission. Then it goes up to the  
22 County Council who approves the rezoning by ordinance.

23           What happened in the ordinance of the original  
24 zoning 93-1 which was approved in January of 1993, was  
25 that there was a condition, Condition F, that required

1 wastewater treatment compliance. There was another  
2 condition, Condition M, which had affordable housing  
3 plan requirements. And there was another condition,  
4 Condition T, which required pro rata share compliance  
5 with school facilities.

6           As you can see these match up with the  
7 conditions that the Petitioner is seeking to modify.

8           What happened further in the history of this  
9 is that in 1996 by another Ordinance 96-153, effective  
10 on December 1996, that amended certain time conditions  
11 from the original ordinance largely related to water  
12 and some other condition modifications. The  
13 wastewater condition remained the same. The school  
14 condition remained the same.

15           The housing condition was modified to include  
16 language that required concurrence from the Housing,  
17 the Office of Housing and Community Development -- the  
18 County Office of Housing and Community Development --  
19 prior to the final subdivision approval.

20           Now, since -- backtracking through that time  
21 period particularly on the Big Island, we've had a  
22 number of D&Os, a number of Petitions that were  
23 approved by the Commission dating back from, let's  
24 see, what do we have: 1996 all the way to 2008. And  
25 some of these some of you are familiar with. Some of

1   them you're not.

2               Petition A93-701 Kaupulehu Developments '96.  
3   That Petition had a housing condition which basically  
4   assigned the distribution, how the housing was to be  
5   complied with, et cetera, to be negotiated between the  
6   Petitioner and the county of Hawai'i.

7               Kaupulehu Developments again 93-701 in 2001  
8   was a modification to that Petition. And again that  
9   contained an affordable housing condition with  
10   basically the same language, "Location, distribution  
11   shall be under the terms as may be agreed between the  
12   Petition and the County."

13              Lanikai Properties, which is A00-730, that was  
14   an industrial project I believe. And in that case  
15   there was still a housing condition, but basically  
16   what it was it was a condition that required an  
17   assessment of whether or not that project would have  
18   housing impacts.

19              Some of the more recent ones: Hiluhilu  
20   A03-744, that had an affordable housing condition.  
21   And actually that housing condition was very, very  
22   similarly worded to that of the housing condition that  
23   was amended for this Petition in 2005.

24              It was different from the standpoint of it was  
25   specific in how many units were to be developed. That



1 was the ceiling. And so whatever -- basically what it  
2 said is that there was some kind of threshold based on  
3 the representations of the Petitioner at that time.

4           Some recent ones I think much of you  
5 participated in: A06-770 Shopoff Group. That had an  
6 affordable housing condition. "Location, distribution  
7 under such terms as may be mutually agreeable between  
8 the Petitioner and the County."

9           A06-767 Waikoloa Mauka, LLC. Same kind of  
10 housing condition.

11           And most recently A10-788 the HHFDC Forest  
12 City Petition which even though it was an affordable  
13 housing project still had a similar condition. That  
14 project has a similar requirement even though it was a  
15 complete housing requirement.

16           So I think what I'm trying to point out is  
17 that history has shown that the allocation of  
18 Commission conditions once the property is rezoned,  
19 generally speaking the county will take the conditions  
20 that are imposed upon them by the Land Use Commission.

21           So what concerns me about this situation is  
22 that except for the additional requirements of the  
23 Bridge D&O, which is condition 1(b) and that is "The  
24 Petitioner shall obtain and provide copies to the  
25 Commission of the certificate of occupancy following

1 the Project's affordable housing units within five  
2 years or November 17, '05" and Condition 1(c) which is  
3 "The Petitioner shall submit to the Commission the  
4 Petitioner's signed joint venture agreement and a mass  
5 grading contract within a reasonable amount of time  
6 not to exceed 1 year from November 17, '05."

7           Except for those two conditions -- I mean  
8 those two sub-conditions of the affordable housing  
9 condition, almost all of the conditions have been  
10 passed off to the county. What I've just explained to  
11 you shows that that's what the standard has been.

12           Obviously notwithstanding what representations  
13 each petitioner has made in terms of what they're  
14 going to provide, how many units, what acreage, what  
15 time, the Commission has seen fit to just provide a  
16 general condition that you go ahead, you work with the  
17 county, you figure it out.

18           I think that's in line with the structure that  
19 the Commission works in and under our rules and also  
20 the Hawai'i Revised Statutes. The statutes that  
21 relate to the Commission, particularly HRS section  
22 205-5 relating to zoning specifically states, "Except  
23 as herein provided the powers granted to counties  
24 under section 46-4 shall govern the zoning within the  
25 districts other than conservation districts."

1           If you go back to section 46-4 again under  
2 Hawaii Revised Statutes, that section refers to county  
3 zoning. And what that says is, "The powers granted  
4 herein shall be liberally construed in favor of the  
5 county exercising them and in such a manner as to  
6 promote the orderly development of each county or city  
7 and county in accord with the long-range comprehensive  
8 General Plan, and to ensure the greatest benefit for  
9 the state as a whole."

