

ORIGINAL

LAND USE COMMISSION

STATE OF HAWAII

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A83-557 Princeville Development Corporation (Kaua'i)	7
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TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at Conference Room 204, 2nd Floor, Leiopapa A Kamehameha, 235 S. Beretania Street, Honolulu, Hawaii'i, commencing at 9:50 a.m. on June 30, 2011, 2011, pursuant to Notice.

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

A P P E A R A N C E S

COMMISSIONERS:

KYLE CHOCK

THOMAS CONTRADES

VLADIMIR DEVENS (Chairman)

RONALD HELLER

LISA M. JUDGE

NORMAND LEZY

JAYE NAPUA MAKUA

ERNEST MATSUMURA

NICHOLAS TEVES, JR.

(Also Present: COMMISSIONER CHAD MCDONALD)

EXECUTIVE OFFICER: ORLANDO DAVIDSON

ACTING CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A83-557 Princeville Development Corporation

For the Petitioner:

BENJAMIN MATSUBARA, ESQ.

CURTIS TABATA, ESQ.

ABBEY MAYER VP Princeville

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

MARY LOU KOBAYASHI

Office of Planning

A P P E A R A N C E S (cont'd)

Docket No. A06-771 D.R. HORTON-SCHULER HOMES, LLC

For the Petitioner: BENJAMIN KUDO, ESQ.
YUKO FUNAKI, ESQ.
CAMERON NEKOTA, VP

For the County: DAWN TAKEUCHI-APUNA, ESQ.
Deputy Corporation Counsel
TIM HATA, DPP

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
MARY LOU KOBAYASHI
Office of Planning

For the Intervenor: KIONI DUDLEY
Friends of Makakilo

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1 CHAIRMAN DEVENS: This meeting is called to
2 order. Good morning to everybody. This is a meeting
3 of the Land Use Commission. Today is June 30, 2011.
4 We're here in Honolulu for today's agenda. First
5 order of business is the adoption of the minutes. Are
6 there any corrections or changes to the minutes?
7 There being none is there a motion to adopt?

8 COMMISSIONER CONTRADES: So moved.

9 COMMISSIONER TEVES: Second.

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

12 (VOICE VOTE)

13 Adopted by unanimous decision. Tentative
14 meeting schedule, Dan.

15 MR. DAVIDSON: Thank you, Chair. We'll be
16 in Maui next meeting to begin the Kula Ridge Project,
17 and on O'ahu for the most part, although we just got a
18 Parker Ranch IAL Petition, so there's a chance in
19 September we will be going to Waikoloa. As always any
20 questions about the schedule contact either Riley or
21 me. Thank you.

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1 CHAIRMAN DEVENS: Thank you, Dan. Next item
2 on the agenda is hearing on docket A83-557 Princeville
3 Development Corporation to consider the Adoption of
4 Order, Amended Findings of Fact, Conclusions of Law,
5 Decision and Order dated March 28, 1985. Appearances
6 of the parties starting with Petitioner,
7 Mr. Matsubara.

8 MR. MATSUBARA: Thank you Mr. Chair, members
9 of the Commission. Before I begin just let me express
10 how grateful we are to see all of you here today.
11 Thank you very much. My name is Ben Matsubara. And
12 along with Curtis Tabata we represent Princeville
13 Development Corporation. To my right is Vice
14 President Abbey Mayer.

15 CHAIRMAN DEVENS: Good morning to you all.

16 MR. YEE: Good morning. Deputy Attorney
17 General Bryan Yee on behalf of the Office of Planning.
18 With me is Mary Lou Kobayashi also with the Office of
19 Planning.

20 CHAIRMAN DEVENS: Good morning to you. Let
21 the record reflect that Ms. Tico has not made an
22 appearance. I do not see her in the conference room
23 here today.

24 Moving on, let me update the record. On May
25 12th, 2011 the Commission voted to grant Petitioner's

1 Motion for Order Amending Findings of Fact,
2 Conclusions of Law, and Decision and Order dated
3 March 28, 1985 and to deny Intervenor's Motion for
4 Continuance of Hearing on Petitioner's Motion. The
5 Written Order Denying Intervenor's motion was filed on
6 June 6, 2001.

7 On May 26, 2011 the Commission received OP's
8 amended memorandum from the State Department of
9 Transportation reaffirming that the 18 homesites
10 proposed for the Petition Area did not change its
11 position or comments on this matter.

12 On June 3, 2011 the Commission received
13 Petitioner's Stipulated Findings of Fact, Conclusions
14 of Law and Decision and Order as signed by the County
15 of Kaua'i and OP. Intervenor-Concerned Citizens of
16 Anini did not sign the document.

17 Dan, do we have anyone signed up to give
18 public testimony in this matter?

19 MR. DAVIDSON: We have no signups for
20 Princeville. Let me double check. Anybody wishing to
21 testify? No.

22 CHAIRMAN DEVENS: At this point we have the
23 form of the Order before the Commission prepared by
24 staff granting Petitioner's Motion for Order Amending
25 the Findings of Fact, Conclusions of Law and Decision

1 and Order dated March 28, 1985. Before we entertain a
2 motion in this matter, Petitioner, is there anything
3 more you want to add to the record?

4 MR. MATSUBARA: Nothing further, Mr. Chair.

5 CHAIRMAN DEVENS: Mr. Yee?

6 MR. YEE: Nothing further, thank you.

7 CHAIRMAN DEVENS: Is there a motion to
8 approve the form of the Order in this matter.

9 COMMISSIONER HELLER: Mr. Chair?

10 CHAIRMAN DEVENS: Commissioner Heller.

11 COMMISSIONER HELLER: Yes. Before
12 proceeding further with this there is a disclosure I
13 want to put on the record. It came to my attention
14 subsequent to our last meeting that Jeffrey Stone owns
15 some form of interest in Princeville Development
16 Corporation. It's my understanding that he also has
17 an interest in Ko Olina Development, LLC and Resort
18 Management Company, LLC. Those two entities are
19 involved in litigation adverse to the Association of
20 Apartment Owners of Beach Villas at Ko Olina. And I'm
21 representing the Association of Apartment Owners in
22 that other litigation.

23 I thought I would make that disclosure and
24 see if any of the parties has any objection to my
25 participation.

1 CHAIRMAN DEVENS: Thank you for that
2 disclosure. Parties have any objections or concerns
3 with that disclosure by Commissioner Heller?

4 MR. MATSUBARA: Mr. Chair, if Commissioner
5 Heller feels that that will not influence his decision
6 on this matter in regards to the adoption of the
7 proposed Decision and Order, obviously we would have
8 no objections to your sitting on that matter.

9 CHAIRMAN DEVENS: Commissioner Heller?

10 COMMISSIONER HELLER: I do not think the
11 unrelated litigation would have any effect on my
12 decision in this matter.

13 MR. MATSUBARA: Thank you. Then we have no
14 objections, Mr. Chair.

15 CHAIRMAN DEVENS: Mr. Matsubara, you also
16 understand it's just approving the form of the Order.

17 MR. MATSUBARA: Yes.

18 CHAIRMAN DEVENS: That's the matter before
19 the Commission.

20 MR. MATSUBARA: Yes. Thank you.

21 CHAIRMAN DEVENS: Mr. Yee, any other
22 concerns or objections to the disclosure by
23 Commissioner Heller?

24 MR. YEE: No objection.

25 CHAIRMAN DEVENS: There being none, is there

1 a motion?

2 COMMISSIONER CONTRADES: Mr. Chair.

3 CHAIRMAN DEVENS: Commissioner Contrades.

4 COMMISSIONER CONTRADES: Move that in the
5 matter of A83-557 Princeville Development Corporation
6 that we adopt the Findings of Fact, Conclusions of
7 Law, Decision and Order granting the Motion for Order
8 Amending Findings of Fact, Conclusions of Law and
9 Decision and Order dated March 28, 1985.

10 CHAIRMAN DEVENS: Is there a second?

11 COMMISSIONER TEVES: Second.

12 CHAIRMAN DEVENS: Any discussion? There
13 being none call for the vote.

14 MR. DAVIDSON: Motion to approve Order,
15 Commissioner Contrades?

16 COMMISSIONER CONTRADES: Aye.

17 MR. DAVIDSON: Commissioner Teves?

18 COMMISSIONER TEVES: Yes.

19 MR. DAVIDSON: Commissioner Matsumura?

20 COMMISSIONER MATSUMURA: Ask to be excused.

21 MR. DAVIDSON: Commissioner Chock?

22 COMMISSIONER CHOCK: Yes.

23 MR. DAVIDSON: Commissioner Lezy?

24 COMMISSIONER LEZY: Yes.

25 MR. DAVIDSON: Commissioner Makua?

1 COMMISSIONER MAKUA: Aye.

2 MR. DAVIDSON: Commissioner Heller?

3 COMMISSIONER HELLER: Yes.

4 MR. DAVIDSON: Commissioner Judge?

5 COMMISSIONER JUDGE: Yes.

6 MR. DAVIDSON: Chair Devens?

7 CHAIRMAN DEVENS: Yes.

8 MR. DAVIDSON: Motion passes 8-0 with one
9 abstention.

10 CHAIRMAN DEVENS: Anything else for the
11 record from the parties?

12 MR. MATSUBARA: Nothing on this particular
13 docket, Chair. But I recognize that this is the last
14 day of your term. And on behalf of us we'd like to
15 thank you for your public service in regard to the
16 Commission. I have nothing further pending before you
17 so I feel at liberty to say a few things.

18 I thank you for the personal integrity
19 you've displayed throughout your conduct as a
20 Commissioner and the Chair and your exemplary handling
21 of all matters that have arisen before you. Thank you
22 very much. And I wish you well.

23 CHAIRMAN DEVENS: Thank you, Mr. Matsubara.
24 Those are very kind words from you. Also I'd like to
25 thank you and your firm for the professionalism and

1 courtesies you've extended to not only me but the
2 Commission as a body throughout the last four years.
3 Thank you very much. Mr. Yee, anything you want to
4 add to the record on this matter?

5 MR. YEE: No. Thank you.

6 CHAIRMAN DEVENS: Thank you very much. That
7 will conclude the matter on this docket. We'll take a
8 short break and move on to the next matter.

9 (Recess was held.)

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1 CHAIRMAN DEVENS: We're back on the record.
2 The next item on the agenda is A06-771 D.R.
3 Horton-Schuler Homes, LLC. This is an action meeting
4 to amend the Agricultural Land Use District Boundaries
5 into the Urban Land Use District for approximately
6 1,553.844 acres of land at Honouliuli, 'Ewa District
7 O'ahu, Hawai'i Tax Map Key Nos. 9-1-17:4; 059 and 072,
8 9-1-18: 1 and 4 to consider.

9 There are four items on the agenda this
10 morning. First is Petitioner's Motion for Leave to
11 File its Second Amended Petition to Cure the
12 Deficiency of its First Amended Petition.

13 Second item is Petitioner's Motion for
14 Determination its Second Amended Petition to Cure the
15 Deficiency of its First Amended Petition and is Ready
16 for Processing.

17 Third. Intervenor Friends of Makakilo's
18 Motion to Close the Case of the Petition of D.R.
19 Horton-Schuler, LLC Without Further Consideration; or
20 in the Alternative to Reject Their Second Amended
21 Petition as a Cure for the Deficiencies in Their First
22 Petition and that the Petition Property Be Removed
23 from Redistricting Availability Until 2061.

24 The last item is Petitioner's Motion to
25 Consolidate for Hearing Purposes the above listed

1 three motions. Can we have the appearances of the
2 parties at this time, starting with Mr. Kudo.

3 MR. KUDO: Good morning, Mr. Commissioner,
4 Ben Kudo representing D.R. Horton-Schuler Homes. With
5 me is my associate Yuko Funaki. And to her right is
6 Cameron Nekota who is vice president of D.R. Horton-
7 Schuler Homes.

8 CHAIRMAN DEVENS: Morning.

9 MR. HATA: Tim Hata, City and County
10 Department of Planning and Permitting.

11 CHAIRMAN DEVENS: Morning.

12 MR. YEE: Good morning. Deputy Attorney
13 General Bryan Yee on behalf of the Office of Planning.
14 With me today is Mary Lou Kobayashi from the Office of
15 Planning.

16 CHAIRMAN DEVENS: Morning.

17 DR. DUDLEY: Good morning. Dr. Kioni Dudley
18 from the Friends of Makakilo.

19 CHAIRMAN DEVENS: Morning to you all. The
20 Commission's been informed and I need to note for the
21 record that Haseko informed the Commission that they
22 were going to withdraw from this docket. So we would
23 note that for the record.

24 Let me update the record. On May 18th, 2011
25 the Commission received Petitioner's Second Amended

1 Petition for land use district boundary amendment and
2 Exhibits 16A, 17A, 19A and 20 through 24.
3 Petitioner's Motion for Leave to File its Second
4 Amended Petition to Cure the Deficiency of its first
5 Amended Petition and Petitioner's Motion for
6 Determination that its Second Amended Petition to Cure
7 the Deficiency of Its First Amended Petition and Is
8 Ready For Processing.

9 On May 25th, 2011 the Commission received
10 written correspondence from the City and County, David
11 Tanoue, stating that the Department of Planning and
12 Permitting has no objection to the Petitioner's
13 motions.

14 On June 1, 2011 the Commission received
15 Intervenor The Friends of Makakilo's Motion to Close
16 the Case of the Petition of D.R. Horton-Schuler Homes,
17 LLC Without Further Consideration; or In the
18 Alternative to Reject Their Second Amended Petition as
19 a Cure for the Deficiencies in Their First Petition;
20 and That the Petition Property Be Removed from
21 Redistricting Availability Until 2061.

22 On June 7, 2011 the Commission received the
23 State Office of Planning's Statement of No Objections
24 to Petitioner's Motion.

25 On June 9, 2011 the Commission received

1 DPP's Opposition to Intervenor the Friends of
2 Makakilo's Motion to Reject Petitioner's Second
3 Amended Petition.

4 On June 13, 2011 the Commission received the
5 following: Petitioner's Motion to Consolidate for
6 Hearing Purposes:

7 1. Petitioner's Motion for Leave to File Its
8 Second Amended Petition to Cure the Deficiency of Its
9 First Amended Petition.

10 2. Petitioner's Motion for Determination
11 that Its Second Amended Petition to Cure the
12 Deficiency of its First Amended Petition and is Ready
13 for Processing.

14 3. Intervenor Friends of Makakilo's Motion
15 to Close the Case of the Petition Without Further
16 Consideration; or in the Alternative to Reject Their
17 Second Amended Petition as a Cure for the Deficiencies
18 in Their First Petition; and That the Petition
19 Property Be Removed from Redistricting Availability
20 Until 2061, and the Memorandum in Support.

21 And Petitioner's Memorandum in Opposition to
22 Friends of Makakilo's Motion.

23 On June 16, 2011 the Commission received
24 OP's Statement of No Position to the Friends of
25 Makakilo's Motion.

1 Between June 20th and June 29, 2011 the
2 Commission received written correspondence via mail
3 and/or e-mail from approximately 380 individuals or
4 groups whose names are in the file.

