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LAND USE COMMISSION

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STATE OF HAWAI'I

4

HEARING AND ACTION

PAGE

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DR11-43 MAHA'ULEPU FARM, LLC)

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A83-557 PRINCEVILLE DEVELOPMENT)

CORPORATION)

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TRANSCRIPT OF PROCEEDINGS

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12 The above-entitled matters came on for a Public

13 Hearing at the Kaua'i Marriott, Salon 3, 3160 Rice

14 Street, Lihu'e, Kaua'i commencing at 1:15 p.m. on

15 May 12, 2011 pursuant to Notice.

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

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Certified Shorthand Reporter

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A P P E A R A N C E S

3 COMMISSIONERS:

4 THOMAS CONTRADES
VLADIMIR DEVENS (Chairman)
5 LISA M. JUDGE
JAYE NAPUA MAKUA
6 NORMAND LEZY
NICHOLAS TEVES, JR.

7

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

10 AUDIO TECHNICIAN: WALTER MENCHING

11

12

13 Docket No. DR11-43 Maha'ulepu Farm, LLC

14 For the Petitioner: BENJAMIN MATSUBARA, ESQ.
CURTIS TABATA, ESQ.
15 MICHAEL TRESLER
Senior VP Grove Farm
16

17 For the County: MICHAEL DAHILIG
Interim Planning Director
18

19 For the State: BRYAN YEE, ESQ.
Deputy Attorney General
20 JESSE SOUKI, Director
Office of Planning
21

22

23

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

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3 Docket No. A83-557 Princeville Development Corp.

4

5 For the Petitioner: BENJAMIN MATSUBARA, ESQ.
6 CURTIS TABATA, ESQ.
7 ABBEY MAYER, VP Resort Group

8 For the County: MICHAEL DAHILIG
9 Interim Planning Director

10 For the State: BRYAN YEE, ESQ.
11 Deputy Attorney General
12 JESSE SOUKI, Director
13 Office of Planning

14 For the Intervenors: TERESA TICO, ESQ.
15 Concerned Citizens SUSAN WILSON
16 of Anini

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1 CHAIRMAN DEVENS: This meeting is called to
2 order. This is a meeting of the state Land Use
3 Commission. Today is May 12, 2011. This agenda
4 hearing is set here on Kaua'i.

5 First item on the agenda is the adoption of
6 the minutes. But before we get to that I wanted to
7 recognize and introduce our newest Commissioner,
8 Commissioner Napua Makua who was recently appointed
9 and is from the island of Maui. I'd like to welcome
10 you aboard.

11 The first item is the adoption of the
12 minutes. Are there any corrections or changes to the
13 minutes? There being none, I make a motion to adopt.
14 Is there a second?

15 COMMISSIONER TEVES: Second.

16 CHAIRMAN DEVENS: Any discussion? There
17 being none, all those in favor say aye. It's
18 unanimous. Motion carries. It's adopted. Second
19 item is the meeting schedule. Dan, you want to update
20 on the future scheduling?

21 MR. DAVIDSON: Thank you, Chair. You have
22 the meeting schedule before you. We do have a new
23 docket, Kula Ridge, which will -- 99 percent -- begin
24 July 14th for the Commissioners' planning purposes.
25 Also the meeting in two weeks, for those of you

1 attending, please work carefully with Riley and me
2 because we need to make sure we have a quorum. Thank
3 you, Chair.

4 CHAIRMAN DEVENS: Thank you, Dan. Next item
5 is the Docket No. DR11-43. This is a hearing and
6 action meeting on this docket in the matter of the
7 Petition of Mahaulepu Farm, LLC for Declaratory Order
8 to designate Important Agricultural Lands for
9 approximately 1,533 acres at Koloa, Kaua'i, Hawai'i.

10 Parties make their appearances, please
11 starting with Petitioner.

12 MR. MATSUBARA: Good morning, Commissioner
13 Devens, members of the Commission. Benjamin Matsubara
14 and Curtis Tabata on behalf of Petitioner. Seated to
15 my right is senior vice president of Grove Farm
16 Michael Tresler.

17 CHAIRMAN DEVENS: Good afternoon.

18 MR. DAHILIG: Good afternoon, Commissioners,
19 My name is Mike Dahilig. I'm the interim planning
20 director for the county of Kauai.

21 MR. YEE: Good afternoon. Deputy Attorney
22 General Bryan Yee on behalf of the Office of Planning.
23 With me is Jesse Souki, director of the Office of
24 Planning.

25 CHAIRMAN DEVENS: Good afternoon to you all.

1 Let me at this time update the record. On
2 February 23rd, 2011 the Commissioner received
3 Petitioner's Petition for Declaratory Order to
4 Designate Important Agricultural Lands, and Exhibits A
5 through C.

6 On April 8, 2011 the Commission received the
7 Office of Planning's comments to the Petition.

8 On April 12, 2011 the Commission received
9 the county of Kauai's comments to the Petition.

10 April 13 the Commission received the
11 Department of Agriculture's comments to the Petition.

12 On August 19th the Commission received a
13 copy of written correspondence to OP from the
14 Commission on Water Resource Management dated
15 April 13, 2011.

16 On April 21st, 2011 the Commission received
17 Petitioner's errata to Petition for Declaratory Order
18 to Designate Important Agricultural Lands filed
19 February 3, 2001 and Exhibit D.

20 On April 25, 2011 the Commission received
21 Petitioner's second errata to Petition for Declaratory
22 Order to Designate Important Agricultural Lands filed
23 February 3, 2011.

24 On May 3, 2011 the Commission received
25 Petitioner's response to the state Office of

1 Planning's letter dated April 8, 2011, the Department
2 of Agriculture's letter dated April 11, 2011 and the
3 Planning Department of the county of Kauai's letter
4 dated April 8, 2011.

5 On May 10, 2011 the Commission received
6 written correspondence via fax from Steven Kai, plant
7 manager, Pioneer Hi-Bred International, Ltd. and
8 Matilda A. Yoshioka, president and CEO of the Kaua'i
9 Economic Development Board.

10 On May 11, the Commission received written
11 correspondence via fax from Roy Oyama, president Kauai
12 County Farm Bureau and Department of Agriculture Chair
13 Russell Kokubun.

14 Just before we started the hearing we also
15 received a letter from Ms. Beryl Blaich, coordinator.
16 It's apparently testimony in this matter that has been
17 received by the Commission and will be made part of
18 the record.

19 Mr. Matsubara, you're aware of the
20 Commission's policy on reimbursement? I take it
21 you're in agreement and will abide by?

22 MR. MATSUBARA: Yes, we are, Mr. Chair.

23 CHAIRMAN DEVENS: Thank you. The procedure
24 for today will be as follows: First, we'll take
25 public testimony. We'll then have the staff report.

1 We'll have Petitioner's presentation, then receive
2 public comments from the Kaua'i County, Office of
3 Planning, Department of Agriculture and we will then
4 conduct deliberations on this matter.

5 Any questions about the process we intend to
6 follow today?

7 MR. MATSUBARA: No questions.

8 MR. DAHILIG: No questions.

9 CHAIRMAN DEVENS: Before we move into the
10 public testimony, the Commission was inclined to
11 accept and admit all of the exhibits and evidence that
12 has been presented. Are there any objections from the
13 parties in doing so?

14 MR. MATSUBARA: No objections.

15 MR. DAHILIG: No objection.

16 MR. YEE: No objection.

17 CHAIRMAN DEVENS: So admitted and accepted.
18 Dan, do we have any public witnesses?

19 MR. DAVIDSON: We have three signups, Chair.

20 COMMISSIONER LEZY: Chair?

21 CHAIRMAN DEVENS: Commissioner Lezy?

22 COMMISSIONER LEZY: Thank you, Chair.

23 Before we move into the substantive part of that case
24 I need to disclose a potential conflict. I performed
25 legal services on behalf of a subsidiary of Grove

1 Farm, Grove Farm Fish and Poi. And while I do not
2 believe that my relationship with that subsidiary will
3 cause any problems with impartiality in dealing with
4 this matter, because there may be an appearance of
5 conflict I wish to disclose it and make it known to
6 the parties and the public.

7 CHAIRMAN DEVENS: Commissioner Lezy, does
8 that matter that you're representing have anything to
9 do with this matter that's pending before the
10 Commission today?

11 COMMISSIONER LEZY: It does not.

12 CHAIRMAN DEVENS: Parties have any
13 objections or concerns about this disclosure?
14 Petitioner?

15 MR. MATSUBARA: No objections.

16 MR. YEE: No objection.

17 CHAIRMAN DEVENS: County, you said "no
18 objection"?

19 MR. DAHILIG: No objection.

20 CHAIRMAN DEVENS: Thank you. Commissioners,
21 is there any concerns? There being none, thank you
22 for the disclosure, Commissioner. The first witness
23 will be?

24 MR. DAVIDSON: The first witness is Jerry
25 Ornellas followed by Karol Haraguchi.

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

4 THE WITNESS: I do.

5 CHAIRMAN DEVENS: If you can just state your
6 name and address for the record.

7 THE WITNESS: My name is Jerry Ornellas. I
8 live at 61-706G Hauiki Road in Kapa'a and that's on
9 Kaua'i. Again, my name is Jerry Ornellas. I'm vice
10 president of the Kaua'i County Farm Bureau. I'm also
11 president of East Kaua'i Water Users Cooperative. And
12 for the sake of disclosure I can tell you I sit on the
13 Board of Agriculture for the state of Hawai'i.

14 But I'm here testifying today as an
15 individual. And strongly support the Petition for
16 Declaratory Order to Designate Important Agricultural
17 Lands at Mahaulepu.

18 I also sit on the stakeholder and technical
19 advisory committee which is, county of Kaua'i, which
20 is presently in the process of identifying Important
21 Agricultural Lands on the island. I'm not speaking in
22 that capacity today. But I point that out simply
23 because we have been working for many months now on
24 identifying Important Agricultural Lands. And in my
25 opinion this particular parcel has all the criteria

1 necessary to be declared Important Agricultural Lands.
2 It is currently agriculture. It has soil quality. It
3 has historically been farmed. It has been identified
4 as ALISH, as unique and prime. It has native Hawaiian
5 crops growing there presently, taro. It has
6 sufficient water.

7 And a note about water. Not only does it
8 have sufficient water, the water is gravity-flowed
9 water. So there would be no expenses as far as
10 pumping goes, to the best of my knowledge. It is
11 consistent with county plans as presently zoned
12 agriculture. It contributes to the critical land mass
13 because of its contiguous nature. And it has access
14 to infrastructure and markets. Being that close to
15 Poipu, which is a major tourist area, marketing would
16 be much easier.

17 So that's my testimony. If you have any
18 questions I'd be glad to answer that.

19 CHAIRMAN DEVENS: Thank you. Any questions
20 for this witness from the parties?

21 MR. MATSUBARA: No questions.

22 MR. DAHILIG: No questions.

23 MR. YEE: No questions.

24 MR. DAHILIG: No questions.

25 CHAIRMAN DEVENS: There being none,

1 Commissioners, any questions? Thank you for your
2 testimony. Next witness.

3 MR. DAVIDSON: Karol Haraguchi.

4 CHAIRMAN DEVENS: Ms. Haraguchi, if we can
5 swear you in.

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

9 THE WITNESS: Yes.

10 CHAIRMAN DEVENS: Please state your name and
11 address, please.

12 THE WITNESS: My name is Karol Haraguchi. I
13 live at 4650 Ohiki Road in Hanalei, Hawai'i. And I'm
14 actually representing my husband as well, Rodney
15 Haraguchi, for WT Haraguchi Farm. My husband Rodney
16 would have been here. He's president of our farm.
17 But he's speaking to 5th graders on Kaua'i at the
18 University of Hawai'i College of Tropical Ag and Human
19 Resources Experiment Station today in Wailua for the
20 annual Ag Day, which supports the ag industry, and to
21 encourage students to learn and consider agriculture
22 in their future education.

23 I'm vice president of our farm and speaking
24 on behalf of our farm as well as our family. The
25 Haraguchi family has been farming on Kaua'i for 94

1 years since our great grandfather and grandfather
2 arrived on Kaua'i. The family has farmed in Hanalei
3 Valley for five generations since 1924 and currently
4 raises taro on the Hanalei Wildlife Refuge.

5 When our daughter Nancy and her husband
6 decided to sacrifice and return home to continue the
7 farming tradition, knowing how difficult farming taro
8 is, we realized that we had to plan a future for the
9 farm that would ensure the next generation will have
10 security and continuity which meant building, looking
11 for ways to diversify and add value to our farm.

12 When Grove Farm contacted Rodney about the
13 opportunity to farm in Mahaulepu, it was the right
14 time. And the family decided to also farm in
15 Mahaulepu in January of 2007. Because of Grove Farm's
16 assurance of their long-term commitment to
17 agriculture, and through the years we share a mutually
18 satisfying relationship with Grove Farm and their
19 employees, we truly support Mahaulepu Farms, LLC
20 Petition for Declaratory Order to Designate Important
21 Agricultural Lands which gives their commitment to
22 protect agricultural land for generations to come.