10           Our Rules 15-15-77 relating to decision-making  
11 criteria, also give boundary amendments and also speak  
12 towards consideration of the General Plan within the  
13 county 15-15-14 "permissible uses within urban  
14 district" basically says, "Any and all uses permitted  
15 by the counties either by ordinances or rule may be  
16 allowed within the district subject to any conditions  
17 imposed by the Commission pursuant to 205-4."

18           So what I'm laying out here is that there's,  
19 in my mind, that there's ample, there's ample  
20 documentation that affordable housing conditions have  
21 been passed on down to the county in a rather generic  
22 form particularly because from time to time each  
23 county has a housing component to them.

24           In the County of Hawai'i the county housing  
25 agency is actually the council as a whole. They sit

1 as the Hawai'i Housing Agency. And they basically set  
2 the policy from time to time in terms of what the pro  
3 rata share for affordable housing would be depending  
4 upon, you know, what market and other conditions.  
5 Okay.

6           So that being the case, again, we come back to  
7 the two sub-conditions of the housing condition,  
8 Condition 1(b) regarding the Certificate of Occupancy.  
9 And actually I think that's related to some Proposed  
10 Findings which relate to the requirements that the  
11 Commission impose on this Petitioner to construct X  
12 number of units by a certain date. That's what's on  
13 the record. Okay.

14           In actuality there's a difference between  
15 construction of buildings, structures, et cetera, and  
16 the Certificate of Occupancy. You can have a  
17 completed structure. You can have a building, a  
18 residence, whatever, constructed and completed without  
19 it being occupied or without getting a Certificate of  
20 Occupancy. The Certificate of Occupancy requires  
21 basically a test of having two out of three criteria:  
22 Access. I believe water is one. Surprisingly power I  
23 believe is a requirement.

24           So those kinds of distinctions in my mind are  
25 not something that I think the Commission should be in

1 the position to have to determine. It's the same  
2 thing with Condition 1(c) where we have -- where the  
3 Commission's requested to have the Petitioner submit  
4 the signed joint venture agreement and a mass grading  
5 contract. And I think when this condition came up I  
6 remember quite distinctly my comment on the record  
7 was: This Commission shouldn't be reviewing mass  
8 grading contracts. I mean what do we know about mass  
9 grading contracts? What does this Commission know  
10 about Certificates of Occupancy?

11 So basically that's where I ended up. I ended  
12 up looking at where this all led us to. Seeing that  
13 there is a hands-off in terms of affordable housing to  
14 the county. It's been done in the past.

15 And I think what the biggest distinction for  
16 me with this Project is this: And that is if the  
17 Petitioner with all of the conditions and all of the  
18 promises and all of the representations never got the,  
19 never got to the next step, you know, never got  
20 rezoning for the property, then in my mind there's no  
21 question, you know, that it should be reverted,  
22 clearly reverted.

23 But in this particular case there was  
24 compliance with representations I believe from going  
25 back to the original petitioners because in 1993 they

1 got the Petition Area rezoned, you know. They took it  
2 to the next step. The county adopted conditions  
3 pursuant to the conditions imposed on them through the  
4 Land Use Commission.

5 And so basically my position upon this, and I  
6 think I spoke towards this when we took a vote on the  
7 Order to Show Cause, was that, you know, this is  
8 clearly in the county's ballpark. And I really -- I'm  
9 really -- I really get concerned when the Commission  
10 ends up with real specific implementation conditions  
11 which are clearly those that are best handled by the  
12 counties. So Mr. Chairman, kinda got all over the  
13 place but that's what happens when you start cleaning  
14 up files.

15 (Laughter)

16 COMMISSIONER KANUHA: Thank you.

17 CHAIRMAN DEVENS: I think everyone appreciates  
18 the thought and the comments provided by you,  
19 Commissioner Kanuha. Is there any further discussion  
20 on this matter? Commissioner Jencks.

21 COMMISSIONER JENCKS: Thank you, Mr. Chairman.  
22 I would just echo Commissioner Kanuha's comments and  
23 support them a hundred percent.

24 You know, there have been times in my career  
25 when I was hoping that the state would play a more

1 active role in land use issues with the counties. And  
2 there's also been times in my career when I've said,  
3 "Gee, I wish the state would just go away and leave us  
4 alone," that being the county.

5           And I think this is one of the times where in  
6 support of Commissioner Kanuha's comments let the  
7 county deal with this issue. I think we've learned,  
8 at least I've learned an important lesson here.  
9 Saying things in front of this Commission that relate  
10 to specific times and dates when you know you have a  
11 laundry list of discretionary approvals to achieve is  
12 a huge mistake and shouldn't have been done.

13           We shouldn't, in my opinion, accepted those  
14 timeframes and those proposals knowing what the  
15 system -- how the system works and what it's like out  
16 there in the industry. There's a lesson to be learned  
17 here with regard to that.

18           My heart of hearts tells me let the counties  
19 deal with this. Let the planning director and the  
20 council deal with the issues of zoning, the compliance  
21 with the zoning, the completion of the affordable  
22 housing and just return this back to local control.

23           I don't think we need to get in the business  
24 of -- certainly we have to be looking at D&Os and  
25 making sure in a general sense these folks are in

1 compliance. But there are many, many projects in the  
2 state of Hawai'i that have gone on for probably  
3 decades and they will continue to go on with little  
4 progress made simply because they're large, they are  
5 very complex, financing today is totally different  
6 than it was three or four years ago. It's gonna get  
7 more complex depending what happens with the federal  
8 budget and the debt ceiling.