5 On June 20, 2011 the Commission received a
6 Notice of Intent to File Petition to Intervene from
7 the Sierra Club.

8 On June 21st, 2011 the Commission received
9 DPP's Statement of No Position on Petitioner's Motion
10 to Consolidate for Hearing Purposes the pending
11 motions.

12 On June 22, 2001 the Commission received
13 Intervenor Friends of Makakilo's Reply Memorandum
14 Responsive to Petitioner's Memorandum in Opposition to
15 the Friends of Makakilo's Motion.

16 On June 27, 2011 the Commission received
17 OP's Statement of No Objection to Petitioner's Motion
18 to Consolidate for Hearing Purposes the Pending
19 Motions.

20 Before we proceed and explain the procedure
21 for today, Mr. Kudo, I wanted to ask if your client is
22 aware of the reimbursement policy and if they're going
23 to abide and adhere to the policy.

24 MR. KUDO: We are aware of it and we agree
25 to pay the expense.

1 CHAIRMAN DEVENS: Thank you very much.
2 Wanted to explain to the audience that the motions
3 that we have on the docket today relate more to a
4 procedural matter where Petitioner is seeking leave to
5 file a Second Amended Complaint to cure a deficiency.
6 We also have Makakilo's motion that basically is
7 opposing that attempt.

8 Therefore, we will open the hearing up to
9 public testimony. But in the first phase of the
10 hearing we wanted to limit the public testimony to
11 address those motions that we need to hear first.
12 'Cause depending on how the Commission votes on those
13 motions, this matter may or may not go any further
14 than today.

15 After we rule on the motions, the Commission
16 votes and hears the arguments, we will then take
17 further public testimony on the matter to give
18 everyone a chance to say what they want to say here
19 today.

20 Are the parties agreeable to proceeding in
21 that matter?

22 MR. KUDO: Yes, we are.

23 MR. YEE: Office of Planning has no
24 objection.

25 CHAIRMAN DEVENS: Dr. Dudley?

1 DR. DUDLEY: I'm afraid I really don't
2 understand the distinction. All right. So at the
3 very beginning we're going to take testimony on the
4 motions that are before the Commission. And then
5 we're going to do what? And then we have the public?
6 I didn't get that.

7 CHAIRMAN DEVENS: We definitely would want
8 to give the public a fair opportunity to give whatever
9 testimony they want in this matter. What I'm trying
10 to do is narrow down the first phase of the hearing to
11 give public testimony as it relates to the pending
12 motions.

13 Because without a decision on the pending
14 motions we don't know if this matter is going to go
15 further or not, depending on how the Commission votes
16 on those particular pending motions.

17 DR. DUDLEY: Okay.

18 CHAIRMAN DEVENS: Does that make sense?

19 DR. DUDLEY: Yes.

20 CHAIRMAN DEVENS: Okay. Depending on how
21 that goes we will open it up for public testimony
22 after that. But it will have a clear picture as to
23 what issues, where the proceedings are going at that
24 point. Is that agreeable to you?

25 DR. DUDLEY: I think so.

1 CHAIRMAN DEVENS: Okay. Thank you. With
2 that, is there any public testimony that wants to
3 address the specific motions are pending? If so we
4 can have you step forward. But let me first ask
5 Senator Hee, I know may have to leave, Senator, did
6 you want to present your testimony since it may be a
7 while before we come back in the afternoon?

8 SENATOR HEE: If I'm permitted.

9 CHAIRMAN DEVENS: Yes, sir.

10 SENATOR HEE: Thank you.

11 MR. DAVIDSON: We have your written
12 testimony.

13 CHAIRMAN DEVENS: Senator Hee, if I can
14 swear you in.

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

18 THE WITNESS: Yes.

19 CHAIRMAN DEVENS: Please state your name and
20 address.

21 THE WITNESS: My name is Clayton Hee,
22 appearing as a member of the Senate, Hawai'i State
23 Capitol, Beretania Street.

24 CHAIRMAN DEVENS: Thank you, sir.

25 SENATOR HEE: Thank you, Mr. Chair. Good

1 morning, Mr. Chairman and members of the Land Use
2 Commission. I'm Clayton Hee. I'm a member of the
3 State Senate. I'm the chairman of the Committee on
4 Judiciary and Labor. I'm before you appearing as a
5 member of the Senate and as the chairman of the
6 Judiciary and Labor.

7 Mr. Chairman, I had my staff send in the
8 testimony to you. I presume that you folks have
9 circulated the testimony. With your kind indulgence I
10 would speak extemporaneously but follow the pattern of
11 the testimony.

12 CHAIRMAN DEVENS: And we will make that part
13 of the record.

14 SENATOR HEE: Okay. I would like to speak
15 on the merits of the amended -- the Second Amended
16 Petition and whether or not the Petitioner has cured
17 the deficiency. It is my view that Second Amended
18 Petition is deficient and defective. It is my view
19 that the Commission, should they agree -- (microphone
20 static) -- excuse me, Mr. Chairman. You make me
21 nervous.

22 (Audience laughter).

23 CHAIRMAN DEVENS: You make me nervous.

24 (Audience laughter).

25 SENATOR HEE: Okay. I would presume that if

1 the Land Use Commission were to agree with my position
2 that you would have no other alternative but to ask
3 the Petitioner to either submit a Third Amended
4 Petition or to deny.

5 The basis of deficiency in my opinion is in
6 reading the Amended Petition, The Second Amended
7 Petition, the presumption is that rail will be built
8 to the extent that Transit-Oriented Development is
9 also a part of the Petition.

10 That is a presumption that in my opinion
11 this Commission cannot...cannot turn away from because
12 of the public statements and the public actions taken
13 prior to this hearing and during this hearing.

14 The first of which, as I'm sure all of you
15 are aware, is the complaint filed by a group of
16 citizens, among whom are former Governor Cayetano and
17 others, that seeks to stop the rail project and will
18 be, I presume, litigated.

19 The second is, and it's in today's paper yet
20 again, is the intent of Bombardier to appeal the
21 decision of the award given to Ansaldo for the
22 construction of the rail cars and the consideration of
23 Sumitomo to do the same. And, finally, the public
24 posturing of the mayor of the City and County of
25 Honolulu who indicated prior to his veto that if the

1 council overrode the veto that he would, in fact, file
2 a lawsuit.

3 Well, in fact the council overrode the veto
4 unanimous -- by a unanimous vote and are fully
5 prepared to litigate this matter before a court of
6 law.

7 These are only three examples of the
8 importance of the assumption and presumption made by
9 the Petitioner that the rail is presumed to be built.
10 There are other states, New Jersey is the latest, of
11 which the largest public works project was stopped by
12 the governor of New Jersey.

13 This is a Project that can be stopped
14 virtually at any time. And it is a project that is my
15 opinion the cost and delays will escalate to the point
16 where people will begin to seriously consider the rise
17 in taxes.

18 For these reasons the Petitioner should have
19 offered a plan that did not include the buildout of
20 the rail. By doing so the Petitioner would have
21 provided this Commission the opportunity and the full
22 knowledge that if, in fact, the rail is not built the
23 Petitioner, based on a different set of assumptions,
24 is prepared to proceed.

25 That's the basis of my discussion on the

1 merits, Mr. Chairman. I'm not -- I fully appreciate
2 and I want to thank Mr. Davidson for explaining to my
3 staff the Petition and the rules before you this
4 morning. So I fully understand that the discussion on
5 prime ag land that is profitable, traffic and other
6 issues are not a part of the discussion on the merits.

7 CHAIRMAN DEVENS: Let me see if there's any
8 questions from the parties, senator.

9 SENATOR HEE: Thank you, Mr. Chair.

10 CHAIRMAN DEVENS: Mr. Kudo, any questions
11 for the senator?

12 MR. KUDO: No questions.

13 CHAIRMAN DEVENS: City?

14 MR. HATA: No questions.

15 CHAIRMAN DEVENS: Mr. Yee?

16 MR. YEE: No questions.

17 CHAIRMAN DEVENS: Doctor?

18 DR. DUDLEY: No.

19 CHAIRMAN DEVENS: Commissioners, any
20 questions for the Senator? There being none, thank
21 you for taking the time to be here today, Senator.

22 SENATOR HEE: Mr. Chairman, just one last
23 point is that if you could direct your executive
24 director that in my discussion with the senate
25 president yesterday it is my intention to file as an

1 intervenor, and that it is my intention that the
2 former Deputy Attorney General who is on staff to the
3 Committee on Judiciary, would represent me as a member
4 of the Senate. Thank you, Mr. Chair.

5 CHAIRMAN DEVENS: Thank you very much,
6 Senator. Are there any other witnesses that want to
7 address the pending motions? Ma'am, if you can raise
8 your right hand we can swear you in.

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

12 THE WITNESS: Yes, I do.

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

15 THE WITNESS: Victoria Cannon, Makakilo 23
16 years.

17 CHAIRMAN DEVENS: Do you have an address?

18 THE WITNESS: 92-102, Oloa Place in
19 Makakilo.

20 CHAIRMAN DEVENS: Thank you.

21 THE WITNESS: I submitted written testimony.
22 I'm assuming you folks received it all.

23 CHAIRMAN DEVENS: We'll make it part of the
24 record.

25 THE WITNESS: Thank you. I'd like to thank

1 you for the opportunity. My testimony -- my in-person
2 testimony has changed, so please forgive me. I too
3 want to base my opposition to both of these motions,
4 the Motion for Determination as well as the Motion for
5 Leave based on No. 1: The litigation regarding the
6 rail. This is obviously not going anywhere any time
7 soon.

8 And No. 2 the fact that what has been
9 submitted to you by the Petitioner in this Second
10 Amended Petition as phasing and all of what they want
11 to do now, is totally not in line with what they are
12 presenting to the public. We're talking two different
13 things here.

14 And you folks really cannot find it in your
15 own Hawai'i State Statutes, Revised Statutes in your
16 Administrative Rules to vote on something that is
17 coming to the public as one thing and being presented
18 to you as another.

19 Therefore you're gonna be voting oranges to
20 apples and not apples to apples. And I as a citizen
21 and a taxpayer don't appreciate that.

22 I do have one other issue I would like to
23 bring up. You can stop me if it's not part of the
24 motion. You folks have an Administrative Rule
25 15-15-77 which is under your decision-making criteria

1 for boundary amendments, paragraph B5. That you are
2 to be aware of the Petitioner's financial status. And
3 as of Tuesday at 5:30 in the morning I got a phone
4 call from Standard & Poors in New York City telling me
5 that D.R. Horton, who trades as DHI on the stock
6 market, has been downgraded once again from a 4 to a
7 3. Now it's a 2. This was as of June 27th, this
8 week's Tuesday morning.

9 There are some very spurious issues going on
10 with their financial status. And I really want you
11 folks to investigate that before you grant them the
12 ability to pursue zoning change which will eventually
13 enable them to simply turn around and sell the land
14 and it will never become Ho'opili by D.R. Horton.
15 Thank you for your time.

16 CHAIRMAN DEVENS: Ma'am, let me see if
17 there's any questions from the parties. Mr. Kudo?

18 MR. KUDO: No questions.

19 CHAIRMAN DEVENS: City?

20 MR. HATA: No questions.

21 CHAIRMAN DEVENS: Mr. Yee?

22 MR. YEE: No questions.

23 DR. DUDLEY: No questions.

24 CHAIRMAN DEVENS: Commissioners? There
25 being none, thank you very much for coming today.

1 THE WITNESS: Thank you very much.

2 CHAIRMAN DEVENS: Any other witnesses that
3 want to address these pending motions? Sir, if we can
4 swear you in.

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

8 THE WITNESS: With all my heart and soul.

9 CHAIRMAN DEVENS: Please state your name and
10 address.

11 THE WITNESS: My name is Stuart Scott. My
12 address is 2801-N2, Lai Road, Honolulu. It's in
13 Palolo Valley. I'm a subsistence farmer, one of the
14 many things I do. I have much comments I'd like to
15 make about the merits of the subdivision but I'll try
16 to limit myself, as you've asked, to the motions.

17 And I'll ask the Commissioners to please
18 find it in your hearts, find it in your wisdom and
19 logic to set aside the developer's motions. I'll make
20 -- since much of what I was going to say has been
21 already said by Senator Hee and Victoria Cannon before
22 me, I won't reiterate the points that they made.

23 But I will add one point of law, point of
24 constitutional law I would say. Let me read what I
25 wrote. The Hawai'i State Constitution in Article 11,

1 Section 3, states, "The state shall conserve and
2 protect agricultural lands, promote diversified
3 agriculture, increase agricultural self-sufficiency
4 and assure the availability of agriculturally suitable
5 lands."

6 So if only on that constitutional grounds I
7 would ask you to set aside the developer's motions.
8 We live in a very uncertain world. Climate change is
9 a very real thing despite some very well-funded
10 attempts to label it as still a question.

11 What the next several decades will produce
12 based upon what we have seen recently, the incredible
13 electricity storms, is just one thing that should wake
14 everyone up to the fact that we are in a changing
15 world.

16 We survive on 85 percent of the food we eat
17 is brought from abroad. We cannot erode further our
18 ability to produce food for our children. That is the
19 ultimate need we have, that and water. I would ask
20 you to please on humanitarian grounds, forward
21 thinking grounds, to set aside the developer's motion.
22 Thank you.

23 CHAIRMAN DEVENS: Let me see if there's any
24 questions from the parties. Mr. Kudo?

25 MR. KUDO: No questions.

1 CHAIRMAN DEVENS: City?

2 MR. HATA: No questions.

3 CHAIRMAN DEVENS: OP?

4 MR. YEE: No questions.

5 CHAIRMAN DEVENS: Dr. Dudley?

6 DR. DUDLEY: No questions.

7 CHAIRMAN DEVENS: Commissioners? There
8 being none thank you very much for your testimony.
9 Any other witnesses relating to the pending motions
10 that want to give testimony? Swear you in, ma'am?

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

14 THE WITNESS: I do.

15 CHAIRMAN DEVENS: Your name and address,
16 please?

17 THE WITNESS: Pearl Johnson, 2404 Kaneali'i
18 Avenue, Honolulu, 96813. I ask the Commission to
19 reject the Petition because there is very grave doubt
20 as to whether D.R. Horton can perform as it states in
21 the position. Ms. Cannon has already said its
22 financial situation is very grave. It has billions of
23 dollars in unsecured debt.

24 Therefore just based on the fact that the
25 Petitioner, D.R. Horton, will not be able to fulfill

1 what it says it will do in the next 10 years, the
2 Commission should reject its position.

3 Furthermore, if the Commission should decide
4 that you need to consider the Petition, then we should
5 take about 50 years to consider whether we really can
6 give up this farmland. Thank you for your attention.