23 Rodney is also president of the Kaua'i Taro
24 Growers Association. And he recognizes that this is
25 also a major commitment to taro farming in the state

1 of Hawai'i and for taro, our state plant.

2 We hope more landowners can make this kind
3 of commitment and follow the lead of Mahaulepu Farms,
4 LLC who's dedicating their lands with no strings
5 attached by waiving the 85-15 reclassification
6 incentive. Thank you.

7 CHAIRMAN DEVENS: Thank you. Any questions
8 for this witness from the parties?

9 MR. MATSUBARA: No questions.

10 CHAIRMAN DEVENS: There being none,
11 Commissioners, any questions? Thank you very much for
12 your testimony. The last witness.

13 MR. DAVIDSON: The last witness that -- I
14 apologize. I'm having trouble reading the name. I'm
15 just going to say "Kamaka"?

16 (Ms. Blaich approaching microphone: "Well,
17 I want to make sure you wanted to hear from me and not
18 somebody else. I'm Beryl Blaich."

19 MR. DAVIDSON: Is there a signup with a
20 P. O. Box 911, Waimea? Sorry, couldn't read the name.

21 CHAIRMAN DEVENS: Beryl, we'll take your
22 testimony next.

23 (Mr. Manini approaching microphone: "Most
24 people can hear me at public hearings."

25 CHAIRMAN DEVENS: Sir, if we can swear you

1 in.

2 J. MANINI, KANAKA HUI

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

5 THE WITNESS: My name is Manini. I'm
6 speaking on behalf of the Kanaka Hui. "Affidavit of
7 Manini. State of Hawai'i, county of Kaua'i. Comes
8 now Manini who first being duly sworn speaks as
9 follows:" --

10 CHAIRMAN DEVENS: Sir, if you can slow down
11 so the court reporter can pick up your testimony. If
12 you can talk into microphone.

13 THE WITNESS: Slow.

14 CHAIRMAN DEVENS: Yes.

15 THE WITNESS: I start over.

16 CHAIRMAN DEVENS: Go ahead.

17 THE WITNESS: "Comes now Manini who first
18 being duly sworn upon other states as follows: No. 1.
19 Pursuant to the provision of the chain of land title
20 to the lands of the audited warranty deed of which
21 includes the land of East Koloa and South Koloa of the
22 island of Kaua'i conveyed to Koke Au Puni in the great
23 land division of the Hawaiian Island January 27, 1848.
24 Number 2. The land conveyance by Kamehameha
25 III to Koke Au Puni and signed by Kamehameha III and

1 Princess Victoria Kamamalu as listed on Page 16 of
2 Hawai'i's land division of 1848 in the seventh rule
3 that terminated their interest to the lands of the
4 warranty deed and properties listed therein.

5 "Therefore" -- or "wherefore Manini by Grant
6 No. 347 to jointly own property of the warranty deed
7 is the surviving owner and original shareholder by
8 deed. And as the co-owner and joint owner to Koke Au
9 Puni rectified by the United States of America as
10 trustee in Grant No. 347 to Manini, protected by law
11 of joint tenancy.

12 "The United States of America returned all
13 of the lands of the warranty deed to the surviving
14 owner by this Grant No. 347 to Manini in 1851. And
15 therefore have no jurisdiction to any lands recorded
16 in the audited warranty deed held by Manini as the
17 legal owner of a separate entity, the Kanaka Hui lands
18 of the Hui Kanaka.

19 The lands involved here is Maha'ulepu. This
20 is by South Koloa. So it's within the -- we see the
21 lands in the warranty deed. The warranty deed on
22 Page 221, 223 "Koloa Hiki and Koloa Hemi is kona lands
23 to all of us on the island of Kaua'i. Both of them
24 were Au Puni. And Manini was the joint owner, joint
25 tenancy to Au Puni. In the Hawaiian -- in the

1 Hawaiian concept they say that 'aupuni' is government.
2 But this is a separate entity. This is a kanaka
3 concept. In the Kanaka Hui Au Puni's a person. Let
4 me read the warranty deed so you can see for yourself.

5 MR. DAVIDSON: Sir, let me advise you you've
6 got about a minute to go.

7 THE WITNESS: Pardon?

8 MR. DAVIDSON: About a minute.

9 CHAIRMAN DEVENS: Actually, sir, instead of
10 reading, what we can do is we can make a copy. And
11 we'd be happy to make it part of the record.

12 THE WITNESS: If I make a copy and I give
13 you my deed it wouldn't be fair unless the state give
14 me one legal -- or go find me one legal how they claim
15 here.

16 CHAIRMAN DEVENS: It's up to you.

17 THE WITNESS: Everybody passing out the
18 deed. They know that's mine. If they're not going
19 present deed and you folks not going to present your
20 rights in jurisdiction, then how can I present mine?

21 CHAIRMAN DEVENS: All I'm offering you is if
22 you want us to make a copy we'd be happy to do so.
23 If you don't want to that's your choice. That's fine.

24 THE WITNESS: You can have a copy of the
25 affidavit.

1 CHAIRMAN DEVENS: Okay. Whatever you
2 want -- whatever you want to submit we'll accept.

3 THE WITNESS: But I cannot give you my deed.

4 CHAIRMAN DEVENS: Then we don't need it.
5 That's fine.

6 THE WITNESS: If you don't need 'em that's
7 all right 'cause when I take people to court -- 'cause
8 I took the state to court, the Supreme Court. What
9 the Court said is the state -- the DLNR is a trustee.
10 This is Trust lands I'm talking about.

11 CHAIRMAN DEVENS: Do you have any more
12 testimony that relates directly to the matter at hand?

13 THE WITNESS: This testimony is directly
14 right to da kine, Maha'uilepu. It is Trust lands
15 because it is joint tenancy lands. The law of joint
16 tenancy is very simple. The joint tenancy --

17 CHAIRMAN DEVENS: -- we'll give you one more
18 minute.

19 THE WITNESS: -- and you gotta return all
20 our lands. If the United States is honest, if the
21 state of Hawai'i's honest that's how joint tenancy
22 works. So if I was to take the state of Hawai'i to
23 court or the United States, I would take 'em on joint
24 tenancy, the law, no can act because there's no
25 probate. But take -- the joint tenancy of old people

1 still holds. The United States rectifies that.

2 I know that state of Hawai'i doesn't believe
3 in that because all of a sudden the DLNR is the
4 agribusiness in Kekaha. So they seem to think that
5 they going take over Kaua'i. But what everybody gotta
6 remember is this: Kamehameha tried seven times.
7 Couldn't.

8 I don't think we could do today with the
9 airplane because the people on Kaua'i -- I don't know
10 about the people. I love the church. I don't believe
11 in da kine, but the people of Kaua'i they can be real
12 mean for stuff.

13 The last guy I talked to was the OHA
14 president. I told him that, "Watch out what you wanna
15 do because some of these people hear what you wanna
16 do, man, you better get somebody to help you." Well,
17 he died before he could present them. So I not
18 threatening you folks, but I just saying...

19 CHAIRMAN DEVENS: Believe me, I don't feel
20 threatened. Don't worry about that.

21 THE WITNESS: Kamehameha tried times seven
22 times. Be very careful.

23 CHAIRMAN DEVENS: Let me see if the parties
24 have any questions for this witness.

25 THE WITNESS: What?

1 CHAIRMAN DEVENS: Let me just see if they
2 have any questions for you. Hearing none,
3 Commissioners, any questions? Thank you for coming.
4 Thank you for your testimony.

5 MR. DAVIDSON: Next witness is Beryl Blaich.

6 CHAIRMAN DEVENS: Also let me clarify for
7 the record the letter that we received from Ms. Blaich
8 today. It appears to be on behalf of Malama
9 Maha'ulepu and is urging the Commission to vote in
10 favor of the Petition. If I we can swear you in,
11 ma'am.

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

15 THE WITNESS: Yes, I do.

16 CHAIRMAN DEVENS: May we have your name and
17 address, please?

18 THE WITNESS: I'm Beryl Blaich. And I
19 reside at 268F Kalihi Wai Road in Kilauea on Kaua'i.

20 CHAIRMAN DEVENS: Go ahead.

21 THE WITNESS: I am representing nonprofit
22 Malama Maha'ulepu. And we work to preserve for future
23 generations the natural and cultural resources of
24 Maha'ulepu. And we believe that this historical and
25 beautiful area that the visitors, and most

1 particularly the residents of this island, deserve the
2 continuing experience of this fantastic area for
3 agricultural, cultural, educational and recreational
4 uses.

5 With this IAL designation Maha'ulepu Farms,
6 LLC, Grove Farm commits to long term to agriculture
7 within significant portions of Maha'ulepu and Pa'a.
8 And Malama Maha'ulepu definitely supports this action.

9 The lands within the proposed area meet just
10 almost all of the IAL criteria. The only one I think
11 not all of the lands are currently in production.

12 We are also very happy, I have to say
13 relieved, that the Applicant has waived
14 reclassification of other lands. We certainly wish
15 that more of the 1533 acres were being put into crops
16 that would increase agricultural self-sufficiency or
17 feed the people of Kaua'i.

18 And I actually believe from many, many
19 things that the Applicant has said in the past that
20 they have the same goal long term. We wish that seed
21 corn cultivation and even kalo cultivation was not so
22 dependent on synthetic fertilizers or pesticides and
23 herbicides.

24 And we certainly wish that we knew what the
25 landowner intended to do with portions of some of

1 these parcels which have not been placed into the
2 designation area. However, we know that the uses can
3 change within the IAL and that, in fact, the uses over
4 time probably are likely to change.

5 What's most significant, of course, about
6 this action is the assurance that come what may
7 suitable agricultural land will probably be available
8 now and in the future.

9 We do have a few questions that we hope
10 maybe the Commissioners can help us answer. Perhaps
11 you have some of the same question. About the
12 incentives. This is just a clarification. So
13 Maha'ulepu Farms is waiving -- this is what I'm trying
14 to understand -- the credits that are associated with
15 the reclassification of the land but retaining the
16 right to use the other incentives that IAL offers such
17 as incentives for employee housing, qualified
18 agricultural cost tax credits, loan guarantees and the
19 priority permitting for ag processing facilities.

20 So I'm trying to understand if that's the
21 situation. I sort of wonder or we wonder why the
22 Koloa Mill was not included within the designation
23 area. It's a portion of one of the tax map keys. And
24 I wondered if that's because of this sort of
25 industrial facility may be precluded from

1 IAL-designated lands.

2 They in the past have talked about utilizing
3 the mill for ag processing. And so we wondered if the
4 mill or part of it was renovated or repaired in the
5 future to process crops or package crops that are
6 grown in the IAL area or in surroundings, but the mill
7 itself was outside of the area, could you have tax
8 credits to repair and renovate the mill in that
9 situation?

10 And similarly Waita Reservoir is outside of
11 the IAL area but it gives the water to make the land
12 viable. So is it -- can you receive tax credits for
13 repair maintenance of Waita Reservoir?

14 Then we had some questions about allowable
15 uses in the IAL. Eighty-eight percent of the soils
16 are class B. And so the state HRS 205-4.5 restricts or
17 says what are permissible uses within lands which are
18 overall class B soils.

19 So are all of the uses permitted in Act
20 (sic) 205-4.5 permitted within the IAL? And
21 specifically, but of course only if the landowner
22 wants to do this, would public and private open area
23 types of recreational use including day camps, picnic
24 grounds, riding stables, parks be permitted within the
25 IAL?

1 Is commercial recreation allowed within the
2 IAL? Or does that require a special permit from the
3 Land Use Commission and county?

4 And then would agricultural tourism be
5 permitted? And are visitors who work on a farm for
6 minimum pay but stay in the farm housing, are they
7 considered agricultural tourists?

8 Then since Kaua'i County now has a
9 permitting process that allows transient vacation
10 rentals on agricultural land, is it possible to have
11 transient vacation rentals on lands designated IAL,
12 typically often lands designation IAL? So those are
13 just some of these questions.

14 Finally, just had some general questions:
15 Would IAL designation preclude the descendants of the
16 area's native Hawaiians from being able to have access
17 to gather for subsistence or cultural/religious
18 purposes?

19 Would IAL designation preclude environmental
20 mitigation, enhancement, or restoration of streams or
21 wetland areas with the IAL? And would IAL designation
22 preclude action to balance agricultural water needs
23 with those required for in-stream uses?

24 But in conclusion, we totally, we definitely
25 support this Petition and hope you'll vote for this

1 declaratory order. I have to say that it's an
2 historic date to feel strongly that agriculture will
3 continue at Maha'ulepu. So thank you very much.