9           This is a complex world. These are difficult  
10 projects. We've had our say. We've given them the  
11 conditions. Yeah, there's been some errors, some  
12 mistakes made, but encourage the Commissioners to  
13 listen to what Commissioner Kanuha said and support  
14 his proposal. I think this belongs in the bailiwick  
15 of the county and not in this Commission.

16           COMMISSIONER DEVENS: Appreciate your  
17 discussion, Commissioner Jencks. Commissioner Heller.

18           COMMISSIONER HELLER: Yes, thank you. I  
19 appreciate the amount of thought and effort that  
20 Commissioner Kanuha has put into this. But with all  
21 due respect I disagree. I think the statutory  
22 framework sets up certain responsibilities and  
23 functions for this Commission and certain  
24 responsibilities and functions for the county.

25           And I think where we have issued an Order,



1 going ahead and enforcing that Order, we're taking  
2 appropriate action if our order is not complied with  
3 is a function of this Commission and not of the  
4 county.

5           If we're just going to leave everything up to  
6 the counties, we might as well just all go home and  
7 forget about having a Land Use Commission. I think  
8 it's this Commission's not only function but  
9 responsibility to make sure that when we make a  
10 decision there's some kind of follow up to make sure  
11 that decision is complied with.

12           As far as the 1993 zoning change by the county  
13 I don't think that's really relevant to the issue of  
14 whether or not the Petitioner complied with conditions  
15 that were embodied in a 2005 Order.

16           I mean at the time the Order was entered in  
17 2005 the 1993 action by the county was already  
18 history, long ago history. The point is in 2005 the  
19 Petitioner came in, specifically requested changes at  
20 that point, reducing the number of affordable housing  
21 units. And basically at that point the Petitioner  
22 said, "We think we can do it in 3 years."

23           And in order to be sort of conservative and  
24 give extra time, the condition was actually imposed  
25 with a 5-year timeframe. It's unfortunate the way it

1 has turned out. But I think it's our duty and  
2 responsibility to make sure that there are some  
3 consequences if a petitioner does not comply with the  
4 conditions in a Decision and Order. Thank you.

5 CHAIRMAN DEVENS: Thank you for your  
6 discussion. Any further discussion on this matter? I  
7 just want to make a couple of comments. I think the  
8 points you raise, Commissioner Kanuha, are well taken  
9 and do give us pause to consider our decision. But I  
10 also agree with the points that Commissioner Heller  
11 has made in terms of what our duties and obligations  
12 are by statute and administrative rules.

13 I keep going back and try to step back from  
14 what has transpired to date. Yes, there's been  
15 different parties that have come in and tried to do  
16 what they can. I don't think there's any question  
17 that they tried to do their best what they can.

18 I think at some point you look -- it's been  
19 22 years now. The Commission, I think, has bent over  
20 backwards to try to accommodate to make this Project  
21 go and to work, mindful of the economic opportunities,  
22 the jobs that it would bring to the area along with  
23 the housing.

24 But at what point do we start looking at  
25 ourselves to weigh the credibility and integrity of

1 the Commission as a whole and the representations that  
2 are made to this Commission, not that we've asked them  
3 to make the representations, but they voluntarily made  
4 to us with reassurances that the representations would  
5 be complied with?

6           So one of the things I look at is, you know,  
7 how credible and with what integrity have those  
8 representations been made to us and fulfilled.

9           The other factor that we were supposed to look  
10 at was: Does the party have the necessary economic  
11 ability to carry out the representations and  
12 commitments made? And I think that has been a big  
13 problem in this case because I think if they had the  
14 wherewithal we would have seen a lot more than what is  
15 out there now which, to me, is little to nothing of  
16 real substance after 22 years.

17           So those are my thoughts. And I think it is  
18 important that we keep in mind what duties do we have  
19 under the statutory authority and the administrative  
20 rules that we've adopted as far as fulfilling our  
21 obligations and role in making sure that the amended  
22 property's in fact being put to its best use.

23           We did make a decision as to what the  
24 amendment should be. But really has it been put to  
25 its best use after 22 plus years? Those are just my

1 comments on the matter. Any further discussion?

2 Nothing further. Dan, vote on this Motion to Amend  
3 Conditions and Amendment to Motion to Amend Conditions  
4 1, 5 and 7.