7 CHAIRMAN DEVENS: Thank you, ma'am. Any
8 questions from the parties?

9 MR. KUDO: No questions.

10 MR. HATA: No questions.

11 MR. YEE: No questions.

12 DR. DUDLEY: No questions.

13 CHAIRMAN DEVENS: Commissioners? There
14 being none, thank you very much. Ma'am, if we can
15 swear you in.

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

19 THE WITNESS: Yes, I do.

20 CHAIRMAN DEVENS: Your name and address.

21 THE WITNESS: Candace Fujikane, 1733 Danagho
22 Road, Honolulu, Hawai'i 96822.

23 CHAIRMAN DEVENS: And you just gave our
24 clerk some handouts that you want added to the record?

25 THE WITNESS: Yes, I do.

1 CHAIRMAN DEVENS: Okay. We'll add it to the
2 record.

3 THE WITNESS: So I'm here to say that I find
4 the Second Amended petition deficient. And I urge the
5 Land Use Commission to approve the Friends of
6 Makakilo's Motion to Close the Case Without Further
7 Consideration. I am concerned -- (inaudible,
8 microphone static interruption) -- misleading
9 information on the edible crops that will be taken out
10 of production.

11 The Second Amended Petition does not address
12 the question of edible crops. And that's my concern
13 of protecting -- I think we need to make a distinction
14 between edible crops and nonedible crops.

15 And in the Petitioner's statement they quote
16 the Department of Agriculture quote, commenting that,
17 quote, "The 1,497 acres of leased agricultural land in
18 the Project site is 13.7 percent of the 10,900 acres
19 of farmland reported to be available on O'ahu."

20 And that is a large number. But if you ask
21 of that 10,900 acres of farmland how much of that is
22 actually in edible crops the numbers are actually
23 quite different. And that's not addressed in the
24 Petition.

25 When we make a distinction between those

1 crops, edible crops is actually only 4,800 acres on
2 the Island of O'ahu. And that represents 32 percent
3 of land in edible crop production on O'ahu. Statewide
4 edible crops total only 11,400 acres. The Petition
5 Area represents 13 percent of the statewide edible
6 crop acreage.

7 So I made a pie chart. And in the pie chart
8 you can see the state numbers for vegetables for the
9 entire state, 5,500 acres -- 6 percent of statewide
10 production. And fruit there's 5,900 acres in
11 production which is also 6 percent. The other
12 88 percent is made of seed crops, feed and forage
13 crops, flora culture, coffee and pineapple. When we
14 look at the O'ahu numbers --

15 CHAIRMAN DEVENS: I apologize for
16 interrupting, but you may be going a little further
17 out than the issues we have with the motion.

18 THE WITNESS: Okay.

19 CHAIRMAN DEVENS: But you'll certainly have
20 that opportunity to present that testimony later on.
21 Is that okay?

22 THE WITNESS: Yes, thank you very much.

23 CHAIRMAN DEVENS: We will definitely make
24 what you presented part of the record. Any questions
25 for this witness, Mr. Kudo?

1 MR. KUDO: Can we get copies?

2 CHAIRMAN DEVENS: Sure. I'm sorry.

3 Parties, have any questions for this witness? There
4 being none -- Dr. Dudley.

5 DR. DUDLEY: I do wonder if she could
6 summarize in one sentence or two sentences what the
7 rest of her testimony was going to be? Was she headed
8 somewhere with what she was doing?

9 CHAIRMAN DEVENS: She'll have a chance to
10 come back later. I think she was going beyond the
11 issues that we need to decide first with the pending
12 motions.

13 DR. DUDLEY: Thank you.

14 CHAIRMAN DEVENS: Commissioners, did you
15 have any questions for the witness? There being none,
16 thank you very much.

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

20 THE WITNESS: Yes.

21 CHAIRMAN DEVENS: Name and address.

22 THE WITNESS: My name is Kika Bukoski.
23 Address is 560 North Nimitz Highway, Honolulu, 96817.
24 Good morning, Chair, Vice Chair, members of the
25 Commission. My name's Kika Bukoski. I represent and

1 am testifying on behalf of the Hawai'i Building and
2 Construction Trades Council. The council is comprised
3 of 16 construction trade unions and represents the
4 interests of over 32,000+ members.

5 I realize that the most important issues at
6 hand right now are the motions before you. And I'm
7 assuming that you're going to hear a lot of comments
8 regarding the merits of the Project. And I ask for
9 your consideration and for your -- to focus on the
10 motions at hand. And I guess it's a little hard not
11 to speak to some of the merit.

12 I kind of wanted to address some of the
13 comments that were made initially by Senator Hee.
14 Respectfully I disagree. And I'm hoping that the
15 opponents of this Project are not trying to insert the
16 successes or failures of a separate issue, the rail
17 transit and the TOD, which is not a part of this
18 Petitioner's property.

19 It is, I understand, a component or
20 potential component of the Project. But as I
21 understand it my opinion is that the Project's success
22 or failure is not hinging on the success or failure of
23 the issues raised by Senator Hee.

24 The issue at hand here as far as the
25 Building Trades is concerned, as I mentioned, this

1 represents thousands of jobs in a time of economic
2 straits. Our members need work. Our community needs
3 work. It's also, in my opinion, due process in the
4 spirit of transparency, public debate.

5 I think that this Petition, if the
6 deficiencies were cured in the Second Amended
7 Petition, that is incumbent on all of us to at least
8 allow this Petition to move forward so that the merits
9 of this Project can be discussed in open debate and in
10 transparency.

11 And for those reasons I sincerely ask this
12 body to please vote in the affirmative on the Motions
13 to Accept the Petition with the cured deficiencies and
14 is to please deny the motion to not allow this
15 Petition to move forward.

16 I think if this Petition was not allowed to
17 move forward it would be a travesty to open debate and
18 transparency.

19 This is not the time to discuss the merits.
20 It's the time to accept the Petition if the
21 deficiencies were cured. Thank you very much.

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

24 (MS. TAKEUCHI-APUNA now present)

25 MR. KUDO: No questions.

1 MS. TAKEUCHI-APUNA: No questions.

2 MR. YEE: No questions.

3 DR. DUDLEY: No questions.

4 CHAIRMAN DEVENS: Commissioners? There
5 being none, thank you very much. Any other witnesses?
6 Let me swear you in first, ma'am. Do you swear to
7 tell the truth in this matter?

8 THE WITNESS: I'm an active Quaker and we do
9 not swear on the Bible or off the Bible.

10 TARA HANDS
11 was examined and testified as follows:

12 CHAIRMAN DEVENS: Do you have a name and
13 address that you can give us?

14 THE WITNESS: My name is Tara Hands. And my
15 address is 440 Lewers Street, Honolulu, 96815. I
16 would encourage you to vote against the project that's
17 all the motions' on. I would like to quote something
18 that was in the "Honolulu Weekly."

19 A 17 year-old person named Joshua Scott is
20 active with a group called "I March" -- I Matter
21 March." And he petitioned the reinforcement of
22 Article 11 section 1 of Hawai'i's Constitution which
23 says, "The state must conserve and protect Hawai'i's
24 natural beauty and all natural resources for the
25 benefit of all the people."

1 I would also like to take us back in time to
2 current things. The basic issues for survival is air
3 is No. 1. No. 2 --

4 MR. DAVIDSON: Ma'am, could I interrupt you
5 one second? The Chair has attempted to set ground
6 rules on testimony. Thus far we've been pretty
7 liberal -- you're supposed to be talking to the merits
8 of the motion. And it appears that you're going
9 immediately into the merits -- (loud audience
10 applause) -- we're just trying to keep -- we're trying
11 to enforce some ability here so the Commission can
12 actually deal with the motions. So if you can try to
13 stick to the motions.

14 THE WITNESS: All right. I would just like
15 to say air is first, water is second and third is
16 food.

17 CHAIRMAN DEVENS: Is there any questions for
18 this witness?

19 MR. KUDO: No questions.

20 MS. TAKEUCHI-APUNA: No questions.

21 MR. YEE: No questions.

22 DR. DUDLEY: No questions.

23 CHAIRMAN DEVENS: Commissioners? Thank you
24 very much for your testimony. Let me also clarify for
25 the record that when we ask someone to swear to tell

1 the truth it is not on the Bible. It is to take an
2 oath to swear to tell the truth before this body as a
3 legal oath.

4 So I don't want any misunderstanding that
5 there's any religious overtones involved when we ask
6 for someone to be truthful to take the oath to be
7 truthful before this Commission.

8 With that, any other witnesses that want to
9 testify regarding the motions that are pending?

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

13 THE WITNESS: Yes, I do.

14 CHAIRMAN DEVENS: Give us your name and
15 address, please.

16 THE WITNESS: My name is Donna Wong,
17 executive director of Hawai'i's Thousands Friends.
18 Our address is 25 Malunui Avenue, Suite 102 No. 282
19 Kailua.

20 I'm here to speak on the Petition that the
21 Petitioners say that they have cured all the questions
22 that the Commission had asked before. Hawai'i's
23 Thousand Friends does not believe that your
24 recommendations have been cured.

25 Let's just start off with what they say in

1 their phased development, that Phase 2 will take 11 to
2 20 years. We don't believe that that was the intent
3 of the Commission to just -- first of all, it's beyond
4 10 years. So we don't quite understand where they
5 came up with 11 to 20 years.

6 What that leads us to believe is that the
7 Petitioner will be satisfied -- because they spent a
8 lot of time talking about Phase I in the segments, we
9 believe the Petitioner will be satisfied with all the
10 land in Phase I being reclassified to urban.

11 The rationale is that once Phase I is
12 reclassified to urban the remaining agricultural lands
13 will be surrounded by development. And changing the
14 designation on the last piece of A and B agricultural
15 land should be relatively easy.

16 We go through our testimony, and I won't
17 read it all, that they talk about how their
18 connection, their infrastructure is connected with UH
19 West O'ahu, which will come online sometime for the
20 sewers, sometime for the waterlines, agreements will
21 be made at "sometime". They rely on the non-potable
22 water or BWS creating or constructing a water tank at
23 "sometime".

24 They have been meeting extensively, they
25 say, with DOT yet they have not come, they did not

1 present anything in the Petition to show how the
2 infrastructure would be phased in.

3 So their phasing project continues on like
4 this with these ambiguities. It also goes on to say
5 that phase or segment 1A, where that will be developed
6 first, and then will put up for sale or will go to a
7 subcontract. So that leads us to believe that the
8 developer has probably no intention of developing any
9 of these segments, any of the phases.

10 But once it's got the urban designation,
11 once it goes through the zoning the land is worth a
12 lot more than it is now as on the market as highly
13 productive agricultural land.

14 In closing, the Petitioner did not answer
15 your request, did not give a starting date or ending
16 date for any of their infrastructure, for any of their
17 segments and for their Phase I. So we think it's
18 deficient, hasn't been cured and should be denied.

19 CHAIRMAN DEVENS: Thank you. Parties have
20 any questions for this witness?

21 MR. KUDO: No questions.

22 MS. TAKEUCHI-APUNA: No questions.

23 MR. YEE: No questions.

24 DR. DUDLEY: No questions.

25 CHAIRMAN DEVENS: Commissioners? There

1 being none thank you very much. Any other witnesses
2 on the pending motions? Besides this gentleman, are
3 there any other witnesses that would like to testify
4 on the motions? One, two. Sir, if we can swear you
5 in.

6 JOSHUA SCOTT

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

9 THE WITNESS: I do.

10 CHAIRMAN DEVENS: Give us your name and
11 address, please.

12 THE WITNESS: My name is Joshua Scott, 2801
13 N2 Lai Road, just like my father, 96816. I come
14 before this board today to ask you to deny the
15 developer's motion based on the constitution Article
16 11 Section 3.

17 "The state shall conserve and protect
18 agricultural lands, promote diversified agriculture,
19 increase agricultural self-sufficiency and ensure the
20 availability of agriculturally suitable lands."

21 I assume that this is meant for the future
22 and it should be. Because that's, that's what our
23 entire -- everything is based -- everything we do is,
24 we do is for the future for the success in the future.

25 Developing the lands in question, turning it

1 from agriculture to homes would be bad for the future
2 really because the uncertainty of the world. We have
3 nuclear reactors melting down, radiation, troubles
4 abound, climate changes as well.

5 If anything were to happen such as if there
6 was a disaster at food production on the mainland
7 where we get our food from, 85 percent from inputs, or
8 if, say, any method which we use to import these
9 foods --

10 CHAIRMAN DEVENS: I'm sorry to interrupt,
11 but we need you to address the issues in the pending
12 motions. You will have a chance to address other
13 matters later. But is there anything you want to add
14 to the issues that are being raised in the motions
15 that are pending before us other than what you've
16 already said?

17 THE WITNESS: I guess not. Sorry.

18 CHAIRMAN DEVENS: Let me ask the parties if
19 they have any questions for you.

20 MR. KUDO: No questions.

21 MS. TAKEUCHI-APUNA: No questions.

22 MR. YEE: No questions.

23 DR. DUDLEY: No questions. Commissioners?

24 There being none, thank you very much.

25 xx

1 GLENN SHIGEFUNA

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

4 THE WITNESS: Yes, I do.

5 CHAIRMAN DEVENS: Name and address.

6 THE WITNESS: Glenn Shigefuna, 52-210
7 Kamehameha Highway, Hau'ula, Hawai'i 96717.

8 You know, just like Ms. Wong had just
9 mentioned about the no start date and no end date, it
10 reminds me of the Turtle Bay thing that we're going
11 through right now. Twenty-five years and no progress
12 on that side. You know, I come from a labor family
13 and I understand our families need work. But I also
14 feel that we need to balance it out. We need to make
15 sure that we do is correctly. And that's all I want
16 to say, thank you, at this point.

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

19 MR. KUDO: No questions.

20 MS. TAKEUCHI-APUNA: No questions.

21 MR. YEE: No questions.

22 DR. DUDLEY: No questions.

23 CHAIRMAN DEVENS: Commissioners? There
24 being none, thank you. Next witness.

25 xx

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

4 THE WITNESS: I do.

5 CHAIRMAN DEVENS: Your name and address.

6 THE WITNESS: My name's Rosie Goo. My
7 address is 44-622 Kuonu Place, Kaneohe, Hawai'i. I
8 happen to be a lawyer by profession. So the failure
9 to cure the deficiencies in the Petition bring me here
10 in the first place. But I also happen to be a mother.
11 And recognizing that people need to have jobs and ways
12 to care for their families is important.

13 But for the fact that I think we have to
14 have a long-term vision, I might be sitting here with
15 Mr. Kudo who's a former partner of mine representing
16 D.R. Horton. But really I've chosen a different path
17 in life. And that is to recognize that our children
18 and their children deserve a future where a body like
19 yours takes note of those deficiencies and is not
20 blinded by strategy and lawyering. And just stick to
21 the facts. The Petition is deficient. So I
22 respectfully ask that you deny it. Thank you.