4 CHAIRMAN DEVENS: Thank you for your
5 testimony. Just a personal comment. The questions
6 you raised are very good questions. Unfortunately
7 many of them are outside the scope of the issues that
8 we are focusing within our jurisdiction, the issues
9 raised by the Petition.

10 So if we don't answer them I don't want you
11 to feel that it's because we don't think they're
12 important. I think they're very good questions. But
13 unfortunately many of them are outside the scope of
14 our review. So I just want you to have the
15 understanding.

16 But before you go let me ask the parties if
17 they have any questions for you. There being none,
18 Commissioners? Mr. Matsubara?

19 MR. MATSUBARA: No questions.

20 CHAIRMAN DEVENS: Commissioners? Thank you
21 very much for your testimony.

22 THE WITNESS: Thank you, Commissioner
23 Devens. Thank you all.

24 CHAIRMAN DEVENS: Did we see you on the tour
25 today?

1 THE WITNESS: Yeah.

2 CHAIRMAN DEVENS: Let me also put on the
3 record that before the hearing started today we did
4 have a site inspection of the Petition Area. The
5 public was also invited. In fact I did see several
6 people from the public that did attend the site
7 inspection. I want to thank the Petitioner for
8 allowing us to look at the property. We did
9 appreciate that.

10 MR. DAVIDSON: No more signed up witnesses,
11 Chair.

12 CHAIRMAN DEVENS: Thank you, Dan.
13 Mr. Matsubara, at this point you would have the floor
14 to make your presentation. I just want to note that
15 we do have all the files. We do have all the
16 submittals from all the parties. And it's very
17 thorough. It's very complete. It's well-articulated.
18 So I think you've covered all the criteria that need
19 to be covered.

20 I wanted to give the Commissioners more time
21 to ask any questions that they may have of the
22 parties. Unless you have something new that you want
23 to add I'll give the other parties a chance to give
24 any public comment that they may have. Otherwise I'll
25 let the Commissioners ask any questions they may have.

1 If you want to highlight anything or add
2 anything please feel free to do so. I also want to
3 note for the record there's no objections and no
4 opposition has been filed to your Petition. County
5 and OP, is that, in fact, correct?

6 MR. DAHILIG: That's correct.

7 MR. YEE: That's correct.

8 CHAIRMAN DEVENS: Mr. Matsubara, do you want
9 to add anything?

10 MR. MATSUBARA: Thank you, Chair. I've
11 practiced long enough to know that sometimes it's
12 better not to say anything if I have been advised of
13 what has been filed is comprehensive and complete. So
14 I thank you for that. And I have nothing further to
15 add on that.

16 CHAIRMAN DEVENS: And I also, so your client
17 understands, the fact that we're not seeking more
18 argument is a testament to the briefings being
19 complete as they were. We appreciate that. County,
20 you want to add any comments to this proceeding?

21 MR. DAHILIG: We stand on our written
22 comments.

23 CHAIRMAN DEVENS: Thank you. Mr. Yee?

24 MR. YEE: The Office of Planning will stand
25 on our written comments in support.

1 CHAIRMAN DEVENS: Commissioners, we went on
2 the site inspection today. Do you have any further
3 questions for the parties? Commissioner.

4 COMMISSIONER MAKUA: I was just wondering
5 what variety of kalo are you growing or varieties?
6 Sorry. It came up after I heard everyone speak.

7 CHAIRMAN DEVENS: Ms. Haraguchi was sworn in
8 earlier. Petitioner, you want to have her answer that
9 question?

10 MS. HARAGUCHI: We're going to Lehua Ma'oli
11 which is the Kaua'i lehua as well as the Maui Lehua.
12 And we're trying to continue it in that manner but we
13 are -- have one variety which is a hybrid, it's not a
14 genetic taro or anything, which is called Ho'olehua.
15 This one is a hybrid.

16 I'd like to add another thing since it came
17 up about synthetic fertilizer. We have been doing
18 experiments in Hanalei to convert to more organic
19 fertilizer methods. It is possible. We are about
20 three-quarters organic. The most difficult for
21 organic is the nitrogen.

22 So we have been experimenting with cover
23 crops, some hemp, which would add green manure, is
24 what it's called, to provide nitrogen. However, what
25 we are finding is that every time we applied in

1 Hanalei we had a flood.

2 So now we're looking at possibly Maha'uilepu
3 will be the area that we could probably go through a
4 whole cycle because we're not in the flood plain of
5 Hanalei.

6 COMMISSIONER MAKUA: Mahalo. Thank you.

7 CHAIRMAN DEVENS: Any further questions?

8 There being none, parties want to add anything more to
9 the record? There being nothing else, Commissioners?
10 Nothing further. We have the Petition before us. We
11 have concluded the public testimony and the
12 presentation submittals. Commissioner from Kaua'i, do
13 you have a motion you want to make?

14 COMMISSIONER CONTRADES: Yes, Mr. Chair. I
15 move that in the matter of DR11-43 Maha'uilepu Farm,
16 LLC Kaua'i that the Petition for Declaratory Order to
17 designate Important Agricultural Lands for
18 approximately 1,533 acres of Koloa Kaua'i, Hawai'i be
19 granted.

20 CHAIRMAN DEVENS: Second?

21 COMMISSIONER TEVES: I second.

22 CHAIRMAN DEVENS: Any discussion? There
23 being none, Dan if you can call for the vote.

24 MR. DAVIDSON: Motion to Approve DR11-43.

25 Commissioner Contrades?

1 COMMISSIONER CONTRADES: Aye.

2 MR. DAVIDSON: Commissioner Teves?

3 COMMISSIONER TEVES: Yes.

4 MR. DAVIDSON: Commissioner Lezy?

5 COMMISSIONER LEZY: Yes.

6 MR. DAVIDSON: Commissioner Judge?

7 COMMISSIONER JUDGE: Yes.

8 MR. DAVIDSON: Commissioner Makua?

9 COMMISSIONER MAKUA: Aye.

10 MR. DAVIDSON: Chair Devens?

11 CHAIRMAN DEVENS: Yes.

12 MR. DAVIDSON: The motion passes 6/0. The

13 land is IAL.

14 CHAIRMAN DEVENS: Parties want to add

15 anything else to the record? There being nothing else

16 thank you very much.

17 MR. MATSUBARA: Thank you very much.

18 CHAIRMAN DEVENS: we'll take a 5 minute

19 break and move on to the next item.

20 (Recess was held. 1:45-1:55)

21 xx

22 xx

23 xx

24 xx

25

1 CHAIRMAN DEVENS: We're back on the record.
2 Moving on to the next item. This is a hearing on
3 Docket No. A83-557 Princeville Development Corporation
4 to consider Motion for Order Amending Findings of
5 Fact, Conclusions of Law and Decision and Order dated
6 March 28, 1985.

7 And we'll have the parties make their
8 appearances, please, starting with Petitioner.
9 Mr. Matsubara.

10 MR. MATSUBARA: Mr. Chairman, members of the
11 Commission, Ben Matsubara and Curtis Tabata on behalf
12 of Princeville Development Corporation. Seated to my
13 right is Abbey Mayer, vice president of the resort
14 group. It seems strange but he's now a client as
15 opposed to director of the Office of Planning.

16 CHAIRMAN DEVENS: Very strange. Good
17 afternoon to you. Good afternoon, Mr. Mayer. Ma'am,
18 are you a party to this case?

19 MS. WILSON: I'm representing the Concerned
20 Citizens of Anini. And the attorney, Teresa Tico, is
21 not here. So I'll just -- I'll just cover a few
22 points that she was making in terms of asking for a
23 continuance.

24 CHAIRMAN DEVENS: Okay, right now we're just
25 taking the appearances of the parties. Can we just

1 get your name, please.

2 MS. WILSON: Excuse me. My name is Susan
3 Wilson.

4 CHAIRMAN DEVENS: Okay. And what's your
5 position with the Intervenor?

6 MS. WILSON: I'm a member of the -- I'm a
7 member of the Concerned Citizens of Anini which have
8 Intervenor standing on this issue.

9 CHAIRMAN DEVENS: Okay. Was your attorney
10 intending to come to today's hearing?

11 MS. WILSON: She's not here right now.

12 CHAIRMAN DEVENS: Okay. But my question
13 was: Was she intending to come?

14 MS. WILSON: I thought that she was
15 intending to come, but I don't know what happened to
16 her schedule.

17 CHAIRMAN DEVENS: Okay. Did she tell you
18 she was going to coming here today?

19 MR. BRILHANTE: I think she said -- she said
20 she was going to try to come. And I think maybe she
21 thought the hearing beforehand was going to be a lot
22 longer. I don't know how busy her schedule was.

23 CHAIRMAN DEVENS: Okay. County?

24 MR. DAHILIG: Good afternoon, Commissioners,
25 Mike Dahilig, interim planning director, County of

1 Kaua'i.

2 CHAIRMAN DEVENS: Good afternoon to you,
3 sir.

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

8 CHAIRMAN DEVENS: Good afternoon. Let me
9 update the record in this matter. On March 9, 2011
10 the Commission received Petitioner's Motion for Order
11 Amending Findings of Fact, Conclusions of Law and
12 Decision and Order dated March 28, 1985 and Exhibits 1
13 to 5.

14 On March 28, 2011, the Commission received
15 Petitioners's Supplement to Motion for Order Amending
16 Findings of Fact, Conclusions of Law, and Decision and
17 Order dated March 28, 1985 and Exhibit 1.

18 On May 2nd, 2011 the Commission received
19 OP's Response to Petitioner's Motion for Order
20 Amending Findings of Fact, Conclusions of Law and
21 Decision and Order dated March 28, 1985, and Exhibit
22 1.

23 On May 10, 2011 the Commission received
24 Intervenor's Motion for Continuance of Hearing on
25 Petitioner's Motion for Order Amending the Findings of

1 Fact, Conclusions of Law and Decision and Order dated
2 March 28, 1985. A copy was received in our office on
3 May 9, 2011 via fax. This motion was not received in
4 time to include it on today's agenda.

5 The procedure for today will be as follows:
6 We'll first take public testimony, take the staff
7 report. We'll consider the introduction and admission
8 of exhibits. Well take the presentation of the
9 parties' positions in this matter. Are there any
10 public witnesses signed up, Dan?

11 MR. DAVIDSON: There are no signups, Chair.

12 CHAIRMAN DEVENS: Is there any objection to
13 the acceptance and admission of the exhibits that have
14 been offered in this matter? Mr. Matsubara?

15 MR. MATSUBARA: No objections.

16 CHAIRMAN DEVENS: Intervenor?

17 MS. WILSON: Any objection to the exhibits?

18 CHAIRMAN DEVENS: Yes.

19 MS. WILSON: No.

20 MR. DAHILIG: No objections.

21 MR. YEE: No objections.

22 CHAIRMAN DEVENS: Our executive just
23 informed me there was one more item that I should note
24 for the record as far as the status of the record.
25 That is on May 11, 2011 the Commission received OP's

1 Supplement to Response to Petitioner's Motion for
2 Order Amending Findings of Fact, Conclusion of Law,
3 and Decision and Order dated March 28, 1985. I
4 apologize for overlooking that.

5 In any event there's been no objections to
6 the offer and admission of the exhibits so they're so
7 admitted. I will now take the staff report. Bert.
8 Mr. Matsubara, your client is agreeable to following
9 the standard Commission's policy on reimbursement?

10 MR. MATSUBARA: He certainly is.

11 CHAIRMAN DEVENS: Thank you, sir. Bert, go
12 ahead.

13 MR. SARUWATARI: The 120 acres subject of
14 the motion was urbanized back in 1985 as part of the
15 docket for a golf course use as well as clubhouse and
16 restaurant. A tennis and fitness complex was
17 subsequently added as an approved use.

18 As it stands now the 120 acres are vacant or
19 used for grazing. The proposed golf course was built,
20 just not on these lands. The 120 acres are proposed
21 for low density, large-lot residential agricultural
22 uses as part of the proposed Princeville Ranch
23 Agricultural Subdivision.

24 Staff reviewed the motion when it first came
25 in and had some, I guess, recommendations for

1 consideration by the Commission. 1. The first one is
2 the position of the parties. OP has already provided
3 their position or comments on the motion. And staff
4 was requesting the comments from the Planning
5 Department as well as the Intervenor in regard to
6 their position on the motion.

7 Another issue is the EIS. Movant should
8 address the basis for excluding the Princeville Ranch
9 Agricultural Subdivision under chapter 343
10 environmental review process.

11 And, finally, if the Commission is inclined
12 to grant the motion, staff is recommending the
13 imposition of several conditions. Those are primarily
14 the Commission's standard conditions with the addition
15 of a condition requiring Petitioner to adhere to the
16 representations made in the motion in regard to the
17 implementation of measures to mitigate potential
18 impacts as a result of the development. That
19 concludes my staff report, Chair.