5 MR. DAVIDSON: Motion to amend as set forth by  
6 Commissioner Kanuha. Commissioner Kanuha?

7 COMMISSIONER KANUHA: Yes.

8 MR. DAVIDSON: Commissioner Teves?

9 COMMISSIONER TEVES: Yes.

10 MR. DAVIDSON: Commissioner Lezy?

11 COMMISSIONER LEZY: No.

12 MR. DAVIDSON: Commissioner Jencks?

13 COMMISSIONER JENCKS: Yes.

14 MR. DAVIDSON: Commissioner Heller?

15 COMMISSIONER HELLER: No.

16 MR. DAVIDSON: Commissioner Contrades?

17 COMMISSIONER CONTRADES: No.

18 MR. DAVIDSON: Commissioner Chock?

19 COMMISSIONER CHOCK: No.

20 MR. DAVIDSON: Chair Devens?

21 CHAIRMAN DEVENS: No.

22 MR. DAVIDSON: The motion fails 3 to 5, Chair.

23 CHAIRMAN DEVENS: Okay. Second matter is DW  
24 'Aina Le'a, LLC's Motion to Reconsider and Defer Entry  
25 of Final Findings of Fact, Conclusions of Law, and

1 Decision and Order. Is there a motion on this matter?  
2 Commissioner Heller.

3 COMMISSIONER HELLER: Thank you. I move to  
4 deny the Motion to Reconsider and Defer Entry of Final  
5 Order.

6 CHAIRMAN DEVENS: Is there a second?

7 COMMISSIONER CONTRADES: Second.

8 CHAIRMAN DEVENS: I'm sorry. Who made the  
9 second? I'm sorry. Commissioner Contrades seconded  
10 the motion. Any discussion on this? There being none  
11 call for the vote.

12 MR. DAVIDSON: Motion to Deny Motion to  
13 Reconsider and Defer Entry. Commissioner Heller?

14 COMMISSIONER HELLER: Yes.

15 MR. DAVIDSON: Commissioner Contrades?

16 COMMISSIONER CONTRADES: Yes.

17 MR. DAVIDSON: Commissioner Lezy?

18 COMMISSIONER LEZY: Yes.

19 MR. DAVIDSON: Commissioner Kanuha?

20 COMMISSIONER KANUHA: No.

21 MR. DAVIDSON: Commissioner Jencks?

22 COMMISSIONER JENCKS: No.

23 MR. DAVIDSON: Commissioner Chock?

24 COMMISSIONER CHOCK: Yes.

25 MR. DAVIDSON: Commissioner Teves?

1 COMMISSIONER TEVES: No.

2 MR. DAVIDSON: Chair Devens?

3 CHAIRMAN DEVENS: Yes.

4 MR. DAVIDSON: Motion passes 5 to 3, Chair.

5 CHAIRMAN DEVENS: The last item is on the  
6 adoption of the Proposed Findings of Fact, Conclusions  
7 of Law, Decision and Order Reverting the Petition Area  
8 as Final Findings of Fact, Conclusions of Law and  
9 Decision and Order Reverting the Petition Area. Is  
10 there a motion on this matter?

11 MR. VOSS: Chair, at this time I would  
12 respectfully request the Chair recuse himself from  
13 voting on the proposed Decision and Order based on the  
14 Chair's conflict of interest.

15 CHAIRMAN DEVENS: What is the conflict?

16 MR. VOSS: The Proposed Decision and Order is  
17 based upon actions taken or allegedly not taken by  
18 Petitioner Bridge 'Aina Le'a, LLC over the last 20  
19 years. During that time period, during 2001, 2002 and  
20 the early part of 2003 the Chair's law firm Weiner,  
21 Meheula, Devens and Bush LLP sued Bridge 'Aina Le'a,  
22 LLC in a lawsuit challenging the water rights to the  
23 'Aina Le'a project. The lawsuit was Civil No.  
24 01-1-0465 in the Third Circuit.

25 On behalf of its client Hale Wailani Partners,

1 the Chair's law firm sought declaratory relief and  
2 damages from Bridge 'Aina Le'a, LLC relating to  
3 Bridge's water wells to the 'Aina Le'a Project. The  
4 lawsuit by the Chair's law firm caused significant  
5 expense and delay to the Project during the same time  
6 period during which the proposed D&O states that  
7 Bridge was not proceeding with the development in  
8 accordance with the Decision and Order.

9 As a partner in the law firm the Chair  
10 received a direct financial benefit by suing Bridge  
11 'Aina Le'a during the time period of the proposed  
12 Decision and Order and thereby by delaying the  
13 Project.

14 Because the Chair through his law firm had a  
15 personal pecuniary interest and received a direct  
16 personal financial benefit from suing Bridge 'Aina  
17 Le'a, LLC on a matter related to the Project and the  
18 specific subject matter of the proposed D&O, it is,  
19 with all due respect, appropriate under the statute  
20 and the rules for the Chair to recuse himself from  
21 voting on the Proposed Decision and Order. Thank you.

22 CHAIRMAN DEVENS: And what statute are you  
23 referring to?

24 MR. VOSS: I'm referring to the ethics statute  
25 under chapter 87 as well as the Commission's own rule

1 15-15-61 "disqualification".

2 CHAIRMAN DEVENS: And can you tell me what  
3 year that matter was instituted that you referred to?

4 MR. VOSS: The lawsuit by your law firm? The  
5 lawsuit filed by your law firm was filed in 2001 as  
6 the Civil 01-1-0465 Hale Wailani Partners LP vs.  
7 Bridge 'Aina Le'a, LLC.

8 CHAIRMAN DEVENS: And what is the section  
9 under HRS 87 that you're referring to?

10 MR. VOSS: I can get that, Chair, if you'd  
11 like, in a second. It is the companion, the statutory  
12 companion to 15-15-61, the disqualification statute.  
13 They essentially say that where a Commission member  
14 has a pecuniary or business interest in a matter  
15 considered by the Commission, the Commission member  
16 should be disqualified or should disqualify himself.