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

25 MR. KUDO: No questions.

1 MS. TAKEUCHI-APUNA: No questions.

2 MR. YEE: No questions.

3 DR. DUDLEY: No questions.

4 CHAIRMAN DEVENS: Commissioners? There
5 being none thank you very much. Any other witnesses?
6 There being no other witnesses -- I'm sorry, one more?
7 Ma'am, if we can swear you in.

8 THE WITNESS: Yes.

9 CHOON JAMES

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

12 THE WITNESS: Yes.

13 CHAIRMAN DEVENS: If we can have your name
14 and address, please.

15 THE WITNESS: Choon James from La'ie,
16 Hawai'i. I host a show called the Country Talk Story.
17 And I've had the fortunate opportunity to meet a lot
18 of people throughout the island. And also have had
19 the fortunate opportunity of people just stop me that
20 I don't know and tell me their feelings about what's
21 going on in land use issues in O'ahu.

22 I testify against this Petition today not
23 because I'm against development --

24 MR. DAVIDSON: Excuse me, ma'am. Maybe if
25 you could come back after we deal with the motions

1 here. We're going to the merits.

2 THE WITNESS: Let me tell you the motion. I
3 think that is very important that we comb through the
4 motion with an uku comb because when we have loose
5 ends in any motion, as some of the testifiers have
6 said, it lays the groundwork for a lot more
7 controversy.

8 And also it lays the groundwork for the
9 citizens not being able to pin down on many issues
10 that are important.

11 And so I hope that you would consider that
12 there has in such a big projects like this there
13 cannot be a lot of loose ends because it just opens up
14 opportunities for so many other uncontrolled
15 circumstances in the future. Thank you very much.

16 CHAIRMAN DEVENS: Thank you. Any questions
17 from the parties for this witness?

18 MR. KUDO: No questions.

19 MS. TAKEUCHI-APUNA: No questions.

20 MR. YEE: No questions.

21 DR. DUDLEY: No questions.

22 CHAIRMAN DEVENS: Commissioners? There
23 being none, thank you.

24 xx

25 xx

1 ANTHONY AALTO

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

4 THE WITNESS: I do.

5 CHAIRMAN DEVENS: Name and address.

6 THE WITNESS: Anthony Aalto, 3946 Lurline
7 Drive, Honolulu. Sir, I'm the secretary of the O'ahu
8 group of the Sierra Club. I'm here to speak on behalf
9 of 5,000 paid up members and supporters we have an
10 O'ahu.

11 The first thing I'd like to say is we filed
12 Notice of Intent to the Petitioner. And so we should
13 have received all of the Petitioner's documents and we
14 have not yet received them. As a result I'm unable to
15 make a detailed presentation.

16 But from the general observation, what we've
17 been able to look at, we consider there are several
18 phasing issues that have not been cured. Number 1 is
19 the issue of water.

20 The last time this issue came up at the
21 hearing the Petitioner talked about the possibility of
22 needing desalinization of their water, that they might
23 be short 5 million to 15 million gallons of water a
24 day. They were supposed to sort that out with the
25 Board of Water Supply.

1 From what we've been able to be ascertain
2 from their Petition that has not been resolved.
3 There's no phasing plan for the introduction of this
4 water.

5 Secondly, there are problems with access to
6 H-1. They talk about having had conversations with
7 the Department of Transportation but we do not see any
8 details on the phasing of how those issues are
9 supposed to be resolved.

10 Third. In their public comments they talk
11 about how they're setting aside land for farmland for
12 those who are going to be living in this community.
13 But we don't see in the documents, from what we've
14 been able to judge, because we haven't heard the
15 detailed submission yet, that those are phased. We
16 don't see them linked to this Petition by the
17 Petitioner.

18 So for those reasons we do not believe that
19 the Petitioner's filing and the deficiencies from the
20 last time they filed have been cured. We respectfully
21 ask you to send them back to get them to do their
22 homework and to come back with a serious plan that
23 seriously cures these deficiencies. Thank you.

24 CHAIRMAN DEVENS: Any questions for this
25 witness?

1 MR. KUDO: No questions.

2 MS. TAKEUCHI-APUNA: No questions.

3 MR. YEE: No questions.

4 DR. DUDLEY: No questions.

5 CHAIRMAN DEVENS: Commissioners? There
6 being none, thank you very much. I believe that's the
7 last witness. What I'd like to do before we take a
8 break is at least take up the first motion. And the
9 first motion I'd like to take up is Petitioner's
10 Motion to Consolidate the three other motions. Has
11 there been any objection or opposition filed to the
12 motion, Mr. Kudo?

13 MR. KUDO: No objection filed.

14 CHAIRMAN DEVENS: Do any of parties have any
15 objection or opposition to the Motion to Consolidate?
16 City?

17 MS. TAKEUCHI-APUNA: No, no objection.

18 CHAIRMAN DEVENS: Mr. Yee?

19 MR. YEE: No objection from OP.

20 CHAIRMAN DEVENS: Dr. Dudley?

21 DR. DUDLEY: I really do have a slight
22 change to it that I would like to see. But I think
23 that it's probably the intent of the Commission to do
24 it as I would think. In the first place, I think that
25 it makes sense to consolidate their motions and our

1 motions.

2 What doesn't make sense would be to take
3 their motion for leave to return, which we are in
4 opposition to, that's it's first part of our motion --
5 and the second part which is the cure of their
6 petition. To put those together would be a problem
7 for us because we have a prob -- we really want to
8 address their motions separately.

9 So what I'm saying, then, is if we were to
10 put the Friends of Makakilo's motions with their
11 motions and to take their first motion first and
12 separately and then their second motion, then we would
13 agree to that.

14 CHAIRMAN DEVENS: Wait. Try that again.

15 (Laughter)

16 DR. DUDLEY: Okay. For us to discuss their
17 motions and our motions together is fine and makes
18 plenty of sense. But we would want to discuss their
19 first motion, which is Leave to Return. We have
20 objection to that as we put in both of our motions.

21 And then we'd like to discuss that first.
22 Then we would like to go to their second motion which
23 is to declare their Petition cured. We would like to
24 handle that in a different way with a whole different
25 set of testimony.

1 And so as long as we were to take their two
2 motions in order and separately, we would agree to the
3 putting together of our motions with their motions.
4 I'm still not clear?

5 CHAIRMAN DEVENS: No, no, I think I
6 understand what you're saying. Right now we just have
7 the Motion to Consolidate so that we can hear all the
8 motions together, which I think makes sense.

9 DR. DUDLEY: Okay.

10 CHAIRMAN DEVENS: And you'll have a chance
11 to argue against each of the motions.

12 DR. DUDLEY: Okay. So we will take their
13 two motions separately, is that correct?

14 CHAIRMAN DEVENS: Well, if they're
15 consolidated we're going to hear everything together.
16 But it probably makes sense, I would expect Mr. Kudo's
17 going to first address the Motion to Leave and in that
18 order. Mr. Kudo, is that the way you had planned to
19 go?

20 MR. KUDO: That's correct. What we wanted
21 to avoid was separate hearings for all the different
22 motions.

23 CHAIRMAN DEVENS: I understand. So we will
24 take everything up. But before we can do that we have
25 to pass on the Motion to Consolidate. I just wanted

1 to make sure that there was no objections. It doesn't
2 sound like you're objecting --

3 DR. DUDLEY: No.

4 CHAIRMAN DEVENS: -- to it. Is that
5 correct?

6 DR. DUDLEY: Yes. No, we are not objecting.
7 It will be fine.

8 CHAIRMAN DEVENS: Commissioners have any
9 comments on this Motion to Consolidate? There being
10 none the Chair's going to move to grant Petitioner's
11 Motion to Consolidate. Is there a second?

12 COMMISSIONER HELLER: Second.

13 CHAIRMAN DEVENS: Any discussion? There
14 being none, call for the vote, Dan.

15 MR. DAVIDSON: Are there any objections by
16 Commissioners to the Chair's Motion to Consolidate?
17 Nine ayes.

18 CHAIRMAN DEVENS: At this point we'll take a
19 short 5-minute break.

20 (Recess was held.)

21 CHAIRMAN DEVENS: Commissioner Judge.

22 COMMISSIONER JUDGE: Thank you, Chair. I'd
23 like to request that we go into an executive session
24 for the Commission to consult with the board's
25 attorney on questions and issues pertaining to the

1 board's powers, duties, privileges, immunities and
2 liabilities.

3 CHAIRMAN DEVENS: All right. Is there a
4 second?

5 COMMISSIONER CONTRADES: Second.

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

8 VOTING: Aye.

9 CHAIRMAN DEVENS: Unanimous. What we'll do
10 we'll leave the room for the exec session and be right
11 back. Thank you.

12 (10:45 recess)

13 CHAIRMAN DEVENS: Before we get into the
14 oral arguments I wanted to introduce and recognize our
15 newest Commissioner Chad McDonald who's sitting here
16 to my left. He was nominated by Governor Abercrombie
17 and will be starting his term as of July 1st. So we
18 welcome him aboard.

19 (Applause)

20 CHAIRMAN DEVENS: Since the Motion to
21 Consolidate was granted and passed upon by the
22 Commission before the break, the motions are
23 consolidated. And we'll now take oral argument on the
24 motions in the order we had talked about earlier.

25 Mr. Kudo, if I may ask, in making your oral

1 argument your first motion is asking for leave to file
2 the second amended Petition. But I also note that an
3 amended pleading was filed on May 18th, 2011 and you
4 refer to it as a second amended Petition.

5 MR. KUDO: Yes.

6 UNIDENTIFIED PUBLIC SPEAKER: Excuse me.
7 Could you repeat that, please, what you said we should
8 do when we're speaking?

9 CHAIRMAN DEVENS: No, I was just talking to,
10 asking a question of Mr. Kudo.

11 UNIDENTIFIED SPEAKER: So sorry.

12 CHAIRMAN DEVENS: No, that's okay. So in
13 your argument, Mr. Kudo, if you could just address the
14 issue. I thought that if you filed for leave you need
15 to get the leave first and then you would come in and
16 file the Second Amended Petition. But it appears that
17 the Second Amended Petition has already been filed
18 before leave was granted. And I just want to make
19 sure we get the procedural --

20 MR. KUDO: Correct.

21 CHAIRMAN DEVENS: -- process correct
22 whichever way the Commission decides on this, to avoid
23 any kind of issue on something that seems more
24 procedural than substantive. If that makes sense.
25 Does that make sense as to what I'm asking?

1 MR. KUDO: Yes. Yes.

2 CHAIRMAN DEVENS: Anyway, let's go ahead
3 with the oral arguments. Mr. Kudo.

4 MR. KUDO: Before I start the oral arguments
5 on the motions I just wanted to make one comment. One
6 of the speakers from Sierra Club mentioned that they
7 had not received yet the papers, the record on this
8 particular docket.

9 We are preparing those materials. As you
10 can imagine after seven months of hearings we have
11 quite a bit to copy. We're putting it on a CD disc
12 for them. We received the notice last week. So we
13 are trying to get that to them in time for their
14 hearing on the actual Petition to Intervene, which
15 hasn't even been scheduled yet. So we are doing that.

16 CHAIRMAN DEVENS: Thank you.

17 MR. KUDO: We are asking the Commission this
18 morning for leave or permission to file the Second
19 Amended Petition. The Rules 15-15-43 provide that we
20 must first ask the Commission for permission to do so
21 because there's a deadline for filing amended
22 petitions and that deadline has passed. We believe
23 that there's good cause for the ability to file the
24 second Petition.

25 By way of a little short history on this and

1 why we're here today for those Commissioners who are
2 new to the Commission: We filed our Petition in this
3 particular docket in 2007, almost four years ago. We
4 had an EIS process that went on for about seven or
5 eight months and then finally hearings on this
6 particular docket began two years later in 2009.

7 We went through approximately seven months,
8 six or seven months of hearings on the Petitioner's
9 case before a motion was filed to find the Petition to
10 be defective. And this Commission voted that the
11 Petition was defective in September of 2009 because we
12 had not provide a phasing plan, and also a map that
13 clearly outlined how we were going to proceed with the
14 development in terms of construction.

15 Since 2009 we have worked with the Office of
16 Planning and other government agencies to make sure,
17 as well as the Land Use Commission staff, to make sure
18 that whatever we filed before you today was going to
19 address the concerns of the Commission.

20 We looked at some of the filings that were
21 filed in the Koa Ridge application, which was very
22 similar in terms of the phasing plan and the phasing
23 map, and we tried to emulate what was provided in the
24 Koa Ridge Petition to satisfy the Commission.

25 In addition, we did have several meetings

1 with the Office of Planning to make sure they were
2 also satisfied with the type of information that we
3 were providing.

4 The information that we're providing doesn't
5 change the Project. All it is is as per request of
6 the Commission it provides more details about what
7 specifically we're going to be doing from a
8 construction standpoint, in which phase, which block
9 we're going to be developing, where the
10 infrastructure's going, when we're going to do it, all
11 that kind of things with approximate timetables.

12 Because as you know in the land use process
13 because we have multiple permits to go through over
14 the years -- remember we filed this Petition in 2007,
15 we still have to go through permits and zoning with
16 the county.

17 So trying to predict when we'll be actually
18 out of the land use permitting process can be a bit
19 challenging sometimes. So in terms of planning and
20 providing for construction timetables we have to
21 provide general guidelines of the timetables that we
22 expect to be in the ground.

23 So the phasing plan attempts to do that, but
24 it's with the caveat that we really can't control the
25 future and we're trying our very best to move forward

1 as quickly as we can to obtain all the permits and
2 approvals that we need to from the various
3 governmental bodies.

4 Therefore we believe that there is good
5 cause, which is a requirement of 15-15-43, to file our
6 Second Amended Petition. And we ask this Commission
7 to grant us the permission to file the Second Amended
8 Petition.

9 We did file the Second Amended Petition.
10 And we didn't want to be presumptuous but we felt that
11 for consolidation purposes and for efficiency purposes
12 that if this Commission were to grant the permission,
13 that the Second Amended Petition would be before you
14 and we can proceed forward in one hearing. But it was
15 not meant to be presumptuous in terms of our
16 expectation of this Commission.

17 We are respectfully asking this Commission
18 to consider the Leave to File the Amended Petition and
19 to consider our Second Amended Petition and the
20 exhibits that we have filed to address the issues that
21 the Commission wanted to see in 2009.

22 CHAIRMAN DEVENS: Thank you, Mr. Kudo. If I
23 can ask you one question. Do you see any procedural
24 defect that could be raised later by the fact that the
25 Motion to Leave wasn't granted yet, yet you've already

1 filed the Second Amended Petition?

2 MR. KUDO: No. We thought about that
3 because we felt that if this Commission felt that we
4 did not have permission to file that, then the Second
5 Amended Petition would be terminated or withdrawn by
6 us. So the effect is that it wouldn't be before you.

7 We just did it because we thought it was the
8 most efficient way to proceed forward. And we didn't
9 want to come back for another hearing with this
10 Commission to consider the Petition at another time.