20 CHAIRMAN DEVENS: Thank you very much.
21 Bert, as usual it's very complete, very informative.
22 Any questions for Bert from the Commission? There are
23 none. At this time I move to go into executive
24 session, question about our powers and authorities.
25 Is there a second on that?

1 COMMISSIONER TEVES: Second.

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

4 (Voice vote)

5 CHAIRMAN DEVENS: It's unanimous. Take a
6 short break.

7 (Recess was held.)

8 CHAIRMAN DEVENS: All right. We're back on
9 the record. Thank you for allowing us the time to go
10 into executive. I also understand that Ms. Tico is
11 now present representing the Intervenors.

12 MS. TICO: Yes, I am. Thank you very much.
13 Before we commence I wanted to make sure that the
14 Commissioners received the Intervenor's Motion to
15 Continue this Hearing for a Minimum Period of 30 to 60
16 days. We are actually asking for more time than that
17 in light of the massive materials we've received.

18 CHAIRMAN DEVENS: Yes. We did note for the
19 record that it was received on May 9th via fax.

20 MS. TICO: And the rule does state a Motion
21 to Continue can be made at any time before ordering
22 the hearing. And we would request that this matter be
23 continued so that Intervenors can further study the
24 Petition. It's been 22 years since --

25 CHAIRMAN DEVENS: The only thing is that

1 it's not on the agenda right now so we can't take
2 arguments. If you can hold those thoughts and see
3 where we go. But we can't take argument at this point
4 because it hasn't been placed on the agenda yet.

5 MS. TICO: How does the rule work then when
6 intervenors and petitioners are permitted under the
7 rules to make a Motion to Continue either before or
8 during the hearing? Does that mean that that motion
9 gets shelved if it's not on the agenda, even though
10 the rule permits that motion to be made during a
11 hearing?

12 CHAIRMAN DEVENS: You want to hang on so we
13 can take the one public witness. There's a witness
14 that showed up, and I want to take care of that
15 witness and allow them to testify in case they want to
16 leave. Then we can come back to the issues.

17 MS. TICO: Thank you.

18 CHAIRMAN DEVENS: I understand there's a
19 witness who would like to provide public testimony.
20 If there is you can come up to the microphone to the
21 right. If you can raise your right hand so we can
22 swear you in.

23 KARIN CARSWELL-GUEST
24 being first duly sworn to tell the truth, was examined
25 and testified as follows:

1 THE WITNESS: Yes.

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

4 THE WITNESS: It's Karin Carswell-Guest,
5 52-87 Kapaka Street, Princeville 96722.

6 CHAIRMAN DEVENS: Go ahead.

7 THE WITNESS: We support, as our family that
8 runs cattle on this portion of the land that we're
9 talking about, we support the motion for the amendment
10 because we have been grazing cattle on these lands for
11 the last 17 years.

12 And if the motion stays -- or the zoning
13 stays in urban and it eventually gets developed into a
14 golf course, then we wouldn't have the grazing rights
15 down there. So therefore we support -- support the
16 Motion to Amend it into ag so that we can continue to
17 graze our cattle down there. That's pretty much it.

18 CHAIRMAN DEVENS: Thank you. Any questions
19 for this witness from the parties?

20 MR. MATSUBARA: No questions.

21 CHAIRMAN DEVENS: There being none, any
22 questions from the Commissioners? There being none
23 thank you for your testimony. Commissioners, I
24 understand under the rules that we have the discretion
25 to add to the agenda Intervenor's motion that Ms. Tico

1 referred to. Is there a motion on this? Commissioner
2 Lezy.

3 COMMISSIONER LEZY: Thank you, Chair.

4 Chair, I move to add the submitted Motion for a
5 Continuance by the Intervenor to the current agenda.

6 CHAIRMAN DEVENS: Is there a second?

7 COMMISSIONER JUDGE: Second.

8 CHAIRMAN DEVENS: There's a second. Any
9 discussion on this? There being none, call for the
10 vote.

11 MR. DAVIDSON: Motion to amend agenda to add
12 the Intervenor's motion. Commissioner Lezy?

13 COMMISSIONER LEZY: Yes.

14 MR. DAVIDSON: Commissioner Judge?

15 COMMISSIONER JUDGE: Yes.

16 MR. DAVIDSON: Commissioner Teves?

17 COMMISSIONER TEVES: Yes.

18 MR. DAVIDSON: Commissioner Makua?

19 COMMISSIONER MAKUA: Aye.

20 MR. DAVIDSON: Commissioner Contrades?

21 COMMISSIONER CONTRADES: Yes.

22 MR. DAVIDSON: Chair Devens?

23 CHAIRMAN DEVENS: Yes.

24 MR. DAVIDSON: Motion passes 6/0 Chair.

25 CHAIRMAN DEVENS: We'll now take arguments

1 on this motion. Intervenor, Ms. Tico, it's your
2 motion.

3 MS. TICO: Thank you very much. When I
4 received all these materials, Petition and other
5 related documents, I did ask the Petitioner's
6 attorneys when I filed the Motion to Continue if they
7 had any objections. I believe they stated they would
8 not take a position on our Motion to Continue. Is
9 that correct?

10 MR. MATSUBARA: That's correct.

11 MS. TICO: And also I've spoken with the
12 deputy county attorney who also informs me that the
13 county of Kaua'i takes no position. Therefore there
14 being no opposition to the Motion to Continue I would
15 ask that it respectfully be granted.

16 It's been many, many years. I was involved
17 in the 1989 proceeding 22 years ago. So it's been
18 many years since we've dealt with this issue. I
19 wanted to review all of the Findings of Fact and
20 Conclusions of Law from that 1989 hearing as well as
21 the Findings of Fact that were entered in 1985.

22 But as a result of Hurricane Iniki I no
23 longer have any of those files. My clients asked me
24 to try to obtain them. And as a courtesy the
25 Petitioner's attorneys did forward them to me via

1 e-mail yesterday. Unfortunately, my clients and I
2 have not had an opportunity to review those documents
3 again. And we just feel that, you know, it's been so
4 long. It's been 22 years. This Petition was only
5 filed 61 days ago, that there shouldn't be a rush to
6 judgment in this matter.

7 Granting the Intervenor another two months
8 to four months would certainly be in order in this
9 matter so that we can review all of the documents from
10 22 years ago in their proper context to see how they
11 would apply today. And we would hope that you would
12 concur.

13 CHAIRMAN DEVENS: Ms. Tico, can I ask you
14 did you get served with the motion on or about
15 March 9th of this year?

16 MS. TICO: I was served some time in March.
17 I don't recall the exact date. I did endeavor to
18 contact the clients. As I said it was quite some time
19 ago and I was unable to locate them at that time. And
20 due to a death in my family I had to go to the
21 mainland. I only returned last Monday.

22 I did hear from Ms. Wilson who contacted me,
23 as a matter of fact, because she had heard
24 independently about this Petition. So I did make an
25 effort to contact clients but I was unable to do so.

1 And then due to my absence from the island we had a
2 very short period of time to discuss this matter.

3 CHAIRMAN DEVENS: So over the last two
4 months or so what efforts have been made to locate
5 documents and to contact your client?

6 MS. TICO: What efforts? I've looked in the
7 phonebook. I've tried finding phone numbers. I
8 looked for my file. Obviously I couldn't find the
9 file. It was quite extensive. In the legal
10 profession we're not even required to keep our files
11 for 22 years. I believe it's only seven years. So I
12 did what I could do. As I said, my father did pass
13 away and I had to go to the mainland, only returning
14 last week Monday.

15 CHAIRMAN DEVENS: Anything else you want to
16 add?

17 MS. TICO: Just that I do recall having
18 participated in the 1989 Petition; that the Petitioner
19 at that time represented this was all they wanted to
20 do was the golf course and they had no other further
21 development plans.

22 And whether or not the Intervenor's concur
23 with the Petition or take issue with it, will be
24 determined provided they're given an opportunity to
25 review all of these documents again, which we just

1 received yesterday.

2 CHAIRMAN DEVENS: What more information
3 would you need to understand what it is that the
4 Petitioner's asking to be amended in terms of the
5 particular conditions?

6 MS. TICO: Right away when I spoke with the
7 Petitioner's attorney yesterday, I asked for the
8 decision from 1985 that was entered, and I believe
9 they didn't have that either. So we'd like to review
10 that document.

11 And then once again my clients at least
12 would like to have the opportunity to review the
13 entire Petition to see what issues are outstanding to
14 them.

15 And I'm sure that they would welcome a
16 meeting with the Petitioners and their clients and see
17 if these matters could be resolved before the
18 continued hearing on this Petition, assuming that the
19 Commissioners are willing to grant a continuance. I'm
20 not saying that, you know, we're opposed or we
21 concur. It's just that we need more time to study the
22 matter.

23 CHAIRMAN DEVENS: I think we understand your
24 position. Mr. Matsubara, you want to have any
25 response to that?

1 MR. MATSUBARA: Just for clarification.
2 When we were advised that Ms. Tico did not have the
3 '85 Decision and Order, the subsequent ones, we
4 forwarded all three of those D&O's. They should have
5 had them as of yesterday. Teresa's correct in saying
6 that we took a no position stance.

7 I couldn't say no objection because to a
8 certain extent we're prepared to proceed. We believe
9 that we have given adequate notice. I appreciate the
10 Commissioners taking the time and effort to fly to
11 Kaua'i to hear this matter.

12 So the "no position" was because if I
13 objected to it my concern was I didn't want to place
14 the Commission in an untenable position if the
15 decision then was subsequently challenged and you
16 would have to deal with that.

17 So I took the "no position" position. My
18 concerns were that the basis, though, for the request
19 to continue, as found in paragraph 8, is totally
20 contrary -- and that's the sole reason I gather for
21 the request -- is the sole basis of the facts listed in
22 paragraph 8 are wrong. The property is not in the
23 Agricultural District. It was reclassified to the
24 Urban District in 1985. So the property currently is
25 in urban.

1 But there is a condition that the property
2 is to be used only for golf course purposes. Of the
3 amount, the 390 acres classified at that time, 120 are
4 left. And those are the acres we're requesting be
5 relieved of the condition of nothing but golf course.

6 The irony of it all is that the reason we're
7 doing that is so we can include the 120 acres as part
8 of the 480 areas ag subdivision which has been
9 approved by the County of Kaua'i. Basically it's to
10 perpetuate, to assist in perpetuating the activities
11 of Princeville Ranch, the Carswell family as well.

12 So actually the property will be placed in
13 an ag use even though it is in the State Land Use
14 Urban District.

15 And that can be further guaranteed to the
16 extent that we file both with the county and the with
17 the Commission is a planning report that reflects the
18 fact that CC&R's will be filed that restrict the use
19 of the land for purposes of assisting the ag
20 activities of the ranch.

21 So the reason for the Request to Continue
22 was of concern to the extent that there may be a
23 concern that doesn't exist because the property is
24 already in urban. Yes, we are asking to remove a
25 condition. But the sole purpose of that is to allow

1 an ag use on the property.

2 And if you examine our filings you will
3 notice that the density that we're proposing in the ag
4 subdivision is about half of what could have been
5 developed on the property with the current
6 entitlements.

7 So in a way we felt that the concerns seemed
8 to be misplaced to the extent that rather than the
9 greater use, it was a lesser use and it was tied into
10 an agricultural endeavor. Thank you.

11 CHAIRMAN DEVENS: Is it your preference,
12 Mr. Matsubara, that the Commission hear the matter
13 today or to allow the Intervenor time?

14 MR. MATSUBARA: I have no objections to the
15 Commission hearing it today.

16 CHAIRMAN DEVENS: County?

17 MR. DAHILIG: No objections.

18 CHAIRMAN DEVENS: No objections to the
19 Intervenor's motion.

20 MR. DAHILIG: No objection. To the
21 Intervenor's motion, no position.

22 CHAIRMAN DEVENS: No position.

23 MR. DAHILIG: Sorry. No objection. Sorry.

24 CHAIRMAN DEVENS: Okay. That's all right.
25 We got it. Mr. Yee?

1 MR. YEE: The Office of Planning takes no
2 position on the Motion for Continuance. We will note
3 that we do believe that paragraph 8 of the declaration
4 is just factually incorrect, although that's not
5 necessarily determinative of the motion. Paragraph 8
6 says "the Petition seeks to change the use of
7 agricultural lands". These are not agricultural
8 lands. They've already been urbanized.

9 And if I could just comment briefly in
10 response to what the Petitioner was remarking that
11 this is an agricultural use. The Petitioner did come
12 to the department -- to the Office of Planning with
13 this proposal. The Office of Planning, I just want to
14 inform you, suggested and recommended that they keep
15 the land in urban. The 18 homesites that are to be
16 built here may or may not be farm dwellings that are
17 to be built.

18 It seemed to us a better idea to use these
19 homesites that they're going to build and put them in
20 urban, avoid the question of whether or not this is or
21 isn't a farm dwelling. Because, quite frankly, it is
22 possible that luxury homes will be built here.