17 CHAIRMAN DEVENS: In that litigation you're  
18 referring to I'm not familiar with it as I sit here.  
19 I don't believe I worked on it at all. In fact it  
20 doesn't sound familiar at all. Do you know which  
21 attorneys from my law firm participated in that  
22 litigation, based on your research?

23 MR. VOSS: The lead attorney for the lawsuit  
24 was Bill Meheula. But with all due respect that is  
25 irrelevant if as a part --



1           CHAIRMAN DEVENS: I'm not asking if it's  
2 relevant. I just want to know who are the attorneys  
3 that participated in that litigation from my law firm.

4           MR. VOSS: The lead attorney was Bill Meheula.  
5 I do not know --

6           COMMISSIONER DEVENS: Does my name show up on  
7 any of the pleadings as far as participating in the  
8 litigation at all in any capacity whether it was  
9 hearings, arguments, memorandums that I signed?

10          MR. VOSS: I have not looked through the  
11 entire file to know, and frankly could not know  
12 respectfully, Chair, whether you worked on this matter  
13 at the law firm.

14          CHAIRMAN DEVENS: Did you talk to your client  
15 to find out if I had any involvement?

16          MR. VOSS: As I said I don't know what you  
17 were doing as a partner in the law firm.

18          CHAIRMAN DEVENS: My question is have you  
19 asked your client if I had any direct involvement in  
20 that matter?

21          MR. VOSS: No, I don't know how that's  
22 possibly relevant, Chair.

23          CHAIRMAN DEVENS: I'm not asking about  
24 relevancy. I'm trying to get some facts on the record  
25 based on the issue that you're raising. Tell me what

1 ethical rules is it that you're relying upon for this  
2 argument.

3 MR. VOSS: The Commission's own rules  
4 15-15-61.

5 CHAIRMAN DEVENS: You said there was a  
6 statutory section you were also relying upon under  
7 HRS?

8 MR. VOSS: Yes. And if you want to give me a  
9 minute I can find it. But basically it is under the  
10 ethics rules. I believe it's chapter 87. And, again,  
11 with all due respect, it is not merely the statutory  
12 or rule-based requirement that I'm pointing to, Chair.  
13 It is the appearance of impropriety of a member of a  
14 commission who has received a direct financial benefit  
15 from suing a party to the proceeding, voting on a  
16 proposed decision and order that goes to the heart of  
17 the allegations in the Proposed Decision and Order  
18 regarding the failure to comply with conditions in a  
19 lawsuit that did, in fact, delay the Project and cause  
20 significant expense to the Project during the time  
21 period of the alleged inaction.

22 CHAIRMAN DEVENS: Let me ask you, Counsel,  
23 when did you first come across this information?

24 MR. VOSS: In all frankness, Chair, as I have  
25 watched you affirmatively seek to develop evidence in

1 favor of the Petition for -- or the action for  
2 reversion -- in particular --

3 CHAIRMAN DEVENS: Mr. Voss, my question is  
4 real specific: When did you come across this  
5 information?

6 MR. VOSS: Approximately two days before the  
7 final argument I went into the files or asked and  
8 obtained the files of this lawsuit to see whether or  
9 not who was the law firm -- actually I did -- all the  
10 actions as to Bridge during this time period.

11 I was able to find the pleadings that  
12 indicated that you were a partner of this  
13 approximately two days before the final argument.  
14 What was that? About 11 days ago. The statutory  
15 section by the way --

16 CHAIRMAN DEVENS: Did you -- I'm sorry, go  
17 ahead.

18 MR. VOSS: -- the statutory section is 84-14.

19 CHAIRMAN DEVENS: Did you notify the executive  
20 director that you were going to be raising this issue  
21 today?

22 MR. VOSS: No. With all due respect it is  
23 your burden, Mr. Chair.

24 CHAIRMAN DEVENS: I'm not asking about  
25 burdens. I'm asking you did you inform the executive

1 officer. That's my question.

2 MR. VOSS: No. Why would I?

3 CHAIRMAN DEVENS: Did you inform any of the  
4 other parties that you were going to be raising this  
5 issue here today?

6 MR. VOSS: Did I inform any of the other  
7 parties?

8 CHAIRMAN DEVENS: Yes.

9 MR. VOSS: Yes.

10 CHAIRMAN DEVENS: Who did you inform?

11 MR. VOSS: I informed DW 'Aina Le'a  
12 Development, LLC, counsel for them.

13 CHAIRMAN DEVENS: What about the county and  
14 OP?

15 MR. VOSS: No. It would not have been  
16 necessary to raise this but for the final vote on the  
17 Proposed Decision and Order, which is the specific  
18 matter of your conflict, Mr. Chair.

19 CHAIRMAN DEVENS: And the matter that  
20 Mr. Meheula was the lead attorney on, when did that  
21 litigation conclude, based on your research?

22 MR. VOSS: It appears to have concluded in  
23 early 2003.

24 CHAIRMAN DEVENS: That matter is no longer  
25 pending?

1           MR. VOSS: Well, there's a settlement  
2 agreement which is, I understand, confidential. And I  
3 don't know if there will ever be may matters related  
4 to enforcement of the settlement agreement related to  
5 litigation.