11 CHAIRMAN DEVENS: So you don't see it
12 raising any kind of procedural --

13 MR. KUDO: -- we don't see it raising any,
14 no.

15 CHAIRMAN DEVENS: All right. Thank you.
16 City?

17 MS. TAKEUCHI-APUNA: The City takes no
18 position on Petitioner's motion.

19 CHAIRMAN DEVENS: Thank you. Mr. Yee.

20 MR. YEE: If I understand this correctly
21 we're addressing all three motions at this time?

22 CHAIRMAN DEVENS: Actually we just started
23 with the first motion.

24 MR. YEE: Just the first motion.

25 CHAIRMAN DEVENS: Yes. They're consolidated

1 in the sense we're going to hear all of 'em today.

2 MR. YEE: Okay. With respect to the Motion
3 to Amend, the Office of Planning has -- Leave to File
4 the Second Amended Petition -- the Office of Planning
5 has no objection.

6 CHAIRMAN DEVENS: Dr. Dudley.

7 DR. DUDLEY: Okay. Procedurally as I
8 understand that would be my time to make my objections
9 to what they said, is that correct?

10 CHAIRMAN DEVENS: You can add what you want
11 to in terms of argument. If you're opposing the
12 motion or supporting the motion whatever arguments you
13 want to make at this time.

14 DR. DUDLEY: Okay. Mr. Chairman, the
15 Friends of Makakilo opposes the Motion for Leave to
16 Return. First of all, I need to point out that even
17 though the Commission acted on my motion back in 2009
18 to declare the Petition deficient, one must realize
19 that my motion, all but a few lines of my motion were
20 really caution saying don't declare the Petition
21 deficient, there are problems here. And these
22 problems need to be cleared before the Petition is
23 declared deficient.

24 Unfortunately, however, the Commission acted
25 contrary to the rules that I warned about in my

1 Petition. And the Commission could have waived the
2 rules, as I said that they really needed to waive,
3 before doing anything. However, if you go back and
4 check the transcript there was no waiving of the
5 rules. And the Commission just went ahead and acted.

6 So I think what we've got now is the
7 Commission acted contrary to its rules. And I'll go
8 through those rules in a little bit here. But now
9 we're in a situation where if we take the Petitioner
10 coming back and we accept his return, then we're going
11 to be going through the same problems with the rules
12 in declaring the Petition cured.

13 And I think the Commission is at a point
14 right now where there have been actions by the
15 Commission that open the case to appeal. And we are
16 about to move into actions again that further
17 exacerbate this situation.

18 And so that is why The Friends of Makakilo
19 recommends that the Commission just simply close the
20 case, lay aside the case or decline to reopen the
21 docket, whatever the terminology is that one wants to
22 use.

23 I'd like to point out the problems that were
24 encountered in the past and which will be encountered
25 in the future if we move ahead today. The first

1 problem is that the schedule and the map for
2 incremental phasing are part of the Petition. And
3 they needed to be presented as part of the Petition
4 when the Petition was filed. Now, the Petition was
5 filed on September the 26, 2008. Okay.

6 The requirement for the schedule and map
7 occurs in subsection C-19 of the Hawaii Administrative
8 Rules and in Section 15-15-50 -- of Section 15-15-50.
9 It's titled "Form and Contents of the Petition." It
10 was already too late for them to be added by any means
11 when the Commission declared the Petition to be
12 deficient in August of 2009.

13 So what I'm saying is, you know, they had
14 their chance before the hearing started. Once the
15 hearing started it was really too late. They had to
16 be filed, the cured Petition had to be filed when the
17 Petition was filed back in 2008.

18 Now, then there's a second part, a second
19 problem. The second problem is that amending the
20 Petition to add the schedule and map needed to be done
21 45 days prior to the first hearing. And that's
22 Section 15-15-43 Amended Pleadings.

23 In the amended pleadings it says very
24 clearly, "All pleadings may be amended at any time
25 until 45 days prior to the hearing date set pursuant

1 to Section 15-15-51."

2 Later on it says, "All parties shall have
3 the opportunity to provide any further response to
4 address the amended pleading up to 30 days prior to
5 the hearing date set pursuant to 15-15-51. No amended
6 pleadings shall be filed after 45 days prior to the
7 date of the hearing. And no responses shall be
8 accepted less than 30 days prior to the hearing date
9 unless," unless "a stipulation is reached by all
10 parties or unless good cause is shown."

11 Now the thing is that, you know, it was
12 contrary to the rules for the Commission to declare
13 this Petition deficient because it should have been
14 done 45 days before the hearing.

15 Now, the possibilities for how they get
16 around that: We could have -- we could have had a
17 stipulation among all the parties, but none of the
18 parties was asked for a stipulation.

19 The other thing is good cause needed to be
20 shown. Now, the question about good cause -- let's go
21 into that for a couple minutes. Let's be really clear
22 about what we're talking about. Good cause. What
23 good cause needs to be shown?

24 Well, we are talking about curing a
25 deficiency. That deficiency is a lack of a required

1 phased development plan and phasing map. What's the
2 reason that we're missing the phasing development plan
3 and the map? The reason is because the Petitioner
4 refused to give that to us.

5 And let me go back and take a look. The
6 Petitioner was asked again and again. On January 24,
7 2007 the Petitioner filed its Petition with the Land
8 Use Commission along with an Environmental Impact
9 Statement Preparation Notice.

10 On February 22nd, the Land Use Commission
11 Executive Director Anthony Ching wrote Mr. Benjamin
12 Kudo commenting on many things that needed to be
13 addressed in the EIS, including the need for a
14 schedule for development of phasing increments and a
15 map pursuant to 15-15-50(c). So that's the first time
16 he was asked. This is back in February of 2007.

17 On March 27, 2008 the Land Use Commission
18 Interim Executive Officer Rodney Maile in comments to
19 Mr. Vincent Shigekuni on the Draft EIS, noted that the
20 Final EIS needed to include a development timetable
21 and a map of incremental phasing.

22 And on April 8th, 2008 the Office of
23 Planning wrote to Mr. Vincent Shigekuni requesting the
24 same. That's the third time they were asked. No
25 timetable or phasing map was included in the Final

1 EIS, however.

2 The Office of Planning noted the lack of
3 development schedule in its oral comments to the
4 Commission on the proposed FEIS. The Office of
5 Planning brought the topic up again in a meeting with
6 the Petitioner and believed the Petitioner had agreed
7 to submit an incremental development schedule and
8 plan. OP states, "The Petitioner believed otherwise."

9 On October 28, 2008 counsel for the Office
10 of Planning repeated the request and expressed his
11 opinion that an incremental development schedule and
12 plan was necessary for a complete Petition. The
13 Petitioner replied with a polite refusal.

14 On December the 16th, we're up to the sixth
15 time they were asked, the Office of Planning filed a
16 Motion to Declare the Petition Deficient. Pretty
17 serious. The Petitioner asked the Office of Planning
18 to withdraw its motion, however, and promised to bring
19 the Office of Planning an explanation and a phasing
20 and the map.

21 The Office of Planning withdrew its motion.
22 But when the phasing material arrived the Office of
23 Planning found it to be minimal and deemed it to be
24 unsatisfactory.

25 On December the 24th Imanaka Kudo and

1 Fujimoto, attorneys for the developer, filed D.R.
2 Horton Homes' response to the Office of Planning's
3 Motion to Declare the Petition deficient, a 61-page
4 document. This response argued that the Petitioner
5 was not required to submit the schedule and map. Its
6 broad reasoning I explained last time in 2009.

7 On April 16, 2009 the Commission voted to
8 defer the hearings. Remember when we stopped the
9 hearings for a couple of days to give the Petitioner
10 time to regroup and to come back?

11 At that time Chair Kanuha noted, "The
12 question has been raised in my mind as whether or not
13 this should more appropriately be an incremental
14 Petition." He asked the Petitioner to give some
15 consideration during the regrouping period. Nothing
16 came of it.

17 On June 5th, the closing date for the
18 Petitioner's direct, several people asked about a
19 schedule of phasing. Commissioner Wong brought up
20 15-15-19. Mr. Benjamin Kudo answered him giving great
21 detail about the historical background for the site.

22 Mr. Kudo then asked Mr. Mike Jones to tell
23 how incremental districting of the Project would
24 affect his ability to proceed. Mr. Jones spoke of the
25 delay for much needed housing and jobs and the costs

1 of those delays, and the need to be flexible for
2 transit. This was the end of the direct questioning.

3 Mr. Bryan Yee asked Mr. Jones, "Do you
4 remember submitting a development schedule setting
5 what's going to happen in the first five years?"
6 Mr. Jones answered, "Yes, I think it's part of my
7 slide presentation actually." Mr. Yee asked, "That's
8 as detailed as you have with respect to a development
9 schedule, correct?"

10 Mr. Jones answered, "Yes." Later Mr. Yee
11 asked, "Do you know where the first 650 homes will be
12 built?"

13 Mr. Jones answered, "No, not at this time."
14 Mr. Yee said, "Bruce Plasch proposed that the land be
15 developed gradually."

16 MR. KUDO: Excuse me, Mr. Chairman.

17 CHAIRMAN DEVENS: Yes.

18 MR. KUDO: Can the Movant summarize where is
19 he going? He's reading from the transcript. What's
20 the argument?

21 CHAIRMAN DEVENS: Yes, actually, Dr. Dudley
22 I was going to interject. We're aware of the record.
23 The record is the record, part of this proceeding.

24 DR. DUDLEY: Very good. What I'm trying to
25 say, then, is there is no good cause. There was no

1 good cause. The question is what is the cause all
2 about? The cause is the reason for why we don't have
3 a plan, a phased development plan, why that was never
4 given. It was never given -- we don't have it because
5 they refused to give it. Fourteen times they refused
6 to give it.

7 Now we're supposed to say there's good cause
8 here for them to be given the chance to go back and
9 cure the Petition. There is no good cause. You know?
10 This is, this is what happened. This is them saying:
11 We won't give it.

12 And now we're supposed to recognize that as
13 good cause. Good cause cannot lie with anything else.
14 They're trying to transfer good cause to the fact that
15 they have good cause to come back because they need to
16 come back now.

17 We sent them off -- you sent them off to
18 cure and they have good cause because they need to
19 come back with a cure. That's not the good cause.
20 Good cause needs to lie with the fact that they
21 refused to give us the Petition and they don't have
22 good cause.

23 Now, what I'm trying to say, then, is they
24 needed either a stipulation from us or good cause for
25 the Commission to allow them to go and do the cure.

1 CHAIRMAN DEVENS: There's no question
2 there's no stipulation. The only argument I hear
3 Mr. Kudo making is for good cause. And I think you've
4 addressed that.

5 DR. DUDLEY: Okay. So what I'm trying to
6 say then is we're going to run into this same problem
7 now as we come back with the cure. The fact is that
8 this whole thing should have been done before
9 September 26, 2007 when they filed. And it certainly
10 should have been done 45 days beforehand.

11 It's true that the Commission could waive
12 the rules and allow them to come back with the cure.
13 But you're going to have to waive the rules ahead of
14 time or else you're --

15 CHAIRMAN DEVENS: I'm not understanding them
16 to ask us to waive the rules. Is that right,
17 Mr. Kudo?

18 MR. KUDO: We're not asking the Commission
19 to waive the rules.

20 CHAIRMAN DEVENS: Then we don't need to
21 address that argument.

22 DR. DUDLEY: All right. Then what I'm
23 basically saying is I think by your actions if you
24 move ahead rather than just closing the case and
25 walking away, I think you're opening the case to

1 appeal.

2 And I think that it really is -- you know,
3 it really is a waste of your time and the taxpayers'
4 money to continue on with the case at the present time
5 because of the problems that have been caused in the
6 past. Thank you.

7 CHAIRMAN DEVENS: Commissioners, any
8 questions for the parties?

9 MR. KUDO: May I respond?

10 CHAIRMAN DEVENS: Mr. Kudo.

11 MR. KUDO: Just a short response. I think
12 Mr. Dudley is really mixing up the good cause issue.
13 The Commission Rules provides that a party has the
14 ability to cure defects. This Commission in 2009
15 issued an order that states specifically that if --
16 directing us to cure --

17 CHAIRMAN DEVENS: We get that. We
18 understand.

19 MR. KUDO: Yeah.

20 CHAIRMAN DEVENS: But we do want to give him
21 a chance to make the arguments as he sees fit.
22 Commissioners have any questions for the parties? Any
23 other response? City, OP?

24 MR. YEE: Nothing further.

25 CHAIRMAN DEVENS: The Chair's going to move

1 on this motion. Move to Grant the Motion for Leave to
2 File Second Amended Petition to Cure the Deficiency of
3 its First Amended Petition based on a finding of good
4 cause which I believe is a fact that the LUC deemed
5 the Petition to be proper and accepted it for filing
6 in the first place. And after subsequent arguments
7 the motions were filed.

8 There was a ruling, finding that it was
9 deficient. The LUC did not shut the Petitioner off
10 from coming back to try and cure the problem that the
11 LUC found subsequently. I understand that the rule as
12 it reads also requires the approval of the Chair. The
13 Chair's approving this motion. And that is the motion
14 that I make at this time. Is there a second?

15 COMMISSIONER CHOCK: Second.

16 CHAIRMAN DEVENS: Any discussion? There
17 being none, call for the vote. And let me also note
18 for the motion that based on the LUC's subsequent
19 ruling finding that was a deficiency, it placed the
20 Petitioner in a time constraint that was clearly
21 beyond its control. That's part of the good cause for
22 this motion.

23 MR. DAVIDSON: Motion to Approve Leave to
24 File Second Amended Petition.

25 Commissioner Chock?

1 COMMISSIONER CHOCK: Yes.
2 MR. DAVIDSON: Commissioner Matsumura?
3 COMMISSIONER MATSUMURA: Aye.
4 MR. DAVIDSON: Commissioner Teves?
5 COMMISSIONER TEVES: Yes.
6 MR. DAVIDSON: Commissioner Lezy?
7 COMMISSIONER LEZY: Yes.
8 MR. DAVIDSON: Commissioner Contrades?
9 COMMISSIONER CONTRADES: Yes.
10 MR. DAVIDSON: Commissioner Makua?
11 COMMISSIONER MAKUA: Aye.
12 MR. DAVIDSON: Commissioner Heller?
13 COMMISSIONER HELLER: Yes.
14 MR. DAVIDSON: Commissioner Judge?
15 COMMISSIONER JUDGE: Yes.
16 MR. DAVIDSON: Chair Devens?
17 CHAIRMAN DEVENS: Yes.
18 MR. DAVIDSON: Motion passes 9-0, Chair.
19 CHAIRMAN DEVENS: Second motion, take
20 argument on, Mr. Kudo. Let me just explain for the
21 audience. The fact that the Motion for Leave was
22 granted does not necessarily mean that any deficiency
23 has been cured. That's the motion that we will now
24 have addressed by the Petitioner and the parties.
25 MR. KUDO: We have moved and requested the

1 Commission to find that the additional information
2 that we have submitted, which is Petitioner's Exhibit
3 No. 20 and 21, addresses and responds to the
4 Commission's request for further details on the
5 Project.