23 So it was the better course, better policy
24 for us to take these lands already urbanized, leave
25 them in urban and simply change the conditions.

1 So it was the Office of Planning's
2 recommendation for this Motion to Amend that's filed
3 before you. Thank you.

4 CHAIRMAN DEVENS: Mr. Yee, is your
5 preference we move ahead today? Or do you have any
6 preference to this?

7 MR. YEE: We'll defer to the Land Use
8 Commission on this.

9 CHAIRMAN DEVENS: Ms. Tico, do you want to
10 add anything further to the record?

11 MS. TICO: Yes, thank you. I do have one
12 comment on the urbanization. Everyone keeps saying:
13 Well, this land's urbanized. Back then if you wanted
14 to have a golf course -- and I know because I was
15 involved in the Petition of Grove Farm way back when
16 they wanted to develop the golf course at
17 Maha'uilepu -- that you couldn't put a golf course on
18 ag land. It had to be zoned urban. That's why you
19 got the urban zoning down at the Maha'uilepu Golf
20 Courses and at Princeville for the golf courses. It's
21 as simple as that.

22 So I just wanted to clarify that. It's
23 zoned urban, and as Petitioner's counsel agreed, for
24 the sole purpose of the golf course use.

25 And in any event as I said it's just been

1 years and years since this has come up. And now all
2 of a sudden in a matter of a few months everyone wants
3 to rush to judgment and move ahead with the hearing.
4 We're just simply asking for the opportunity to study
5 the issue, and perhaps meet with the Petitioner and
6 their representatives and come back to you hopefully
7 with some resolution.

8 CHAIRMAN DEVENS: Okay. Commissioners have
9 any questions for the parties? Commissioner Judge.

10 COMMISSIONER JUDGE: Good afternoon,
11 Ms. Tico. Could you describe the current status of
12 the Concerned Citizens of Anini? Are they still --
13 are they incorporated? Do they have regular meetings?
14 I'm just trying to find out. I know this was 22 years
15 ago. And back then there may have been a group that
16 got together regarding this Petition and now they may
17 not exist anymore.

18 So I'm just curious to know is it still a
19 viable group that's incorporated that has regular
20 meetings that does business?

21 MS. TICO: I know that the individuals who
22 contacted me with whom I worked back in 1989 all have,
23 you know, a vested interest in the use of these lands;
24 that they're adjacent neighbors.

25 I believe they would qualify for intervenor

1 status regardless of whether it's Concerned Citizens
2 of Anini are incorporated or not. They still reside
3 here after all of these years in the same place, North
4 Shore Kaua'i.

5 So I can't answer your questions
6 specifically whether they're incorporated, whether
7 they have regular meetings. But I do know that they
8 made the effort once they heard about this meeting to
9 contact me.

10 COMMISSIONER JUDGE: When you say "they" how
11 many people contacted you?

12 MS. TICO: I was contacted by Susan Wilson,
13 who is sitting by my side. If you'd like to ask
14 Ms. Wilson any questions I'm sure that she can answer
15 them.

16 She has been involved in these issues since
17 the '80s, the 1980's and has quite a lot of
18 understanding about the zoning issues pertaining to
19 Princeville.

20 CHAIRMAN DEVENS: Ms. Wilson, we need to
21 swear you in if you're going to be making
22 representations. If you'd raise your right hand.

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

1 THE WITNESS: Excuse me. What was the
2 question?

3 CHAIRMAN DEVENS: Do you swear to tell the
4 truth in this matter?

5 THE WITNESS: Yes.

6 CHAIRMAN DEVENS: Go ahead. Hold on.
7 Commissioner Judge, what question do you want
8 answered?

9 COMMISSIONER JUDGE: The question is just
10 basically the Concerned Citizens of Anini, if you
11 could describe that group for me. Is it three people?
12 Is it 120 people? I'm just trying to understand what
13 the status of this group is. Are you putting this
14 group back together?

15 MS. WILSON: The group was formed in 1985.
16 It's a group of concerned citizens and landowners that
17 abut this property. And that's one of the reasons,
18 one of reasons we'd like a continuance as to --

19 CHAIRMAN DEVENS: The question is how many
20 people make up the group. That's all she's asking.

21 MS. WILSON: Oh. In 1985?

22 CHAIRMAN DEVENS: No. Presently.

23 MS. WILSON: I do not have an exact. I know
24 there are certainly the three people, which I was one
25 of them, that handled the legal proceedings actually

1 in 1985. And I know there's probably about five
2 landowners that are -- they're probably quite elderly.
3 I know some of them who died that are still down
4 there.

5 But that would be one of the reasons it
6 would be nice to be able to have continuance to be
7 sure and recontact all the people that were active
8 both in '85 and '89.

9 COMMISSIONER JUDGE: So since 1989 there
10 really hasn't -- has there been a meeting of the
11 Concerned ...

12 MR. BRILHANTE: There hasn't been an issue
13 that's come up that's directly abutted the properties
14 until now. So there hasn't been a need for a formal
15 -- well, actually there have been other issues that
16 probably came up in the '90s when there was a request
17 to extend something in Princeville.

18 But other than that there has been no need
19 until now with the imposition of this possible urban
20 zoning. So that's -- that's one of the reasons we
21 haven't met recently for over a couple decades.

22 COMMISSIONER JUDGE: So it's fair to say
23 that this group of Concerned Citizens of Anini is a
24 group that's specifically concerned with --

25 MS. WILSON: Yes.

1 COMMISSIONER JUDGE: -- created for this
2 Petition.

3 MS. WILSON: Yes.

4 COMMISSIONER JUDGE: It's not an ongoing
5 group that looks at different issues. It was created
6 specifically --

7 MS. WILSON: Yes --

8 COMMISSIONER JUDGE: -- for this petition --

9 MS. WILSON: -- yes, to address the
10 urbanization above their properties.

11 COMMISSIONER JUDGE: Thank you.

12 MS. WILSON: And that appears to be the
13 issue right now again.

14 CHAIRMAN DEVENS: Is that all you have,
15 Commissioner Judge?

16 COMMISSIONER JUDGE: Yes, thank you.

17 CHAIRMAN DEVENS: Is there any other
18 questions? Commissioner Lezy.

19 COMMISSIONER LEZY: Yes, thank you, Chair.
20 Just a couple of questions for the Intervenor.
21 Ms. Tico, you mentioned that you made efforts to
22 contact the members of the intervening party. But you
23 were unable to. But then as I understand it
24 Ms. Wilson contacted you. What efforts did you make
25 to contact Ms. Wilson directly?

1 MS. TICO: Well, I didn't have the correct
2 phone number for her, obviously. I didn't have the
3 same information. I left voice mails with other
4 people who had been involved in this issue back in
5 1989. And I still wasn't able to get ahold of
6 Ms. Wilson. Then I had to go to the mainland. My
7 father died.

8 COMMISSIONER LEZY: Did anybody else that
9 was a member of the intervening party contact you
10 aside from Ms. Wilson?

11 MS. TICO: No, just Ms. Wilson.

12 COMMISSIONER LEZY: When did Ms. Wilson
13 contact you?

14 MS. TICO: I think it was Monday May 9th.

15 COMMISSIONER LEZY: Ms. Wilson, when did you
16 become aware of the pending motion?

17 MS. WILSON: I became aware of it on May
18 9th, or maybe May 8th when the agenda, the LUC agenda
19 became available. And then I saw it was based on this
20 LUC decision from 1985.

21 COMMISSIONER LEZY: And, Ms. Tico, you had
22 indicated that part of the reason you're requesting
23 the continuance is because you were unable to review
24 the original, I think, Decision and Order --

25 MS. TICO: The Findings of Fact, Conclusions

1 of Law and Decision and Order from 1985 and 1989.

2 COMMISSIONER LEZY: Let me just finish
3 asking my question first. You indicated you made a
4 request of the Petitioner for that. When did you make
5 that request of the Petitioner?

6 MS. TICO: I believe it was yesterday or the
7 day before. But they were very prompt in getting it
8 to me. I was surprised it wasn't attached to the
9 Petition.

10 COMMISSIONER LEZY: Then I guess the last
11 question I had for you is: Assuming that the Motion
12 to Continue is not granted, I presume that you're
13 prepared to present -- make some sort of presentation
14 in either in opposition or otherwise.

15 MS. TICO: We're not prepared at all.
16 That's why we're asking for the continuance.

17 COMMISSIONER LEZY: But you were aware of
18 the fact that it was possible that your motion may be
19 denied, right?

20 MS. TICO: I didn't know what was going to
21 happen today without having spoken with my clients,
22 which I didn't do until this week due to the
23 circumstances, I've explained.

24 COMMISSIONER LEZY: All right. Thank you.

25 CHAIRMAN DEVENS: Mr. Matsubara, may I ask

1 you what was the date of service of the motion if you
2 have that handy?

3 MR. MATSUBARA: We filed it on March 9th.
4 Certified mailing on the same day of filing.

5 CHAIRMAN DEVENS: March 9th, 2011. And it
6 was by U.S. Mail.

7 MR. MATSUBARA: U.S. Certified Mail.

8 CHAIRMAN DEVENS: Did you get the return
9 receipt on that? And I'm asking about the service on
10 Ms. Tico.

11 MR. MATSUBARA: It was sent to Ms. Tico -- I
12 don't have the return receipt.

13 CHAIRMAN DEVENS: You don't have it with you
14 now. You're not saying it didn't come back.

15 MR. MATSUBARA: My recollection is that we
16 didn't get it.

17 MR. TABATA: I don't know.

18 CHAIRMAN DEVENS: Fair enough. And the
19 address that you sent it to was that P. O. Box 230,
20 Hanalei, 96714?

21 MR. TABATA: What's on the COS form.

22 CHAIRMAN DEVENS: Right. That's what I'm
23 reading from. Ms. Tico, is that your P. O. Box?

24 MS. TICO: No, it's not. My address is Box
25 220. But I did receive this document --

1 CHAIRMAN DEVENS: I'm sorry, I misread it.

2 MS. TICO: -- I just don't recall when I
3 received it. But I did receive it sometime in March.

4 CHAIRMAN DEVENS: I'm sorry. It was my
5 error. The certificate says P. O. Box 220, Hanalei,
6 96714. Is that your P. O. Box?

7 MS. TICO: Yes, it is.

8 CHAIRMAN DEVENS: Mr. Matsubara without
9 getting into your work product, I assume in putting
10 together your motion the starting point was the D&O.

11 MR. MATSUBARA: Correct, the 1985 Decision
12 and Order.

13 CHAIRMAN DEVENS: And you went from there
14 and put together the motion, correct?

15 MR. MATSUBARA: Correct.

16 CHAIRMAN DEVENS: Was there much more that
17 you had to look at to put the motion together? You
18 know what the D&O says. You know what you folks want.

19 MR. MATSUBARA: Right.

20 CHAIRMAN DEVENS: I'm just trying to figure
21 out how much work there really was to try to gauge
22 what it is Ms. Tico may really need in this case.

23 MR. MATSUBARA: What I needed to familiarize
24 myself with included as part of the motion was the
25 Princeville Ranch Agricultural Subdivision Plan, which

1 is attached to our motion and the Ranch Preservation
2 Plan to blend that into our request to remove the
3 condition on the urban designated property. That
4 would be the new thing I would need to look at to
5 include and incorporate in the motion.

6 CHAIRMAN DEVENS: All right. But your
7 starting point was the D&O.

8 MR. MATSUBARA: Correct.

9 CHAIRMAN DEVENS: Commissioners have any
10 other questions? Parties want to add anything else to
11 the record?

12 MS. TICO: I understand there was a traffic
13 study that was made available today. I haven't seen
14 that.

15 (Counsels' inaudible comments)

16 CHAIRMAN DEVENS: Hang on. You gotta talk
17 to us. Don't talk among the parties. That's not the
18 way we handle the proceeding.

19 MS. TICO: I withdraw the comments.

20 CHAIRMAN DEVENS: Mr. Matsubara, you want to
21 add anything else to the record?

22 MR. MATSUBARA: Nothing further.

23 CHAIRMAN DEVENS: Ms. Tico, you want to add
24 anything else to the record?

25 MS. TICO: Nothing further.

1 CHAIRMAN DEVENS: County?

2 MR. DAHILIG: Nothing further.

3 CHAIRMAN DEVENS: OP?

4 MR. YEE: Nothing further.

5 CHAIRMAN DEVENS: So, Commissioners, what we
6 have before us is Intervenor's Motion for Continuance
7 of the Hearing on the Petitioner's Motion for Order
8 Amending the Findings of Fact, Conclusion of Law and
9 Decision and Order dated March 28, 1985 along with the
10 declaration of Ms. Tico. She's made her arguments.
11 We've heard the arguments from the other parties.
12 What's the Commission's pleasure on this matter? Is
13 there a motion?