6           CHAIRMAN DEVENS: So the matter concluded  
7 approximately 8 years ago?

8           MR. VOSS: The case was dismissed in 2003 as I  
9 said, Chair.

10          CHAIRMAN DEVENS: Parties have any response or  
11 comments they want to put on the record? Any  
12 concerns?

13          MR. YEE: Office of Planning has no opposition  
14 to the Chair's continued engagement in this matter.

15          CHAIRMAN DEVENS: County, any concerns about  
16 my participation in this matter?

17          MS. LEITHEAD-TODD: County has no concerns  
18 about your continued participation.

19          CHAIRMAN DEVENS: I'm going to move -- I'm  
20 sorry, Commissioner Lezy.

21          COMMISSIONER LEZY: I'm sorry. I'd just like  
22 to ask one question before we go into what I'm  
23 expecting we're going to go into.

24          Mr. Voss, can you articulate for us your  
25 argument as to how the Chair has a personal pecuniary

1 interest in the outcome of this particular matter?

2 MR. VOSS: The Chair in the past has received  
3 person financial benefits from suing Bridge 'Aina Le'a  
4 on a matter directly related to the Decision and  
5 Order.

6 I would respectfully hope that anyone in the  
7 Chair's position would voluntarily recuse himself as  
8 it is clearly the appropriate thing to do under any  
9 reasonable interpretation of the ethics laws.

10 But to answer your specific question. The  
11 Chairperson as a partner in a law firm receives a  
12 share of the profits, as the Chair did. That was,  
13 frankly, a very lucrative litigation for the  
14 Plaintiff's law firm, extended over a period of 3  
15 years. I don't know exactly the attorneys fees, but I  
16 would suspect it was in excess of \$200,000.

17 I don't know what the Chair's percentage of  
18 the law firm distribution profits at that time was.  
19 But to the extent that that distribution as a  
20 percentage of the fees, that is the personal benefit  
21 that the Chair received during the time period in  
22 question in the proposed Decision and Order.

23 So, therefore, I don't see how the Chair can  
24 not have a conflict of interest having received such a  
25 personal financial benefit.

1           COMMISSIONER LEZY: Let me see if I can focus  
2 my question a little bit more then. Can you  
3 articulate your argument as to how the Chair has a  
4 personal or pecuniary interest arising out of the  
5 current matter, which is reversion based on a failure  
6 by the Petitioner to meet a condition imposed in 2005?  
7 When, at least based on the facts as you represented  
8 them to us, all of the dealings that you've just  
9 discussed occurred prior to the imposition of that  
10 condition.

11           MR. VOSS: Well, first, the Chair has already  
12 received the persons financial benefit. And I think  
13 it's a pretty thin read to make a distinction between  
14 a past benefit and a future benefit.

15           But if the Proposed Decision and Order is  
16 granted and this project is killed, then the Chair's  
17 law firm client Hale Wailani Partners, will have an  
18 undisputed first draw of the water that was intended  
19 for the 'Aina Le'a Project and the Chair's client,  
20 Chair's law firm's client, rather, will have a  
21 personal pecuniary -- a pecuniary advantage going  
22 forward.

23           COMMISSIONER LEZY: I guess you and I disagree  
24 on what a thin read is.

25           CHAIRMAN DEVENS: Commissioner Kanuha.

1           COMMISSIONER KANUHA: Yes, Mr. Chairman. I  
2 move we go into executive session to consult with our  
3 attorney on questions and issues pertaining to our  
4 powers, duties, privileges, immunities and  
5 liabilities.

6           COMMISSIONER HELLER: Second.

7           CHAIRMAN DEVENS: There's a second. Any  
8 discussion? All those in favor say aye.

9           COMMISSIONERS VOTING: Aye.

10          CHAIRMAN DEVENS: Before we break let me put  
11 on the record that I don't recall this litigation.  
12 It's been some time, but it does not really jog my  
13 memory. I don't remember participating in the  
14 litigation. It's not really my area of expertise.  
15 I'm more of a labor/SOPO attorney, personal injury  
16 attorney. Of the little land matters that I have  
17 handled go way, way back when I first got into the  
18 practice again.

19          So in fairness to the parties, on the record I  
20 at least want to make that disclosure. It doesn't  
21 really sound familiar to me. If he says my firm  
22 handled that, no reason to disbelieve Mr. Voss. But  
23 that is more of an area where my partner, Mr. Meheula,  
24 would have handled it as the primary attorney as  
25 opposed to myself.



1           As far as these allegations about pecuniary,  
2   would I benefit, I may not have benefited, what  
3   Mr. Voss says, he's just saying 200,000. I have no  
4   idea what it was. I don't know of any pecuniary  
5   benefit.

6           I really don't appreciate those kinds of  
7   speculative statements being made and attributed to me  
8   because I don't know what, if any, fee was charged.  
9   And it would be confidential to my client, my firm's  
10  clients in any event.

11          And I really don't have any knowledge about  
12  that as I sit here now. I'd like to at least put that  
13  on the record. And with that we'll take a short break  
14  and go into executive session.