6 That information, which consists of the
7 Ho'opili phased development plan marked as
8 Petitioner's Exhibit No. 20, and the map for
9 development phasing for Ho'opili, which is marked as
10 Petitioner's Exhibit 21, were filed and attached to
11 our Second Amended Petition.

12 As again the information that we have
13 provided provides more detailed information as to the
14 development timetable for the Ho'opili Project, in
15 particular the construction and phasing of the Project
16 both with regard to then residential component,
17 commercial components and the infrastructure that is
18 part of this particular Project.

19 We looked and examined, as I said before,
20 the Koa Ridge filings which were very similar. And we
21 tried to follow the details, the level of details that
22 was included in their filings because we wanted to be
23 responsive to the Commission. And we believe that we
24 have.

25 In addition, we enclosed a map which

1 outlines the phasing of the construction as the
2 Project proceeds forward. Based on that, we believe
3 that our Second Amended Petition cures the defects
4 that were found by this Commission in 2009 and we'd
5 like to proceed forward to the hearings.

6 I'm sure that a lot of the people that are
7 here today really go to the case in chief. And I
8 think those issues will never be aired if we are never
9 able to get to the hearing. So we are anxious to get
10 forward and have an opportunity for people to give
11 their point of view on the Project and the issues that
12 concern them so that we can address them. Thank you.

13 CHAIRMAN DEVENS: Mr. Kudo, curing the
14 deficiency you look at this issue as curing a
15 procedural deficiency, is that correct?

16 MR. KUDO: Yes.

17 CHAIRMAN DEVENS: Would there be any effect
18 on the timing if you were to refile the Second Amended
19 Petition? How would that affect the timing of the
20 proceedings?

21 MR. KUDO: Well, it would delay it for a few
22 months because it depends on the scheduling because
23 you'd have to have a separate hearing on that
24 particular matter. That's what we were really trying
25 to avoid was another hearing on the issue, but we can

1 do it, but it would...

2 CHAIRMAN DEVENS: I'm not asking you -- I'm
3 just try to satisfy myself that there's no procedural
4 issues that I'm overlooking in terms of the Motion for
5 Leave has now been granted.

6 The Second Amended Petition is filed. I'm
7 not sure it makes a difference now with that. But I
8 just want to know if you had any concerns about that.

9 MR. KUDO: I have no concerns about that.

10 CHAIRMAN DEVENS: Okay. City.

11 MS. TAKEUCHI-APUNA: The City takes no
12 position on the motion.

13 CHAIRMAN DEVENS: Mr. Yee.

14 MR. YEE: The Office of Planning has no
15 objection to the determination of the completeness of
16 in the matter. As you know the Office of Planning
17 previously objected on the basis that there was no
18 incremental development plan. That incremental
19 development plan has not been -- or is now part of
20 their Second Amended Petition. Obviously we reserve
21 the right to analyze, critique and respond to that
22 incremental development plan. But we will do so in
23 the context of the decision-making process in this
24 case. Thank you.

25 CHAIRMAN DEVENS: Mr. Kudo, with the filing

1 you're not asking the Commission to pass on the
2 credibility or to accept it in any way, is that right?

3 MR. KUDO: Yes. We're not asking the
4 Commission to look at it substantive. It's just a
5 procedural issue.

6 CHAIRMAN DEVENS: Dr. Dudley, do you have
7 any argument?

8 DR. DUDLEY: I don't think I'm really clear
9 on what's going on here.

10 CHAIRMAN DEVENS: The only thing going on
11 is that they're trying to cure a procedural deficiency
12 which I was trying to clarify and Mr. Kudo has
13 clarified, that the way we're looking at it is correct
14 in terms of they're not asking us to accept the
15 substance of the plans. That will be subject to a lot
16 more hearings and dissection depending on how this
17 motion is ruled upon.

18 But they're merely meeting a procedural
19 requirement that was not met previously. That's the
20 issue that we're faced with at this point. We're not
21 really arguing the substance of whether or not it's a
22 good project, bad project or somewhere in between.
23 We're not at that point yet.

24 DR. DUDLEY: Okay. But we are arguing
25 whether the material that was submitted, the phased

1 development plan and the phasing map, whether or not
2 the substance of that is adequate, right?

3 CHAIRMAN DEVENS: Not necessarily. And I
4 don't want to speak for Mr. Kudo. He can answer
5 himself. But from what I understand they are merely
6 trying to satisfy a procedural requirement that's
7 mandated under the rules with the subsequent filing.
8 Whether we agree with the merits of the substance of
9 that is to be heard on another day, assuming they get
10 by this motion today.

11 And, Mr. Kudo, is that a correct
12 understanding?

13 MR. KUDO: Yes. What we're trying to do is
14 submit a level of detail of information that we
15 believe was requested by the Commission. What the
16 Commission is doing today is saying: Okay. You've
17 submitted the level of detail of information that we
18 wanted but reserving the right to look at and examine
19 the details of that information during the hearings.

20 DR. DUDLEY: Okay. And I disagree entirely
21 that that's the way we should be going about it.

22 CHAIRMAN DEVENS: And you can make your
23 argument. Go ahead.

24 DR. DUDLEY: Okay. I think that the cure
25 has come back to us. We need to look and see does

1 this satisfy us or does it not, you know. So with
2 your indulgence I would like to move on and really
3 discuss this thing in detail.

4 CHAIRMAN DEVENS: As long as you keep it
5 within the parameters of the issues being raised in
6 this motion because we did still have your motion as
7 well.

8 DR. DUDLEY: Okay. Mr. Chairman, I think
9 you have an idea where I'm going with this and that I
10 would like to really get into the substance of what
11 he's saying. Would you prefer that I wait until my
12 motion comes up and then I would lay that out?

13 CHAIRMAN DEVENS: Well, I don't want to tell
14 you how to argue your case. You argue your case the
15 way you see fit. But I also want to keep it confined
16 to the issue being raised with this particular motion.
17 You will have a chance to argue the other issues that
18 you raise in your own motion right after this. That
19 would also depend on how this motion turns out.

20 DR. DUDLEY: Okay. So this motion --
21 okay -- I would prefer to give my material now since
22 we have voted to handle these things together. I
23 would like to answer the question of whether or not we
24 see -- I'd like to point out the problems that I see
25 with the cure that they have provided. That means

1 going into the substance. So with your indulgence I'd
2 like to do that now.

3 CHAIRMAN DEVENS: Okay, we'll hear you.

4 DR. DUDLEY: Okay. I did pass out some
5 things here. Does everybody have those? And if you
6 could look at those with me, please. Okay. The first
7 of those things is the original master plan. This is
8 Page1. Okay. And Page2 is their development phasing
9 map that they have given us. Page 3 is the revised
10 Ho'opili plan unveiled, which is the material they
11 gave to the newspaper. So this is the map from the
12 newspaper. And Page4 is the 'Ewa Development Plan and
13 the map that they have for the 'Ewa Development Plan.

14 The first problem with the material which
15 they have given us is that their phased development
16 plan does not really go along with their map. If we
17 were to look at the first page there as just an
18 example, the dark brown colors, you see in the center
19 there some dark brown.

20 You see up to the left some dark brown, and
21 then up to the right of that some more dark brown.
22 Those are the high-density buildings.

23 Now, if you look at the phasing map, which
24 is the second one, you'll see that there's an overlay
25 there. And underneath that is the original map. And

1 what you find is that you've got the same dark brown
2 buildings are there although they're not dark brown,
3 they haven't been moved at all.

4 So the second map, which is their
5 development phasing map, takes into consideration the
6 rail because the rail is there. You can see it with
7 the UH West O'ahu station and the brown line going
8 across and so forth. Okay -- the Ho'opili station
9 over there. Their phased development plan talks about
10 Transit-Oriented Developments. Where are the
11 Transit-Oriented Developments here?

12 The Transit-Oriented Developments should be
13 portrayed as circles, concentric circles with smaller
14 circle inside and larger circle on the outside. And
15 that's where the high development would go. Okay?

16 Instead, what they have done they don't have
17 any Transit-Oriented Developments on this map. They
18 have the buildings and the underneath part in the
19 wrong place. Those brown buildings should be around
20 the train station because that's what a
21 Transit-Oriented Development is all about.

22 So what I'm saying is that there's no
23 coordination between what they are telling us in the
24 phased development plan and their phasing map and
25 between their phasing map and their original plan for

1 the Project.

2 Now what we really need from them would be
3 for them to straighten things out, you know. We don't
4 need a map that shows buildings out of place and no
5 Transit-Oriented Development here. What we need is
6 two maps. We need a map that shows the original plan.
7 And then we need a map that shows a plan with circles
8 around the buildings and the building's mood so that
9 it fits the plan.

10 So basically what we're trying to say, then,
11 is, you know, they haven't taken the time to separate
12 things out. They haven't given us a plan which is
13 really clear. What they've given us is a plan that's
14 just all a jumble where everything is just kind of put
15 together and you figure it out for yourselves and
16 maybe this and maybe that.

17 I'd like to say then the second point moving
18 on to the third page here. They don't say -- what
19 they told the public and what they have on Page 2
20 disagree. What they have told to the public is
21 they're all of a sudden going to have farms on this
22 property.

23 The farms are going to be 16 percent of the
24 property. That's a substantial change. They have
25 changed the focus and the intent of this thing to

1 where it's now going to have farms.

2 No mention of that whatsoever is made in any
3 of the paperwork they have given us. They went to the
4 public on exactly the same day that they turned the
5 material in to you and told the public they were going
6 to do one thing. And they instead turned in to you
7 something that didn't reflect that whatsoever.

8 Let me point out talking about the -- if you
9 go to the first map, take a look at it and take a look
10 at the green areas on the first map. Now, if you go
11 to the legend there it says "open space and buffers".
12 All right? That's because these green areas right now
13 are not farmed. And the reason they're not farmed is
14 those are the gullies. Those are the gulches. Those
15 are the hillsides. And they're not currently farmed.
16 So they were planning on leaving those as open space.

17 If you go to the other map, the map that was
18 given to the public, this is on Page 3, you see
19 exactly the same open spaces. Some of them have been
20 changed a little bit to show a lighter green and a
21 darker green. But when we go and take a look at the
22 legend the legend says, "These are now the commercial
23 farms."

24 Where are the commercial farms going?
25 They're going to into the land in which commercial

1 farmers today don't farm because it's not worth it.
2 Okay? You know what they're doing, they're converting
3 the junk land to the commercial farms.

4 That's what they -- and so they're telling
5 the public one thing but what we get is just not
6 there. There's none of that in anything that we have
7 received. They say they're going to do a 5 megawatt
8 station, a power station. There's nothing in what
9 they have given us either in the phased development
10 plan or in the map, that says how is that power going
11 to come into the Project? They tell us about the
12 pipes coming in for water. They tell us about the
13 wastewater system.

14 Why don't they tell us about the
15 electricity? That goes in pipes underground too, you
16 know. It's something that is lacking from this map.
17 There are definitely things that are lacking here.

18 The next thing that I'd like to point out is
19 that this map is contrary to the 'Ewa Development
20 Plan. Now, everybody knows the 'Ewa Development Plan,
21 that's nothin'. But the 'Ewa Development Plan is the
22 law. It was passed by ordinance and it is the law.
23 And it's -- the 'Ewa Development Plan from 1997 is the
24 one that's still in effect.

25 And if we go to that and you take a look

1 here at Page 4 what you find is the 'Ewa Development
2 Plan has a different idea entirely about what they're
3 going to do. You know? They've got phased
4 development also. And if you take a look at Page 4 in
5 the Ho'opili area you'll see that the dark yellow
6 sections are for the first years of phasing. They
7 have numbered two sections over the second phasing
8 years. The numbered three sections are for the third
9 phasing years. All right. So it doesn't correspond
10 with the 'Ewa Development Plan.

11 CHAIRMAN DEVENS: Dr. Dudley, I apologize
12 for interpreting.

13 DR. DUDLEY: Yes.

14 CHAIRMAN DEVENS: But we're running up on
15 the lunch hour. We wanted to get to your motion as
16 well, have them decided, this motion as well as your
17 motion before we go to lunch. Can you summarize here?

18 DR. DUDLEY: Okay. Let me try to wrap up
19 real quickly then. We have a problem with water
20 desalinization. Their own testifier says they're
21 going to be running out of water.

22 We don't have any pipes coming from anywhere
23 showing us where are they going to get the water after
24 they run out of water and we go to the desalination
25 plant? It's lacking.

1 We find in the stuff they gave to the press,
2 they're talking about Energy Star development.
3 They're talking about making the places to save
4 energy, water, natural resources, all kinds of things
5 they're going to do. This group was really interested
6 in the LEED program. There's nothing of that in the
7 phased development plan.

8 It comes to traffic. And traffic they do
9 say something about traffic. What they say is we're
10 going to agree with the Department of Transportation
11 sometime after we're through with you guys. Okay? I
12 don't like that. I think let's get traffic down now.
13 Traffic is one of our major problems.

14 I think if we take a look at -- if we go
15 back and just ask ourselves: Why is it that 14 times
16 they refused to do this? Mike Jones testified that it
17 was -- it was the fact that it would take so much
18 time.

19 MR. KUDO: Mr. Chairman, I'm going to object
20 because I think he's getting into the argument of the
21 substance of the case in chief which is really meant
22 for the hearing. I think we're trying to cure a
23 procedural defect, not argue the case in chief at this
24 point. I have arguments on every single point that he
25 made. And we put it in our response. But, you know,

1 I think it's really meant for the case in chief.

2 CHAIRMAN DEVENS: I understand. Why don't
3 we give him another minute to wrap up his argument.

4 DR. DUDLEY: Thank you very much. I just --
5 I was on the point about the fact that they have
6 refused 14 times to produce this plan. Why? Because
7 it was going to take so much time. This 10 pages is
8 not something you refuse 14 times to produce. Okay?
9 So what I'm saying it's lacking, it's inconsistent, it
10 didn't provide all the material and you should not
11 approve this as curing the problem. It just simply
12 doesn't do it. Thank you very much for your time.

13 CHAIRMAN DEVENS: Commissioners, any
14 questions for the parties? There being none, any
15 rebuttal, Mr. Kudo? You don't need to address the
16 arguments that he made that went outside the issue.
17 But I wanted to give Dr. Dudley the respect and the
18 time to make his argument with had the understanding
19 that he's a layman and trying to understand the
20 substance of the case and the procedural.

21 MR. KUDO: We have no further argument.

22 CHAIRMAN DEVENS: City?

23 MS. TAKEUCHI-APUNA: No.

24 CHAIRMAN DEVENS: Mr. Yee, anything you want
25 to add?

1 MR. YEE: Just very briefly. When the
2 Office of Planning is basically saying that the
3 Petition and the incremental development plan are
4 sufficient for purposes of completeness in 15-15-50C
5 Hawaii Administrative Rules, whether or not the
6 Petition and the incremental development plan is
7 sufficient to justify reclassification is not before
8 you today. And the Office of Planning is reserving
9 comments on that. Thank you.