14 COMMISSIONER LEZY: Chair?

15 CHAIRMAN DEVENS: Commissioner Lezy.

16 COMMISSIONER LEZY: Chair, I move to deny
17 the Motion for Continuance.

18 COMMISSIONER JUDGE: Is there a second?

19 COMMISSIONER TEVES: Second.

20 CHAIRMAN DEVENS: Commissioner Teves seconds
21 the motion. Discussion? No discussion. Call for the
22 vote.

23 MR. DAVIDSON: Motion to Deny the Motion for
24 Continuance. Commissioner Lezy?

25 COMMISSIONER LEZY: Yes.

1 MR. DAVIDSON: Commissioner Teves?

2 COMMISSIONER TEVES: Yes.

3 MR. DAVIDSON: Commissioner Judge?

4 COMMISSIONER JUDGE: No.

5 MR. DAVIDSON: Commissioner Makua?

6 COMMISSIONER MAKUA: Aye.

7 MR. DAVIDSON: Commissioner Contrades?

8 COMMISSIONER CONTRADES: Aye.

9 MR. DAVIDSON: Chair Devens?

10 CHAIRMAN DEVENS: Yes.

11 MR. DAVIDSON: The Motion to Deny passes 5
12 to 1, Chair.

13 CHAIRMAN DEVENS: Mr. Matsubara, your
14 argument on the motion.

15 MR. MATSUBARA: Thank you. I recited most
16 of my argument at one point when I was talking about
17 my position on the motion. Let me just highlight.

18 As was comprehensively described in the
19 staff report, this motion is to amend the original
20 1985 Decision and Order that reclassified 390 acres
21 into the Urban District with the restriction that it
22 be used only for golf course purposes.

23 The Prince Golf Course and clubhouse have
24 since been completed. And there are 120 acres of the
25 390 acres of undeveloped urban land that will not be

1 utilized for golf course purposes.

2 We are seeking to delete that condition so
3 that the remaining undeveloped property, which will no
4 longer be used for golf course, can be included in the
5 proposed Princeville Ranch Agricultural Subdivision.

6 We attached as Exhibit 1 to our Petition the
7 Princeville Ranch Agricultural Subdivision. Attached
8 as figure 1 on Page 1-4 is this diagram which shows in
9 red the 120 acres we are talking about in regard to
10 this particular Motion to Amend.

11 The surrounding blue circle is the 480 acres
12 of the ag subdivision that has been contemplated of
13 which the 120 acres concerned with in this motion is a
14 part of. We've attached the subject property --
15 excuse me. Trying not to be repetitive.

16 Within the 120 acres that we are asking to
17 remove the condition on there will be a maximum of 18
18 homesites being proposed, which will provide each
19 homeowner with exclusive use of three-quarters of an
20 acre surrounding his dwelling with the remainder of
21 each lot placed under an agriculture easement for use
22 by the Princeville Ranch for their operation.

23 Attached to Exhibit 1 is the Agricultural
24 Subdivision Planning Report which discusses the
25 environmental setting, impacts and mitigation measures

1 proposed for the Project. Included as Appendix A in
2 the planning report is the Princeville Ranch
3 Preservation Plan which discusses the current ranch
4 and farm operation and the proposed expansion and
5 preservation of those uses.

6 Since the Petitioner's plan now contemplates
7 uses and a density of less than previously considered
8 in the prior approved EIS, we concluded that chapter
9 343 was not applicable.

10 For example, the prior approved EIS
11 considered impacts for development consisting of 1,240
12 single-family units and 420 condominium units. The
13 current Princeville Ranch Subdivision will consist of
14 17 agricultural lots with a maximum of 75 homesites.

15 Under the circumstances we request that the
16 Land Use Commission amend its prior Decision and Order
17 to remove the condition restricting the use to golf
18 course use and allow us to include the 120 acres as
19 part of the Princeville Ranch Subdivision.

20 As indicated in the attached Princeville
21 Ranch reports and the Ranch Preservation Plan, there
22 are representations relating to the homesites and the
23 uses that are clearly agricultural. Thank you.

24 CHAIRMAN DEVENS: Thank you for your
25 presentation, Mr. Matsubara. Intervenor, you have

1 standing to make an argument in this matter.

2 MS. TICO: Can we call witnesses?

3 CHAIRMAN DEVENS: Witnesses for?

4 MS. TICO: Ah, to...

5 CHAIRMAN DEVENS: What's the offer of proof
6 for the witnesses?

7 MS. TICO: The offer of proof I believe I
8 just heard something that I don't recall as being
9 accurate. That urban zoning, once again, that was
10 granted back in the '80s did not allow for the
11 development of these, all of these homesites that are
12 being alleged. The urban zoning -- I have documents
13 from 1989. I don't have copies but I can pass them
14 around. Again, the urban uses was solely for the golf
15 course and there was no allowance for any homesites
16 surrounding the golf course.

17 So I don't know why they keep saying,
18 "Well, we have urban zoning. We could have built out
19 this whole area," when it's simply not true. I can
20 show you from our documents in 1989.

21 CHAIRMAN DEVENS: If you want to make that
22 part of the record we'll take copies of that.

23 MS. TICO: Thank you.

24 CHAIRMAN DEVENS: Anything more you want to
25 add?

1 MS. TICO: Are we entitled to call witnesses
2 to --

3 CHAIRMAN DEVENS: If the witness is just
4 going to repeat what you said, then you've presented
5 the argument.

6 MS. TICO: May I have a moment to confer
7 with the clients?

8 CHAIRMAN DEVENS: Sure, of course.

9 MS. TICO: Could we take a short recess for
10 that purposes?

11 CHAIRMAN DEVENS: Sure. We'll take five
12 minutes.

13 (Recess was held.)

14 CHAIRMAN DEVENS: We're about to go back on
15 the record. Ms. Tico, did you have enough time to
16 consult with your client?

17 MS. TICO: Yes, I did. And a question has
18 arisen. The clients are reluctant to testify because
19 they, again, they haven't had sufficient opportunity
20 to review this tome of a Petition, and also to go
21 back and review all of the prior Findings and
22 Conclusions and D&O's that were entered in this
23 matter. They asked if there's going to be an
24 allowance for public witness testimony at this
25 hearing.

1 CHAIRMAN DEVENS: No. We've concluded that
2 parts of the hearing. We're now into the presentation
3 and arguments.

4 MS. TICO: There was a public hearing?

5 CHAIRMAN DEVENS: Public testimony was
6 accepted earlier, yes.

7 MS. TICO: I'm sorry I missed that.

8 CHAIRMAN DEVENS: I believe you weren't here
9 yet.

10 MS. TICO: All right.

11 CHAIRMAN DEVENS: Is there anything else you
12 want to add to the record?

13 MS. TICO: Yes. I would like to call two
14 witnesses at this point just to give their
15 recollection of what the Land Use Commission did back
16 in 1985 and 1989, and what the intent of the Land Use
17 Commission was in allowing the urban zoning for golf
18 course purposes.

19 They have a much more detailed recollection
20 of those proceedings than I do. I was only involved
21 in the latter one, 1989. And I would like to have
22 them comment on the entire proceedings '85 and '89.

23 MR. MATSUBARA: Mr. Chair?

24 CHAIRMAN DEVENS: Mr. Matsubara.

25 MR. MATSUBARA: Just one comment. I believe

1 the Commission can take judicial notice of the
2 Decision and Orders filed in '85 and the two
3 subsequent amendments. And I believe the Commission's
4 Decision and Orders speak for themselves and would be
5 the best evidence of the Commission's rulings at that
6 time.

7 And I think any testimony relating to what
8 these filed Decisions and Orders meant would be
9 superfluous. You do have the original Decision and
10 Orders as part of your files. You can take notice of
11 that. And I think that should be the documents that
12 govern.

13 CHAIRMAN DEVENS: Ms. Tico.

14 MS. TICO: I think that would be a complete
15 and utter depravation of due process. It's bad enough
16 that a continuance wasn't granted. But to deprive the
17 witnesses from talking to the Commission on this issue
18 is depriving them of their due process rights in this
19 matter.

20 CHAIRMAN DEVENS: For the record we are well
21 aware of what proceeded, what had transpired up to the
22 point we are here today. So to have a witness come on
23 and recite what our body may have done in years past,
24 we're already pretty well aware of what's transpired.
25 So I don't know how helpful that kind of testimony may

1 be.

2 Is there something else that you want to
3 present the witnesses for? Again, the Commissioners
4 here are well aware of what has transpired up to this
5 point.

6 MS. TICO: Again, these Findings of Fact,
7 Conclusions of Law were not even attached to the
8 Petition. I don't know if these Commissioners had the
9 opportunity to read the entire file that goes back
10 some 25 years or more, 25 to 30 years.

11 I would venture to guess that not any of
12 these Commissioners took the time to read all of those
13 Findings and Conclusions. They weren't attached to
14 the Petition. I hadn't read them. I had to ask to
15 get copies since I no longer had any.

16 I do feel that it's important to allow these
17 people who live adjacent to the proposed site be
18 allowed to testify and give their opinions as to what
19 the Commissioners' actions may or may not do today in
20 the context of what came down in those previous
21 hearings in the '80s.

22 CHAIRMAN DEVENS: Is it going to address
23 specifically the amendments that are being proposed?

24 MS. TICO: Yes, it will.

25 CHAIRMAN DEVENS: So what's the offer on

1 that?

2 MS. TICO: Um...

3 CHAIRMAN DEVENS: What are they going to
4 talk about?

5 MS. WILSON: Well, for one thing the Land
6 Use Commission hearing on the golf course, which is
7 being quoted as being available for urban use, is not
8 included in that thick Finding. And the other thing
9 that dealt with urbanization of the area contingent to
10 what is called Princeville Phase I -- this is
11 Princeville Phase 2 -- had to do with urbanizing -- in
12 front of the Land Use Commission -- urbanizing the
13 western and central plateaus.

14 That Land Use Commission finding has not
15 been available to us or to the representatives here.
16 That finding specifically dealt with urbanization
17 issues. And in specific it dealt with the
18 urbanization of the western plateau.

19 And it was contingent on urbanizing the
20 central plateau, which is where this was located. If
21 there was a performance standard met, that performance
22 standard was lost. The central plateau was not
23 urbanized.

24 In 1989 in front of the Land Use Commission
25 hearing we had a hearing on this enormous clubhouse

1 and golf course complex. And in that hearing the
2 testimony was that the clubhouse, which is the only
3 thing that survived that was allowed in that, which is
4 there now, was surrounded by ag lands.

5 So the use of urban in the same
6 understanding that urban use has to do with
7 residential use is simply not a valid use of that
8 statement in this case. There was no urbanization
9 allowed in the central plateau. That was lost because
10 the performance was not met. The western plateau was
11 urbanized.

12 So what you're dealing with is urbanization
13 of a spot zoning here not contingent to an urban area
14 at all. And I think the use of "urban" is a bit
15 misleading when it's used in the same breath that it's
16 being used in this case that it has urban rights.
17 There weren't any. Thank you.

18 So there's -- so there's I think a need for
19 some clarification not only in what I've just talked
20 about but maybe some geographic clarification. And
21 that's why I think it would be helpful to have the two
22 witnesses that are here be able to give a little, not
23 lengthy, but a presentation on physicality. I think
24 that's -- I think it would be nice to clarify that for
25 your own sake. Thank you.

1 CHAIRMAN DEVENS: You know, personally,
2 speaking for myself from what I've read I don't see
3 that offer as providing much assistance to me
4 personally in deciding this matter. Therefore I'm
5 inclined not to take that testimony if it's along the
6 lines of what you folks are offering.

7 However, let me ask my fellow Commissioners
8 if they want to hear the witnesses, I'll defer to that
9 if they feel they want to hear those witnesses.
10 Commissioners, is there any inclination to want to
11 take that to hear these two offered witnesses?

12 COMMISSIONER LEZY: Chair?

13 CHAIRMAN DEVENS: Commissioner Lezy.

14 COMMISSIONER LEZY: Chair, I'd like to hear
15 the Intervenor's witnesses.

16 CHAIRMAN DEVENS: Okay. You have two
17 witnesses?

18 MS. TICO: There's only one witness.

19 CHAIRMAN DEVENS: Who is that going to be?

20 MS. TICO: Barbara Robeson.

21 CHAIRMAN DEVENS: Have her take the stand,
22 please.

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

1 THE WITNESS: Yes, I do.

2 CHAIRMAN DEVENS: Your name and address.

3 THE WITNESS: Barbara Robeson, 5-6650 Kuhio
4 Highway, Hanalei 96714.

5 EXAMINATION

6 BY MS. TICO:

7 Q Barbara, have you had an opportunity to
8 review the Petition that was filed?

9 A Not exactly. Thank you, Commissioners. I
10 learned about this hearing on Sunday. And so I wasn't
11 able to prepare the testimony that I generally like to
12 prepare. It's a little bit up to my standards.
13 But -- and so probably some of the things that I say
14 might need a fact check. However, I would like to
15 cover a few things. And I have a map here if I could
16 review.