15          (Executive session recess was held. 12:05)

16          CHAIRMAN DEVENS: (12:16) We're back on the  
17  record. After consulting with our deputy attorney  
18  general and going through the authorities and the  
19  rules, it does not appear that there is grounds for a  
20  need for me to recuse myself.

21          Also note that Mr. Voss did not raise this  
22  issue at the beginning of this docket matter this  
23  morning as I think he should have. I also felt that  
24  as an attorney an obligation to raise that before I  
25  participated in the prior two motions to at least have

1 given me a fair opportunity to have evaluated this  
2 matter.

3 But he did not give that consideration, nor  
4 did he raise it until the point in time that he did,  
5 which was just before the Commission was ready to take  
6 action on the third matter on this docket.

7 Also note that the other two parties did not  
8 raise any concerns or ask for my recusal on this  
9 matter. During the break I did have a chance to call  
10 my office. Unfortunately Mr. Meheula was off to  
11 another matter. I did not have a chance to talk to  
12 him. I did ask his secretary to check to see if Hale  
13 Wailani Partners was a client of ours at the present  
14 time. And based on her research she did not find any  
15 indication that it is a continuing client of ours. As  
16 I indicated earlier I do not have any recollection of  
17 participating in the matter.

18 Whether I assigned something for Mr. Meheula  
19 or did some research I really can't remember and I  
20 can't say either way. But I definitely, as I sit here  
21 today, do not have any real recollection of the  
22 matter, that alone, that matter being in our office.

23 The one pleading that Mr. Davidson showed to  
24 me the caption showed William Meheula, my partner and  
25 David Fasi as the two named attorneys that were

1 working on the case, which does not surprise me as  
2 Mr. Meheula and Mr. Fasi often worked together on  
3 matters concerning those types of cases as opposed to  
4 myself.

5           So examining the rules, based on the advice of  
6 our counsel, there does not appear to be any grounds  
7 for myself to recuse, disqualify myself from  
8 participation in this matter. If I thought for a  
9 second that I could not remain objective or impartial  
10 on this matter I would recuse myself in an instant. I  
11 do not feel that way nor have I ever felt this way  
12 about this matter.

13           I have conscientiously in all seriousness in  
14 looking at any matter before this Commission,  
15 especially this case, have taken the time to look at  
16 all the evidence, reserved any type of judgment or  
17 passing on the evidence until the matter has been  
18 closed. That is the way I've approached this case and  
19 maintained any objectivity and impartiality as I will  
20 continue to do so until this matter is concluded.

21           With that, is there a motion on this matter?  
22 Commissioner Heller.

23           COMMISSIONER HELLER: Yes. I move that we  
24 adopt the Proposed Findings of Fact, Conclusions of  
25 Law and Decision and Order Reverting the Petition Area

1 as dated March 10, 2011 as our Final Decision and  
2 Order with the following amendments:

3           In Finding No. 18 on the third line I would  
4 add the words, "within the Petition Area" immediately  
5 after the words "affordable units". So that it would  
6 refer to "Certificates of Occupancy for at least 385  
7 affordable units within the Petition Area by  
8 November 17, 2010."

9           Would then add a new Finding of Fact No. 19 to  
10 read "Bridge represented to the Commission that the  
11 385 affordable units would be built on the Petition  
12 Area and that it would not claim credit against the  
13 385 units for the 107 affordable units that its  
14 predecessor had built offsite."

15           Then immediately after that add a new No. 20  
16 stating "There was no appeal of the 2005 Order."

17           Then in No. 56, currently numbered 56, add at  
18 the end of that Finding the words, "within the  
19 Petition Area". So it would refer to "....even one  
20 affordable dwelling unit within the Petition Area."

21           And then finally in the Order itself add a  
22 part 4 to read, "Any and all Proposed Findings of Fact  
23 submitted by the parties which are not expressly  
24 adopted by the Commission or rejected by clearly  
25 contrary Findings of Fact are hereby denied and

1 rejected."

2           So with those changes I would make our  
3 Proposed Order the Final Order.

4           CHAIRMAN DEVENS: Is there a second to  
5 Commissioner Heller's motion?

6           COMMISSIONER CONTRADES: Second.

7           CHAIRMAN DEVENS: Second by Commissioner  
8 Contrades. Any discussion? Commissioner Kanuha.

9           COMMISSIONER KANUHA: Thank you, Mr. Chairman.  
10 I will be voting against this motion. But by the same  
11 token I think I'm fully supportive of your disclosure.  
12 I do not believe there is any conflict, that there's  
13 any appearance of conflict. And I support your  
14 participation in the voting on this matter.

15           CHAIRMAN DEVENS: Thank you, Commissioner  
16 Kanuha. Any further discussion? Commissioner  
17 Contrades.

18           COMMISSIONER CONTRADES: I just want to say  
19 that I'm in support of this motion because, like  
20 Commissioner Kanuha said, this was the first docket  
21 that was before us when I first started on this  
22 Commission. And for the members of the public who  
23 came today to testify and ask us to reconsider I have  
24 to say this: that room was filled that first day. And  
25 people were stating we have to change the 60 to the

1 20. "It's important to get this off. We need this  
2 work. We need the housing." We need to support them.  
3 So we did. Nothing happened.