10 CHAIRMAN DEVENS: Understood. At this time
11 the Chair's going to move to grant the motion,
12 Petitioner's Motion for Determination, that its second
13 amended position cures the deficiency of its first
14 amended Petition and is ready for processing.

15 It appears that the subsequent filings
16 satisfy the deficiency that was noted previously by
17 this Commission under HAR 15-15-50-C19. Is there a
18 second?

19 COMMISSIONER CHOCK: Second.

20 CHAIRMAN DEVENS: Second by Commissioner
21 Chock. Any discussion? There being none, call for
22 the vote.

23 MR. DAVIDSON: Motion as stated by Chair
24 Devens.

25 Commissioner Matsumura?

1 COMMISSIONER MATSUMURA: Aye.

2 MR. DAVIDSON: Commissioner Chock?

3 COMMISSIONER CHOCK: Yes.

4 MR. DAVIDSON: Commissioner Teves?

5 COMMISSIONER TEVES: Yes.

6 MR. DAVIDSON: Commissioner Lezy?

7 COMMISSIONER LEZY: Yes.

8 MR. DAVIDSON: Commissioner Contrades?

9 COMMISSIONER CONTRADES: Yes.

10 MR. DAVIDSON: Commissioner Makua?

11 COMMISSIONER MAKUA: Aye.

12 MR. DAVIDSON: Commissioner Heller?

13 COMMISSIONER HELLER: Yes.

14 MR. DAVIDSON: Commissioner Judge?

15 COMMISSIONER JUDGE: Yes.

16 MR. DAVIDSON: Chair Devens?

17 CHAIRMAN DEVENS: Yes.

18 MR. DAVIDSON: Motion passes 9/0, Chair.

19 CHAIRMAN DEVENS: Why don't we get to the

20 last motion. After we rule on that we'll take a

21 break. And I apologize to the public for not getting

22 back to you sooner. But we needed to at least have

23 the motions ruled upon.

24 But we certainly want to give you all the

25 time that you need to testify in this matter. We

1 will -- well, why don't we take the motion and see
2 where we are at that point in time.

3 Dr. Dudley, your motion.

4 DR. DUDLEY: Which last motion was that?

5 CHAIRMAN DEVENS: It was your motion.

6 MR. KUDO: Mr. Chairman, may I make a point?

7 CHAIRMAN DEVENS: Yes, sir.

8 MR. KUDO: In looking at FOM's motion it
9 really -- all of the arguments, all of the arguments
10 go to the case in chief. And I believe it's more
11 proper to take up his arguments during the hearing I
12 mean rather than at this point.

13 CHAIRMAN DEVENS: Your point is well taken,
14 but we had consolidated the motions earlier. And that
15 was something that the Commission passed on. So I
16 think at this point we would have to go forward and
17 give Dr. Dudley the opportunity to argue his motion.
18 Dr. Dudley, you know which motion we're on now? It's
19 the motion that you filed on June 1st of this year.

20 DR. DUDLEY: It's the 3-part motion?

21 CHAIRMAN DEVENS: Yes. And some of it may
22 be moot now so you don't have to repeat the issues
23 that have already been decided upon. But the
24 arguments have been made for the record.

25 DR. DUDLEY: Okay. I think the first and

1 second motions are moot as far as I can see. And
2 there's not much sense in presenting more material on
3 those.

4 I would like to talk about the third part of
5 the motion, though, which is to remove this land from
6 further consideration.

7 CHAIRMAN DEVENS: Doctor, can I ask you
8 this before you jump into your argument?

9 DR. DUDLEY: Yes.

10 CHAIRMAN DEVENS: Do you have any legal
11 authority that you can cite the Commission to for such
12 a proposition where we would remove this property 'til
13 2061?

14 DR. DUDLEY: No. I wish I did. It was
15 simply a layman reading your rules and trying to find
16 ways that that could happen. So, you know, the things
17 I came up with are really kind of oblique --

18 CHAIRMAN DEVENS: Are you really pushing
19 this argument at this point in time?

20 DR. DUDLEY: Yes. The way I think it could
21 happen also -- no, not this time. I think the other
22 two motions really make this motion moot. But I would
23 like to speak to it for just a minute.

24 I think we need to begin to look to how the
25 Commission can do that. I will have lawyers looking

1 into it trying to find something. People told me,
2 "You're really just beating a bush, knocking your head
3 against a wall."

4 But even waiving rules is a possibility it
5 seems to me for doing this, you know. It looks like,
6 looks like --

7 CHAIRMAN DEVENS: Do you want to consult
8 with your attorneys and come back with this argument
9 some other time?

10 DR. DUDLEY: Okay. Good.

11 CHAIRMAN DEVENS: You want to proceed that
12 way?

13 DR. DUDLEY: Yes, that would be fine.

14 CHAIRMAN DEVENS: Okay. Parties have any
15 objection to that? Do you want to withdraw this
16 motion at this point or how do you want to proceed?

17 DR. DUDLEY: I'm afraid I don't know enough
18 legalese to tell you what I want to do. But I'd like
19 to defer for another time. Maybe withdraw is the best
20 way.

21 MR. KUDO: I think it would be cleaner for
22 him to withdraw, otherwise you have this *res judicata*
23 issue taking up the same issue in the case in chief if
24 he repeats it again.

25 CHAIRMAN DEVENS: You want to withdraw the

1 motion at this time?

2 DR. DUDLEY: Okay.

3 CHAIRMAN DEVENS: So the Chair will
4 note that --

5 DR. DUDLEY: Mr. Chair.

6 CHAIRMAN DEVENS: Yes.

7 DR. DUDLEY: Counsel here just tells me --

8 CHAIRMAN DEVENS: Which counsel?

9 (Laughter)

10 DR. DUDLEY: My newest hired counsel
11 suggests that I not withdraw but ask for a continuance
12 on the motion... that part of the motion.

13 MR. KUDO: We would object to a continuance.
14 We would like him to argue now if that's the case.

15 CHAIRMAN DEVENS: City, do you have any
16 position on this? No position?

17 MS. TAKEUCHI-APUNA: Well, I think we agree
18 with Petitioner that we'd rather him argue it today.

19 CHAIRMAN DEVENS: Mr. Yee, any position on
20 this issue?

21 MR. YEE: We have no position on this issue.

22 CHAIRMAN DEVENS: Dr. Dudley, I think to
23 keep it clean it would probably make more sense to
24 take the argument today. I seriously doubt that
25 you're going to come up with legal authority that's

1 going to allow us to grant what you're asking for.

2 It would probably get us into a lot of
3 trouble. But that's my own personal thought. I
4 haven't done the research on it. But I'm sure it
5 would be very difficult for us to grant what you're
6 asking if the Commissioners were inclined to even go
7 in that direction.

8 DR. DUDLEY: Could I take --

9 CHAIRMAN DEVENS: Why don't we do this. Why
10 don't we take your argument, let the Commission rule
11 on this motion, and take our lunch break and come
12 back.

13 DR. DUDLEY: All right. Mr. Chair, to tell
14 you the real honest truth I haven't read over my
15 material on this. And I'm really not prepared right
16 now to do it. Could we take lunch and then I could
17 take a couple minutes when we return?

18 CHAIRMAN DEVENS: You want to take a couple
19 minutes now? Because I don't want to keep the public
20 waiting, you know. I got a real problem with that.
21 People take off from work and there's so many people
22 here today that obviously took time to be here. The
23 time now is about 12:21. We started earlier this
24 morning. It's been several hours. I want to extend
25 some courtesy to the people that are here.

1 DR. DUDLEY: Okay.

2 CHAIRMAN DEVENS: I feel for you if you had
3 not had an opportunity to review your materials. You
4 did make a filing. The filing is under your name,
5 apparently signed by you. So I have to assume that
6 you have some familiarity with the arguments that you
7 filed and presented to us in good faith.

8 So why don't we take your arguments and let
9 the Commission rule on your motion and then we'll take
10 a break for lunch.

11 DR. DUDLEY: Okay. Give me a minute.

12 (Pause) All right. Mr. Chair, I think it best right
13 now to just go ahead and withdraw it. However, I
14 will, I will enter it again. I think it's something
15 that we really need to have the Commission think
16 about.

17 This is the last piece of property within
18 the Urban Growth Boundary. We need to take some time
19 to think about what we're going to do with this piece.
20 And because of that we've got to find a way to give us
21 the time to do that.

22 CHAIRMAN DEVENS: No, if your decision's to
23 withdraw we respect that decision and note the motion
24 has been withdrawn.

25 DR. DUDLEY: Thank you.

1 CHAIRMAN DEVENS: With that we'll take our
2 lunch break. But for those that want to provide
3 public testimony, basically there is not a whole lot
4 of substance left to be decided on today. We decided
5 on the motions. It appears that the matter will
6 continue to proceed forward. There will be many other
7 opportunities to provide public testimony in this
8 matter.

9 But we will reconvene after lunch if you
10 want to provide public testimony. We reassure that
11 you will be given that opportunity. Also, to let you
12 know that there will be other times when we start
13 hearing more of the evidence where you can give public
14 testimony and it may make more sense then knowing what
15 the Petitioner is proposing and knowing a little bit
16 more about the substance.

17 But just wanted to give you a heads up and
18 forewarning on that. Anyway, we'll take our lunch
19 break, reconvene at 1:30.

20 (Lunch recess)

21 CHAIRMAN DEVENS: We're back on the record.
22 I apologize for running a little bit late on this. In
23 any event we're going to come back, take remaining
24 public testimony. Do the parties want to add anything
25 to the record at this pont in time, Mr. Kudo?

1 MR. KUDO: We have nothing further to add.

2 CHAIRMAN DEVENS: City?

3 MS. TAKEUCHI-APUNA: Nothing further.

4 CHAIRMAN DEVENS: Mr. Yee?

5 MR. YEE: Nothing further.

6 CHAIRMAN DEVENS: Doctor?

7 DR. DUDLEY: No.

8 CHAIRMAN DEVENS: Do we have any signed up,
9 Dan?

10 MR. DAVIDSON: No.

11 CHAIRMAN DEVENS: Is there anyone out there
12 in the audience that wants to provide public testimony
13 in this matter? You can come forward, please.

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

17 THE WITNESS: I do. Rosie Goo, again. I
18 just wanted to say --

19 MR. DAVIDSON: Go ahead, have a seat.

20 THE WITNESS: -- that rezoning the most
21 productive agricultural lands on O'ahu doesn't make a
22 lot of sense. And there are many in the community who
23 may not be construction workers or members of the
24 union who stand to benefit directly from development,
25 but they matter too. They have families and they have

1 children that need to eat good food.

2 So I think that those people in the
3 community are really relying on you as a Commission to
4 preserve, to conserve and to protect the agriculture
5 land in the way that the state constitution requires
6 the state to do.

7 So I just ask you to think about the future
8 long term not just the fact that we have a bad economy
9 and times are difficult and people do need jobs. But
10 being shortsighted in regard to the most productive
11 agricultural land I think we would really be selling
12 present and future generations short. And that's what
13 we rely on you for to make the right decisions. So
14 thank you.

15 CHAIRMAN DEVENS: Any questions from the
16 parties for this witness?

17 MR. KUDO: No questions.

18 MR. YEE: No questions.

19 DR. DUDLEY: No questions.

20 CHAIRMAN DEVENS: Commissioners? There
21 being none, thank you very much. Next witness. Once
22 again my name is Victoria Cannon from Makakilo.

23 CHAIRMAN DEVENS: Can I swear you in again.

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

1 and testified as follows:

2 THE WITNESS: I do. 92-102 Olelo Place in
3 Makakilo. I just want to reiterate these are prime...
4 ag...lands. They are the only prime....ag....lands
5 left. You are compelled by your own statutes to give
6 these lands the greatest possible protections. You
7 are compelled by your own rules to do that. Do you
8 all understand that? I have the chapter and the
9 paragraph if you need it.

10 I also want to reiterate we're looking here
11 at an issue that is going to mean more jobs for
12 mainland folks than it is for our own union boys. And
13 I am incensed that these union members are not being
14 told this by their own leaders.

15 You folks need to see to it that the truth
16 comes out on that particular issue. That is the point
17 that D.R. Horton-Schuller Limited Liability
18 Corporation continued to stress. It is not
19 necessarily the truth.

20 Finally, regarding your own subchapter 8
21 Land Use Commission Administrative Rules 15-15-77
22 under the decision-making criteria for boundary
23 amendments, paragraph B-5 of that subchapter.

24 As of Tuesday morning, I told you this in my
25 earlier testimony, 5:30 Tuesday morning I received a

1 call from a man who works for Standard and Poors in
2 New York City. I had been waiting for his call for
3 almost three weeks. He was away on school kids'
4 vacations, but regardless, he made it very clear to me
5 Horton has gone from a 4 to a 2. A 2 is flags raised.

6 It has gone from triple B. to BB- which is
7 creating some rumblings in the bond market and the
8 stock market in New York City.

9 You folks have no assurances that they are
10 going to simply seek this land reclassification
11 change, get the zoning changed from ag to urban and
12 simply turn around and sell it so they can pay some of
13 their \$2.2 billion senior unsecured debt they are
14 going to be required to pay on shortly. You need to
15 investigate these issues, please, before you make any
16 other decisions. I expected the decision today. I
17 wasn't surprised. But coming up I'll bring it up
18 again. Thank you for your time.

19 CHAIRMAN DEVENS: Any questions for this
20 witness? There being none next witness.

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

24 THE WITNESS: I do.

25 CHAIRMAN DEVENS: Can I have your name and

1 address, please.

2 THE WITNESS: Denise Snyder, 4592 Mana
3 Place, Honolulu, 96816. I represent a lot of people
4 in the community and I'm here to try to protect our
5 agricultural land. I'm extremely concerned that it's
6 even gotten this far.

7 It's my understanding that a lot of the ag
8 land that's still zoned ag land is not that
9 productive. The farmed ag land that is currently
10 being farmed, the vast majority of that is being used
11 to grow non-edible crops such as GMO seeds and
12 flowers.

13 And I'm also concerned that you guys look
14 into having ag land that's really used for edible
15 crops and not cash crops. This ag land up for
16 rezoning is being used to grow a large percentage of
17 our locally grown and consumed vegetables and fruit.

18 I'm extremely concerned that such a large
19 tract of land that is such a high grade of land is
20 even up. I can't understand how it got this far. I
21 urge you to think about the big picture and help us
22 obtain food security. That's a fundamental right, the
23 right to eat.

24 This seems like such a no-brainer to me.
25 The next time the ships don't come in or the boats

1 don't come in who doesn't get to eat? Which one of us
2 is going to be left starving? Please protect O'ahu's
3 ag lands. It needs to be getting stricter.
4 Concentrate on edible foods. Thank you.