17 CHAIRMAN DEVENS: You can give that to our
18 clerk and he'll mark it and provide it to us.

19 THE WITNESS: This map came from the
20 Princeville Phase II EIS. And the date of the map is
21 November 27.

22 CHAIRMAN DEVENS: Hang on. What's the
23 question that you're answering? I think she just
24 asked if you had a chance to review something. Now
25 we're getting into maps. What's the question?

1 MS. TICO: I wanted her to comment on her
2 recollection of the background of this matter. And I
3 believe that she found a map and she's about ready to
4 comment on it.

5 CHAIRMAN DEVENS: All right.

6 THE WITNESS: As I said the map came from
7 the EIS. It's dated November 27th, 1981. It shows
8 the general configuration of the western, the central
9 and the eastern plateau which was just mentioned by
10 Ms. Wilson.

11 The Land Use Commission granted
12 redistricting from agriculture to urban for the
13 western and the central plateau, the central plateau,
14 and it turned down the eastern plateau.

15 The central plateau had conditions for
16 performance. Those conditions were not met and it was
17 reversed back to ag.

18 Q (Ms. Tico) What was your understanding of
19 the urban zoning that was granted back in 1985?

20 A You're talking about the golf course?

21 Q Yes.

22 A That it had to be used for golf course only.

23 Q Okay. And that urban zoning didn't allow
24 for any subdivision or any other houses to be built in
25 the land that wasn't built up as golf course?

1 A Not according to my limited amount of
2 information that I've been able to gather since
3 Sunday.

4 Q Now, just turning to the present Petition
5 and your understanding of it, and we understand that
6 you haven't had an opportunity to review it, but what
7 are your concerns should this matter be granted, this
8 Petition be granted?

9 A Let me just say first of all that I totally
10 support the Princeville Ranch and their use of that
11 property. It's very important not only for them but
12 for the community because it keeps that space open and
13 the viewplanes, et cetera. It's consistent with the
14 North Shore Development Plan which is a Special
15 Planning Area.

16 In terms of my concerns about removing the
17 condition of taking away the golf course only
18 condition and allowing it to go for an ag subdivision,
19 I guess my questions are: Why? Why wouldn't it be
20 just reverted back to ag? Because that would be
21 consistent both with what the Land Use Commission did
22 before on the central plateau.

23 If it's surrounded by ag subdivision it
24 would be consistent with the surrounding lands. As
25 previously mentioned it wouldn't be spot zoning urban

1 with surrounding ag lands.

2 Q Is there also a concern about the potential
3 for vacation rentals should this land be --

4 A Yes, of course.

5 Q -- okay. Explain.

6 A And that's been very controversial on
7 Kaua'i, as many of you must know. And it continues to
8 be controversial because of the current bill that is
9 coming before the planning commission with the
10 potential to grant special permits for transient
11 vacation -- large estates to get a transient vacation
12 rental permit on ag land.

13 Q Ms. Robeson, do you have any other concerns
14 as far as your understanding of this Petition goes?

15 A Well, again, I haven't had an opportunity to
16 read the Petition. But those are my big, big picture
17 kind of concerns that I've been able to put together
18 in the last few days.

19 Q So the Commissioners understand, then, in
20 the past the Commission simply took away or took back
21 the zoning when the conditions weren't met.

22 A That's correct.

23 Q And it's your feeling that that's what they
24 should do in this case rather than allow for this
25 subdivision and gentlemen's estates, so on.

1 A It makes more sense to me to do that because
2 it's surrounded by ag. If it's going to be used for
3 ag it should be ag, not urban and shouldn't be spot
4 zoned.

5 Q And that would support the Carswell's
6 agricultural operation --

7 A Correct.

8 Q -- just as well. Thank you.

9 A You're welcome.

10 CHAIRMAN DEVENS: Cross examination,
11 Mr. Matsubara?

12 CROSS-EXAMINATION

13 BY MR. MATSUBARA:

14 Q Ms. Robeson, in the other action you
15 mentioned to the Commission relating to the west end
16 and central plateau --

17 A Yes.

18 Q -- that was part of another separate Land
19 Use Commission docket, was it not?

20 A I don't know.

21 Q For the record the Decision and Order in the
22 docket I'm seeking to amend is A83-557. The two other
23 western and central plateau requests that were granted
24 and the eastern one that was denied, you will find in
25 your docket A83-553, which is a totally separate and

1 complete docket than the docket before you today that
2 we're seeking to amend, which related just to the golf
3 course.

4 So the testimony relating to what may have
5 happened, the fact that it was, the entitlement was
6 removed, relates to a totally and completely separate
7 docket, not the docket before the Commission today.
8 And it's within the Commission's --

9 A Can I reply?

10 MS. TICO: I have to object on the grounds
11 that that's testimony, not a question.

12 CHAIRMAN DEVENS: Do you have a response? I
13 think he was asking whether what you had represented
14 could be related to a different docket. You can
15 respond to that question.

16 THE WITNESS: It may have related to a
17 different docket. But if you look at the map it
18 relates to the same area in Princeville.

19 CHAIRMAN DEVENS: Mr. Matsubara, do you have
20 any further questions for her?

21 MR. MATSUBARA: Nothing further.

22 CHAIRMAN DEVENS: County, any questions,
23 examination for this witness?

24 CROSS-EXAMINATION

25 BY MR. DAHILIG:

1 Q Ms. Robeson, is the assertions regarding
2 transient vacation rentals that you made related to
3 the personal knowledge that the area of the Petition
4 is within the County's designated Visitor Destination
5 Area or is it outside?

6 A It's outside the VDA.

7 MR. DAHILIG: Thank you.

8 CHAIRMAN DEVENS: Mr. Yee?

9 CROSS-EXAMINATION

10 BY MR. YEE:

11 Q A couple matters. First, I believe you
12 handed out a document to the Land Use Commission.
13 Would we be able to get a copy of that?

14 CHAIRMAN DEVENS: Yes. In fact I thought
15 they were provided copies. I apologize. Do you have
16 a copy now?

17 (Documents handed to Mr. Yee)

18 MR. YEE: Yes, I have a copy now.

19 Q Ms. Robeson, first when you said that the
20 zoning had been changed, were you referring to a
21 county process --

22 A No.

23 Q -- or a land use process?

24 A Redistricted. I'm sorry. The central
25 plateau.

1 Q And for my information when you said it was
2 changed, was a portion of it denied?

3 A In the original approval before the Land Use
4 Commission Princeville, whoever owned it at that time,
5 came in for redistricting for the western, central and
6 eastern plateaus. The Land Use Commission denied the
7 eastern plateau. They approved the western and the
8 central.

9 The central had conditions attached to it
10 if you didn't perform, I think it was within five
11 years, that the urban district districting would be
12 taken away, which it was. And now it's ag, back to
13 ag. The western plateau is urban and it has been
14 developed.

15 Q Is it your understanding the western plateau
16 is -- well, let me ask a different question.

17 Are you at all familiar with the Princeville
18 Ranch Agricultural Master Plan?

19 A Vaguely, yes.

20 Q You didn't participate in the process?

21 A Well, I would have to check my records
22 whether I did or not. I have a lot of files. I know
23 that there was a presentation made in the community
24 but I'm not sure it was directly the Princeville ag,
25 the ranch, if that was the exact presentation or if it

1 was another presentation by Princeville.

2 Q Were you aware that there was a process for
3 developing a Princeville Ranch Agricultural Master
4 Plan?

5 A Not that I remember but...

6 Q So the inclusion of this land within the
7 Princeville Ranch Agricultural Master Plan you're not
8 familiar with that.

9 A According to my understanding that this is
10 included in the master plan for the Princeville Ranch,
11 which I support.

12 Q So you support the --

13 A Except I don't support the keeping of the
14 urbanization if it's going to be ag.

15 Q Do you support the master plan?

16 A Yes. My recollection.

17 Q And so the development of this property, if
18 it's consistent with the master plan, your objection
19 would be related solely to the legal classification as
20 urban?

21 A Uhm...

22 Q Do you want me to rephrase the question?

23 A Yes, please.

24 Q Okay. If the Petition Area's use is
25 consistent with and subject to and required to be

1 consistent with the Agricultural Master Plan,
2 Princeville Ranch Agricultural Master Plan, then I
3 assume you don't have any problems with the particular
4 use.

5 A With ag use?

6 Q If it's consistent with the use in that
7 Princeville Ranch Agricultural Master Plan, you're
8 happy with that use. You're just disagreeing with the
9 underlying classification. Am I misunderstanding?

10 A The use is fine. I agree -- I'm supportive
11 of that. It's the underlying district of urban.

12 Q Okay. Thank you. Nothing further.

13 CHAIRMAN DEVENS: Any redirect, Ms. Tico?

14 MS. TICO: No redirect.

15 CHAIRMAN DEVENS: Any further questions from
16 any of the parties?

17 MR. MATSUBARA: No questions.

18 CHAIRMAN DEVENS: Commissioners?

19 Commissioner Lezy.

20 COMMISSIONER LEZY: Thank you, Chair.

21 Ms. Robeson, are you a member of the Intervenor's
22 entity?

23 THE WITNESS: I was. But as Ms. Tico said
24 we haven't had an opportunity to reconvene. So off
25 the top of my head I'd say yes because I still support

1 their position.

2 COMMISSIONER LEZY: And how did you become
3 aware of today's motion?

4 THE WITNESS: I got a phone call from
5 someone that got an LUC agenda in the mail. And they
6 said, oh, did I know. And I didn't know. So I looked
7 it up on the website and that's all that I could find
8 was the agenda. I couldn't find any Petition or
9 anything else but the agenda item.

10 COMMISSIONER LEZY: Who was that person that
11 contacted you?

12 THE WITNESS: It was a friend of mine.

13 COMMISSIONER LEZY: What was her name?

14 THE WITNESS: Karen Diamond.

15 COMMISSIONER LEZY: And is she also a member
16 of the Intervenor?

17 THE WITNESS: No.

18 COMMISSIONER LEZY: And when was the last
19 time prior to today you spoke with either Ms. Wilson
20 or Ms. Tico?

21 THE WITNESS: When was the -- say again?

22 COMMISSIONER LEZY: Last time prior to today
23 that you spoke with either Ms. Wilson or Ms. Tico.

24 THE WITNESS: I'm a friend of Susan. We
25 walk on the beach all the time.

1 COMMISSIONER LEZY: Okay. And how about
2 Ms. Tico?

3 THE WITNESS: I hardly ever see Ms. Tico.

4 COMMISSIONER LEZY: Okay. But when was the
5 last time you recall seeing her before today?

6 THE WITNESS: I might have seen her at the
7 post office one day, but I can't remember when that
8 would have been. If you're trying to narrow down
9 within March 9th through whatever, I haven't seen her
10 since then.

11 COMMISSIONER LEZY: Okay, fine. Thank you
12 very much.

13 CHAIRMAN DEVENS: Any further questions?
14 There being none, Ms. Tico do you have any other
15 witnesses you want to present?

16 MS. TICO: No other witnesses.

17 CHAIRMAN DEVENS: Any further argument?

18 MS. TICO: No further argument.

19 CHAIRMAN DEVENS: County?

20 MR. DAHILIG: Based on the March 9th, 2011
21 Petition motion, the County takes no opposition to the
22 Petitioner's motion.

23 CHAIRMAN DEVENS: Is it supporting the
24 motion?

25 MR. DAHILIG: Not supporting. Taking no

1 opposition.

2 CHAIRMAN DEVENS: Anything more you want to
3 add?

4 MR. DAHILIG: Just for clarification for the
5 record. Based on the, some of the comments regarding
6 transient vacation rentals, that the ordinance passed
7 by the county council, which is Ordinance 904 locally,
8 prohibits the establishment of transient --
9 single-family transient vacation rentals outside the
10 visitor designation areas that were designated by the
11 county. Upon reliance of the witness's testimony we
12 feel that this particular ordinance would not apply in
13 this case.

14 CHAIRMAN DEVENS: Thank you, sir. Mr. Yee?

15 MR. YEE: The Office of Planning supports
16 the Motion to Amend. As we discussed in response to
17 the Motion to Continue the Office of Planning actually
18 recommended that the land use classification remain in
19 urban rather than be placed into agriculture.

20 And the reason is that the purposes that are
21 to be used for this subject area I know are being
22 characterized as being agricultural, and much of the
23 land will be agricultural. But the use of farm
24 dwellings of that permitted use of agriculture is a
25 tricky question.

1 And it seemed clear to us that the homes
2 that were to be developed were very likely to be, well
3 frankly, luxury homes. It's not stated explicitly.
4 It's not a guarantee. But it seemed to us that was
5 the likely course this Project would take.