4 People came back again. Same thing. "Oh, we  
5 have to support. We have to help. We have to  
6 consider all this." They're going to do it. Nothing  
7 happens.

8 There comes a time when you have to make up  
9 your mind if something is right or something is wrong.  
10 In this case I think we gave all whoever -- there's so  
11 many of them it's hard to remember who was where at  
12 times, but we gave everybody a chance.

13 For people to come now, not necessarily the  
14 public, but for the attorneys representing these  
15 different entities to come now and act as if this  
16 Commission has not done everything in its power to  
17 bend over backwards to help them to get this done, to  
18 listen to promises made, "We can do it."

19 I remember specifically asking, "Are you sure  
20 that you can do this in the time limits that you are  
21 stating?"

22 "Yes we can."

23 It wasn't done. And it's still not done. I  
24 personally cannot continue to say, "Yes, I support  
25 it." You can't. We gave them enough chances. If we

1 don't vote on this and don't revert it back, then why  
2 have a Commission? What powers do we have? That's  
3 one of the only powers we have. If people don't  
4 follow their promises, don't live up to what they  
5 claim, then why do we have this Commission?

6 We are here to do it and we must follow our --  
7 and that's why I'm doing this. I'm sorry for those  
8 who feel this is jobs that they coulda had or coulda,  
9 woulda, shoulda, but not. That's how I feel. That's  
10 why I'm voting to approve this motion. Thank you.

11 CHAIRMAN DEVENS: Thank you, Commissioner  
12 Contrades. Any further discussion on this matter?  
13 There being no further questions, Dan, if you could  
14 call for the vote please.

15 MR. DAVIDSON: This is Motion for Order  
16 Adopting Proposed Findings of Fact, Conclusions of Law  
17 and Decision and Order Reverting the Petition Area as  
18 amended as the Commission's Final Decision.

19 Commissioner Heller?

20 COMMISSIONER HELLER: Yes.

21 MR. DAVIDSON: Commissioner Contrades?

22 COMMISSIONER CONTRADES: Yes.

23 MR. DAVIDSON: Commissioner Lezy?

24 COMMISSIONER LEZY: Yes.

25 MR. DAVIDSON: Commissioner Kanuha?

1 COMMISSIONER KANUHA: No.

2 MR. DAVIDSON: Commissioner Jencks?

3 COMMISSIONER JENCKS: No.

4 MR. DAVIDSON: Commissioner Chock?

5 COMMISSIONER CHOCK: Yes.

6 MR. DAVIDSON: Commissioner Teves?

7 COMMISSIONER TEVES: Yes.

8 MR. DAVIDSON: Chair Devens?

9 CHAIRMAN DEVENS: Yes.

10 MR. DAVIDSON: The motion passes 6 to 2,  
11 Chair.

12 CHAIRMAN DEVENS: All right. That concludes  
13 the matter on this docket. Before we adjourn just  
14 wanted to recognize that this is the last Commission  
15 hearing where we'll have Commissioner Kanuha and  
16 Commissioner Jencks serving.

17 And on behalf of the Commission I wanted to  
18 personally thank you both for the insight, the  
19 experience you've brought to us, Commissioner Kanuha.  
20 You were here from the time I first came aboard.

21 You really provided a guiding light for us, a  
22 lot of knowledge and experience that I truly value  
23 that you brought to us.

24 I think I speak for all us here we're going to  
25 miss your presence and the discussion that you always



1 made us think about before we made any kind of  
2 decision in any matter. I wanted to say thank you to  
3 you.

4 Commissioner Jencks, it's been a short time  
5 that you've been with us but you've made a tremendous  
6 impact. The knowledge and experience that you brought  
7 to us was very much appreciated. The comments and the  
8 questioning was very stimulating on the matters that  
9 you participated in.

10 So I'd like to also thank you for everything  
11 you've done for us. To both of you we will miss you  
12 and we wish you the best. And please stay in touch.  
13 Aloha. Commissioner Contrades.

14 COMMISSIONER CONTRADES: I would also like to  
15 thank both of my two friends there. I'm a small-town  
16 boy. You know, Kaua'i we grumble about traffic. From  
17 where I live to go to where I go to work used to take  
18 me 10 minutes. It takes me 12 now and we grumble.

19 And the reason I mention that is because my  
20 brother Duane over there, when we first started I  
21 insisted that he had to be the driver. So he always  
22 picks me up no matter what island we're on. He drives  
23 me around. Now I guess I gotta catch the bus.

24 (Laughter)

25 And, Charley, it's been great. Thank you very

1 much for your friendship. We really will miss both of  
2 you guys. Thank you for all the service that you've  
3 done. And I hope you have the opportunity to continue  
4 to serve our state in any other matters. Thank you.

5 CHAIRMAN DEVENS: We stand adjourned. Thank  
6 you very much.

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8 (The proceedings were adjourned at 12:30 p.m.)

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

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

5 That I was acting as court reporter in the  
6 foregoing LUC matter on the 21st day of April 2011;

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

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

13

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15 DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2011

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20 \_\_\_\_\_  
21 HOLLY M. HACKETT, HI CSR #130, RPR  
22 Certified Shorthand Reporter  
23  
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