6 And if the Office of Planning was the one
7 that would have to be here to recommend this Project
8 move forward, it put us in a difficult position of
9 then being on record as supporting a proposal to have
10 luxury homes designated as farm dwellings.

11 And our recommendation was to have, to keep
12 the land in urban, to make it consistent with the
13 Agricultural Master Plan so that the uses were
14 entirely consistent with the surrounding agricultural
15 areas as well as being subject to those conditions,
16 but to leave the land, the subject area, in urban, not
17 to change it back to agriculture and avoid that
18 question of what is or is not a farm dwelling.

19 We have been working with the Petitioner on
20 a variety of issues, the major issue being if you move
21 homesites into an area that was originally designated
22 for a golf course are there any impacts from that
23 change in use.

24 The planning report prepared by the
25 Ppetitioner does analyze those environmental impacts.

1 It does contain mitigation measures within that
2 planning report.

3 And the Office of Planning has been working
4 with the Petitioner to have them agree in the Decision
5 and Order to comply with the mitigation measures
6 recommended by their consultants in that report.

7 We also included a letter from the
8 Department of Civil Defense regarding warning sirens.
9 And that would be required to be put in as well as
10 various other measures, as I said, that were contained
11 in that planning report.

12 The Department of Transportation did look at
13 the question of traffic and determined that as long as
14 they kept to their proposed 18 homesites there will be
15 no traffic impacts.

16 So we did want to assure you that we have
17 looked at these homesites and this change in use from
18 golf course, and have worked with the Petitioner to
19 ensure that any impacts would be mitigated
20 appropriately.

21 Finally, I wanted to note that the Office of
22 Planning has been working with the Petitioner to draft
23 a Stipulated Decision and Order containing all the
24 necessary representations as well as all the
25 appropriate requirements to comply with their

1 representations and with the mitigation measures
2 represented by the consultants. We are very close and
3 agree with the language, the specific language and
4 certainly have an agreement on the basic form of that
5 document.

6 So the only thing I may add is that we would
7 ask an opportunity to have a Stipulated D&O if you
8 choose to grant the motion, an opportunity to submit a
9 Stipulated D&O to you or at least a partial
10 stipulation between the Petitioner and the Office of
11 Planning and such other parties as may agree to it.
12 That's all. Thank you.

13 CHAIRMAN DEVENS: Thank you. Mr. Matsubara,
14 did you have any rebuttal to that you wanted to
15 present?

16 MR. MATSUBARA: Nothing further.

17 CHAIRMAN DEVENS: Commissioners have any
18 questions for the parties? Commissioner Judge.

19 MS. TICO: Excuse me. Do I have an
20 opportunity for rebuttal on behalf of the Concerned
21 Citizens with respect to the State's position?

22 CHAIRMAN DEVENS: You can go ahead.

23 MS. TICO: What I just heard is that the
24 State is advocating that this land be kept in urban
25 designation but the use, which was exclusively for the

1 golf course, now be changed so that these luxury
2 homes -- we all know that they are going to be luxury
3 homes -- can go on this urbanized 120 acres. I
4 believe that's what I just heard.

5 And if that is the case that seems to me to
6 go against the State's stated policy to keep ag lands
7 in agriculture. And I know at the beginning of this
8 hearing a number of people took issue with my
9 statement paragraph 8 of the Motion to Continue this
10 hearing wherein I represented that the use would be --
11 the use of ag lands would be changed.

12 But that if you allow the urban zoning then
13 you are changing the use of these ag lands. We note
14 from the Petitioner's Petition that 20 percent of this
15 land that is before you for consideration has been
16 rated prime ag land and 20 percent has been rated
17 Other ag land. So if you're going to allow the zoning
18 to stay in urban, then you're taking away this
19 agricultural land that the State has said it wants to
20 preserve. That would be my only comment.

21 CHAIRMAN DEVENS: Parties want to add
22 anything more to the record? Mr. Yee?

23 MR. YEE: Just for the record. When she
24 refers to keeping ag lands in agriculture, the area is
25 classified urban. That's all.

1 CHAIRMAN DEVENS: Commissioners, any
2 questions? Commissioner Judge.

3 COMMISSIONER JUDGE: Thank you, Chair. I
4 just wanted to confirm with the Petitioner that they
5 concur with the statement that Mr. Yee has just made
6 to the Commission that there's an agreement between
7 the State and the Petitioner on the mitigation
8 measures that have been proposed.

9 MR. MATSUBARA: Yes. We have circulated a
10 stipulated -- Proposed Stipulated Decision and Order
11 which includes those conditions that the Office of
12 Planning wanted incorporated which requires us to
13 commit to our consultant's recommendations in regard
14 to the mitigation necessary for the activities that
15 would occur.

16 We've also provided that to the county of
17 Kaua'i. They're in the process of doing their final
18 review on that.

19 We sent an earlier version also to the
20 Intervenor for their review and information as to
21 what we were considering doing, in an effort to see if
22 we could provide the Commission with a Stipulated
23 Decision and Order today. But we have not been able
24 to get all parties to sign.

25 COMMISSIONER JUDGE: And one last question.

1 Just for the record, what is the number of, the
2 maximum number of homes that you're proposing for this
3 120 acres?

4 MR. MATSUBARA: Eighteen sites.

5 COMMISSIONER JUDGE: Eighteen. Okay. Thank
6 you.

7 CHAIRMAN DEVENS: Any further questions?
8 Commissioner Lezy.

9 COMMISSIONER LEZY: Thank you, Chair.
10 Mr. Matsubara, I may have missed this. You may have
11 addressed it. I apologize if I did. But staff in its
12 presentation raised a concern about the exclusion of
13 the proposed subdivision from the Chapter 343 review
14 process. I'm wondering if you could address that
15 issue.

16 MR. MATSUBARA: I'll follow along with what
17 Office of Planning said. We have included a planning
18 report as part of Exhibit 1 to our Petition which
19 talks about the impact of the proposed agricultural
20 subdivision, recommended mitigation that would be
21 required and the potential impacts.

22 Those were the mitigation measures and
23 potential impacts that we've included as part of the
24 Stipulated D&O to make sure those impacts are covered.

25 The other issue related to the fact that the

1 proposed use of the agricultural subdivision as a
2 whole, which is a total 480 acres of which the 120 is
3 a part of, would possess a density far less than it is
4 presently permitted for the proposed agricultural
5 subdivision site in its totality. Instead of 1660
6 units you'd be dealing with 75 units.

7 So based on the comparison, based on the
8 planning report we did that, re-explored the impacts,
9 consultation with the Department of Transportation and
10 others relating to relevant issues of concern, we
11 felt that 343 was unapplicable under the circumstances
12 because of the absence -- because the earlier approved
13 EIS that approved a much more significant density and
14 impact for the Project.

15 COMMISSIONER LEZY: Thank you. Mr. Yee,
16 OP's position on that point?

17 MR. YEE: The Office of Planning believed we
18 had more than enough information on the environmental
19 impacts to move forward with this motion.

20 COMMISSIONER LEZY: County, do you have a
21 position on that issue?

22 MR. DAHILIG: County is satisfied with the
23 hard look that we've taken.

24 COMMISSIONER LEZY: Intervenor, do you wish
25 to raise an issue regarding the 343 review?

1 (No response)

2 Intervenor, do you wish to raise an issue
3 regarding the 343 review?

4 MS. TICO: Because we didn't get a
5 continuance and we couldn't study these issues, all I
6 can say is that yes, we want to reserve whatever we
7 can so that we can further study the issue.

8 COMMISSIONER LEZY: But are there any
9 substantive points you want to raise at this juncture?

10 MS. TICO: Not at this time, but I'm sure
11 when we study the issue we will be raising whatever we
12 can. In fact we may even bring a Motion to Reopen
13 this hearing. Or we may not.

14 COMMISSIONER LEZY: Thank you.

15 CHAIRMAN DEVENS: Any further questions for
16 the Commission? There being none, Mr. Matsubara
17 anything else you want to add in closing?

18 MR. MATSUBARA: No, nothing further.

19 CHAIRMAN DEVENS: Intervenor, anything you
20 want to add in closing?

21 MS. TICO: No.

22 CHAIRMAN DEVENS: County?

23 MR. DAHILIG: Nothing further, Chair.

24 CHAIRMAN DEVENS: Mr. Yee?

25 MR. YEE: Nothing further, thank you.

1 CHAIRMAN DEVENS: Mr. Matsubara, if the
2 Commission is inclined to grant the motion, do you
3 have any particular objection to the standard
4 conditions that we normally impose on a D&O?

5 MR. MATSUBARA: As it relates to the subject
6 property, no.

7 CHAIRMAN DEVENS: All right. Commissioners,
8 is there a motion on this matter? Also let me note
9 before we take any motions that the Intervenor's map
10 that was presented by the witness will be marked as
11 Exhibit 1. Do the parties have any objection to
12 admitting that map into evidence in this matter?

13 Mr. Matsubara?

14 MR. MATSUBARA: No objection.

15 MR. DAHILIG: No objection.

16 MR. YEE: No objection.

17 CHAIRMAN DEVENS: It will be admitted,
18 marked for identification as Exhibit 1.

19 Commissioners, is there a motion on this matter?

20 COMMISSIONER CONTRADES: Mr. Chairman.

21 CHAIRMAN DEVENS: Commissioner Contrades.

22 COMMISSIONER CONTRADES: I move in the
23 matter of A83-557 Princeville Development Corporation
24 Kaua'i that the request to consider the Motion for
25 Order Amending Findings of Fact, Conclusions of Law

1 and Decision and Order dated March 28, 1985 be granted
2 with the staff preparing a Decision and Order for
3 approval.

4 CHAIRMAN DEVENS: Is there a second?

5 COMMISSIONER TEVES: Second.

6 CHAIRMAN DEVENS: Commissioner Teves seconds
7 the motion. Any discussion? Commissioner Lezy.

8 COMMISSIONER LEZY: Just one point of
9 discussion, Chair. I might suggest a friendly
10 amendment if Commissioners Contrades and Teves are
11 agreeable. I think that OP indicated and Petitioners
12 agreed that they wanted to prepare an Agreed order,
13 Stipulated Order.

14 CHAIRMAN DEVENS: Yeah, we can -- if the
15 motion passes we can allow the parties to work on
16 that. Not so sure if needed to be added to the
17 motion. If you're offering that --

18 COMMISSIONER LEZY: I offer it only because
19 the memos --

20 COMMISSIONER CONTRADES: I have no problem
21 with that.

22 COMMISSIONER LEZY: -- said specifically
23 "staff to prepare".

24 CHAIRMAN DEVENS: I'm sorry. You're
25 correct.

1 COMMISSIONER TEVES: I agree.

2 CHAIRMAN DEVENS: Okay. So the motion has
3 been amended and seconded by Commissioner Teves on the
4 amendment that was offered by Commissioner Lezy. Any
5 further discussion on this matter? There being none,
6 call for the vote.

7 MR. DAVIDSON: Motion to Approve Motion to
8 Amend Order as stated by Commissioner Contrades and
9 with the "as amended".

10 Commissioner Contrades?

11 COMMISSIONER CONTRADES: Aye.

12 MR. DAVIDSON: Commissioner Teves?

13 COMMISSIONER TEVES: Yes.

14 MR. DAVIDSON: Commissioner Lezy?

15 COMMISSIONER LEZY: Yes.

16 MR. DAVIDSON: Commissioner Judge?

17 COMMISSIONER JUDGE: Yes.

18 MR. DAVIDSON: Commissioner Makua?

19 COMMISSIONER MAKUA: Aye.

20 MR. DAVIDSON: Chair Devens?

21 CHAIRMAN DEVENS: Yes.

22 MR. DAVIDSON: Motion passes 6/0, Chair.

23 CHAIRMAN DEVENS: Mr. Matsubara, you want to
24 add anything else to the record before we conclude?

25 MR. MATSUBARA: I'd just like to thank the

1 Commission for the time and effort involved in
2 considering this. Thank you.

3 CHAIRMAN DEVENS: Intervenor?

4 MS. TICO: We would like to have a
5 clarification on the number of homes that are going to
6 be allowed under this action that the Land Use
7 Commission is taking.

8 CHAIRMAN DEVENS: You can talk to the
9 Petitioners after we're done. Did you want to add
10 anything else to the record?

11 MS. TICO: That would be it. We just wanted
12 to have that in writing.

13 CHAIRMAN DEVENS: County?

14 MR. DAHILIG: Nothing further, Chair.

15 CHAIRMAN DEVENS: Mr. Yee?

16 MR. YEE: Nothing further, thank you.

17 CHAIRMAN DEVENS: There being nothing
18 further this concludes. We're adjourned.

19

20 (The proceedings were adjourned at 3:40 p.m.)

21 --oo00oo--

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24

25

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

2

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 12th day of May 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

14 DATED: This _____ day of _____ 2011

15

16

17

18

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

22

23

24

25