5 CHAIRMAN DEVENS: Any questions for this
6 witness? There being none, thank you very much.

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

10 THE WITNESS: I do. My name is Harmony
11 Bentosina. My address is 92-1242 Makakilo Drive. We
12 need to save our farmland. Ho'opili would pave over
13 the best farmland on O'ahu. And this is not only for
14 us but for our future and for our children's future.
15 Hawai'i is perhaps the most geographically isolated
16 place in the world and we cannot know for certain that
17 mainland food will always get here.

18 I heard them say that the latest plan from
19 Ho'opili calls for garden plots. But garden plots in
20 no way compensate for sacrificing the best farmland on
21 this island. I mean the best agricultural lands
22 should not be growing houses.

23 People claim Ho'opili will bring jobs. But
24 food is even more basic than jobs. And farmland
25 provides agricultural jobs. And it's even a boon for

1 tourism. Tourists don't want to come here to see a
2 paved over island. I mean they want open space and so
3 do the people who live here. We want food and we want
4 open space.

5 I think that Joni Mitchell said it the best
6 in her song (singing) "Don't you know -- you don't
7 know what you got till it's gone. They paved paradise
8 and put up a parking lot." My response is I firmly
9 hope not. Thank you.

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

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

15 THE WITNESS: I do.

16 CHAIRMAN DEVENS: Can we have your name and
17 address, please.

18 THE WITNESS: (Off mic) Rick Stanley, 4038C
19 Keanu Street, Honolulu, Hawai'i 96816. I've been
20 lookin' at both sides of the argument. It seems like
21 the other side, not my side, (back on mic) gee, I'm a
22 sound man. I should know this.

23 I am a union member, but I recognize the
24 need for jobs but not to sacrifice the heritage of my
25 children for jobs. Now, the only argument I've heard

1 is, number one, a big corporation wants to make more
2 money. And number two we need the jobs.

3 I repeat. Not sacrificing what our children
4 will have. They will have nothing but ashes and oil
5 balls if we keep this up. Just because a law is made
6 does not mean it's good law. You have the power to
7 change something here. Just by changing it that's not
8 gonna make it good. And you will be wrong if you let
9 us lose this agriculture land. That's all I have to
10 say.

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

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

17 THE WITNESS: I so swear.

18 CHAIRMAN DEVENS: Can you state your name
19 and address for the record?

20 THE WITNESS: Roger Wickenden, 974 Apokula
21 Place, Kailua.

22 CHAIRMAN DEVENS: Go ahead, sir.

23 THE WITNESS: We live in changing times.
24 When I became a resident of Hawai'i in 1968 the
25 pillars of our economy were sugar, pineapple and the

1 military. We have observed radical changes since
2 then. What future changes should we guard against?

3 1. World food supply is starting to decline
4 while the word population continues to increase.
5 Futurists predict starvation of large populations in
6 another generation.

7 2. The preeminence of the United States
8 naval power to maintain freedom of the seas in the
9 Pacific is likely to be challenged by emerging
10 economies and navies of Asian nations.

11 Any decision made this year to achieve the
12 right balance between urban and agricultural use of
13 land is likely to be seen as inappropriate only 10
14 years from now.

15 A primary reason for reclassifying any of
16 the proposed lands to urban is the proximity to a rail
17 station. But the impact on agriculture may require
18 limiting reclassification to a much smaller perimeter
19 about the proposed Ho'opili station and also the
20 proposed UH West O'ahu station, than the area covered
21 by the existing Petition.

22 The three considerations I have brought up:
23 future world, food shortage, future contestations of
24 freedom of the seas and HART has not yet been
25 implemented, reclassification of the proposed land is

1 inappropriate at this time. Thank you.

2 CHAIRMAN DEVENS: Any questions for this
3 witness? Hearing none, thank you very much, sir.

4 ALI'I TASI PONDER

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

7 THE WITNESS: I do.

8 CHAIRMAN DEVENS: Your name and address,
9 please.

10 THE WITNESS: Ali'i Tasi Ponder. Kahuku.

11 CHAIRMAN DEVENS: Do you have a mailing
12 address?

13 THE WITNESS: Yes. P. O. Box 360 in Kahuku,
14 96731.

15 CHAIRMAN DEVENS: Thank you.

16 THE WITNESS: I'm the fifth generation to
17 live in my community. My grandfather worked at the
18 sugar mill down the street from me when he was a kid.

19 The wonderful thing about these kinds of
20 situations is that it is allowing a number of us,
21 including myself who never thought of themselves as a
22 good public speaker, to become so awakened by what we
23 see that we're forced out of our comfort zones. And I
24 realize that I can't just sit back and complain in my
25 living room and expect anything to change.

1 And even though I come here and I see the
2 authority and the power that can feel to me as a
3 citizen outweighs the little people in the country, I
4 also recognize in each of you that you're a person
5 just like I am.

6 So I hope that when I come up and speak, as
7 everyone does, that we have an ability to move you to
8 really hear us because I can see how it would be very
9 easy to stop listening and hearing people, hearing the
10 same things over and over.

11 The one thing that I want to kind of -- I
12 felt important to say is that even though I live on
13 the other side of the island, and we're talking about
14 Ho'opili, we're starting to understand regardless of
15 where we live on the island that we all collectively
16 contribute to the benefit or the undermining of this
17 entire island.

18 So I'm on the board of a number of different
19 organizations. One of the organizations that I'm
20 involved in involves 28 different organizations that
21 are all for the preservation of our ag lands, but are
22 also very empathetic and sympathetic to the need to
23 develop in a good way.

24 So I guess what I want us to all keep
25 thinking about is how to use our creative

1 intelligence, develop in a way that meets our current
2 and future needs, not what we decided was applicable
3 years ago, and not, and not paint ourselves into a
4 corner where we have nothing to eat which makes no
5 sense at all.

6 I want to kind of encourage everyone to
7 realize that more of us are becoming advocates for the
8 right to eat, the right to eat healthy food and to
9 live a clean and healthy lifestyle.

10 And we're going to involve more and more
11 people. Because if you can get me out of my part of
12 the island and cancel a day's worth of work to come
13 here and speak like this when I wasn't able to do this
14 at all a year ago, then I'm encouraged to think that
15 there's going to be more and more people. And I
16 definitely want to be on that side. So I hope that
17 you'll continue to keep your eyes, ears and heart open
18 to us. Mahalo.

19 CHAIRMAN DEVENS: Questions for this
20 witness? There being none, thank you very much.

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

24 THE WITNESS: Yes. My name is Charles
25 Carole. I'm the vice president of the Honolulu League

1 of Women Voters, 49 South Hotel Street Room 314,
2 96813. The League is for sustainable agriculture on
3 O'ahu. Therefore we are in opposition to the rezoning
4 of the last 'Ewa agricultural land.

5 The city has zoning and gave permits for
6 over 30,000 housing units to be built. We don't need
7 additional -- the additional 12,000 housing units.

8 These lands are prime agricultural land
9 close to the markets. Local food is far more
10 nutritious than the imported food.

11 In addition, if jobs are needed we have a
12 dying need for renewable energy projects on O'ahu.
13 And these will provide additional opportunity, job
14 opportunities. So therefore we hope that you would
15 consider denying this application for rezoning. Thank
16 you.

17 CHAIRMAN DEVENS: Any questions for this
18 witness? There being none thank you very much, sir.

19 URSULA MEGAFORT

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

22 THE WITNESS: Yes, I always tell the truth.

23 CHAIRMAN DEVENS: Name and address.

24 THE WITNESS: My name is Ursula Megafort and
25 my address is 42 North Kainalu Drive in Kailua. And I

1 oppose the reclassification of some of our most
2 productive farmland to urban. I believe that there
3 are very good reasons and sound judgment underlying
4 the Hawai'i State Constitution that asks the state
5 shall conserve and protect agricultural lands, promote
6 diversified agriculture, increase agricultural
7 self-sufficiency, and assure the availability of our
8 agricultural suitable lands. I know you have heard
9 this several times today. But we cannot repeat it
10 often enough.

11 What land on this island could be more vital
12 to agriculture self-sufficiency than the fertile land
13 of Ho'opili proposed development? I cannot think of
14 any. We are a small island in the middle of the
15 Pacific Ocean, the farthest removed from any land mass
16 of any place on our planet.

17 This makes us vulnerable on many, many
18 fronts, not the least on our ability to feed ourselves
19 for any lengths of time. Too much agricultural land
20 has already been lost.

21 Sadly, and regrettably we already import
22 over 80 percent of the food that we eat. And I
23 understand that there's only an estimated 7 days
24 supply of food on the island should a major
25 catastrophe could cut us off from imports.

1 This is not only an uncomfortable
2 predicament to be in, it is a dangerous one. I do not
3 think it is wise to make even -- to make it even worse
4 further reduce by further reducing our already limited
5 agriculture self-sufficiency.

6 Given the resources and geographic isolation
7 of our island there is a limit to development whether
8 we like it or not. Livability and survival will enter
9 the equation at some point. And the longer we
10 continue to ignore the cumulative impacts of
11 individual developments, the sooner the day of
12 reckoning will come. We cannot afford to lose more
13 than 1500 acres of our most productive agricultural
14 lands.

15 Are short-term jobs really a sufficient and
16 moral justification for selling out for long-term
17 interests? Would that not be a shortsighted and
18 irresponsible way of governing? What after jobs?
19 Yes. What after jobs? Let's not focus on temporary
20 gains for some.

21 Let's focus on the long-term sustainability
22 and food security for all. Please honor the mandate
23 of our state constitution by denying the request for
24 the land use classification before you. Thank you for
25 letting me speak.

1 CHAIRMAN DEVENS: Thank you, Ma'am. Any
2 questions for this witness? There being none, thank
3 you very much. Any other witnesses?

4 THAD SPREG

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

7 THE WITNESS: I do.

8 CHAIRMAN DEVENS: Name and address, please.

9 THE WITNESS: My name is Thad. I live at
10 92-1152 Kueonani Street in Makakilo 96707. I wrote
11 what I was going to say this morning when the room was
12 full. I'd like you to note that the Ho'opili
13 supporters have left but many who oppose Ho'opili
14 development are still here.

15 In other words, those who are supporting
16 Ho'opili with their wallets are gone. Those who
17 oppose Ho'opili with their hearts are still here.
18 Today you were to determine whether or not to accept
19 the Petitioner's motion. You saw before you many,
20 many members of the community. A lot of those here
21 were in support of Ho'opili but many were not.

22 But what needs to be factored in is that
23 most, if not all, of those in favor of the development
24 were here because it directly affects them mostly in
25 the form of them getting jobs.

1 Those of us who are here in opposition to
2 the development are not here because of any direct
3 benefit. So although you saw more supporters than
4 those in opposition the reality is the opposite. The
5 general public does not support the change of the best
6 agricultural land in the state of Hawai'i from ag to
7 urban.

8 Now, we don't have a budget for fancy signs.
9 We don't have union guys we can dangle the promise of
10 time limited jobs in front of. If we did you would
11 see much, much, much support in opposition of Ho'opili
12 than you would for it.

13 Commissioners, you represent the people.
14 Talk to the people. Listen to the people. Listen to
15 all the people, not just the ones with the big bucks
16 and the fancy signs. You will find that the will of
17 the people is to preserve what we have, not to pave
18 over it. Please find a way to ultimately deny this
19 Petition. Thank you.

20 CHAIRMAN DEVENS: Thad, did you have a last
21 name that you can give us for our record?

22 THE WITNESS: Spreg.

23 CHAIRMAN DEVENS: Can you spell that.

24 THE WITNESS: S-p-r-e-g.

25 CHAIRMAN DEVENS: Thank you. Any questions

1 for this witness? There being none thank you very
2 much. Any other witnesses?

3 THE WITNESS: Aloha, Commissioner. My name
4 is Phyllis Katcher.

5 CHAIRMAN DEVENS: Can I swear you in first,
6 please.

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

10 THE WITNESS: Yes.

11 CHAIRMAN DEVENS: Your address, please.

12 THE WITNESS: 3652 Hilo Place, Honolulu
13 96816. My name is Phyllis Katcher and I'm not a big
14 bucks union guy. And I don't hold fancy signs. I'm
15 really one of the people. I was president of Waikele
16 Community Association for 7 years.

17 And the D.R. Horton-Schuler people Schuler
18 Homes Division, they were the primary developer
19 representing -- they built probably over 2,000 homes
20 in Waikele.

21 And I was the president during that whole
22 time from the very start to the very finish. And they
23 didn't ask me to testify but I wanted to because I
24 wanted to tell you firsthand you can trust D.R.
25 Horton. I volunteered to testify today just to share

1 my personal experience.

2 During my term as Waikele they always put
3 people first and they always fulfilled every promise
4 that they agreed to do even during the toughest times.
5 I guess I'm here to say Hawai'i is such a tough place
6 to do business.

7 And we've seen so many developers come and
8 go. Even recently in the news we've seen developers
9 unable to fulfill promises and things go back and
10 forth.

11 But D.R. Horton is here for the long haul.
12 And for, I think, almost 40 years they have built
13 thousands and thousands of affordable homes. I think
14 the homes at Waikele they started at about \$80,000 for
15 a 2-bedroom townhouse, which is almost unheard of. I
16 know they probably didn't make very much money on
17 those homes. But they fulfilled them and always took
18 care of the people.

19 So I wanted you to know that. That I feel
20 that we're lucky that they're willing to invest
21 millions of dollars to help Hawai'i families have a
22 better life. Both of my parents and grandparents were
23 farmers, two generations of farmers. And I have a lot
24 of aloha for the farming community. But I mean
25 there's people here that can't even -- they don't know

1 where their kids are going to sleep at night. There's
2 children that go to bed hungry.

3 Some of the union people I was talking to
4 out there they have been on the bench for two years.
5 They don't have a job. They can't even buy their kids
6 even basic things like school supplies. So I mean
7 weighing those two things I think a roof over your
8 head and basic things like food, shelter and a job are
9 much more important.

10 So even though I do sympathize with some of
11 the comments that were made previously, I just think
12 we've got to look at the priorities. And a basic job
13 is far more important.

14 One other thing too I wanted to point out is
15 a lot of the piecemeal developments that we've seen
16 lately, a lot of those small developments do not bring
17 community benefits like this Project does. This
18 Project has a lot of considerations for the community.

19 These small piecemeal developments, they
20 don't provide traffic relief like Ho'opili does. And
21 I really ask that you have the courage and vision to
22 approve this project. Thank you.

23 CHAIRMAN DEVENS: Thank you very much. Any
24 questions? There being none. May I swear you in?

25 KENT FONOIMOANA

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

3 THE WITNESS: Yes, sir.

4 CHAIRMAN DEVENS: Please state your name and
5 address.

6 THE WITNESS: My name is Kent Fonoimoana.
7 My address P. O. Box 122 La'ie, Hawai'i, 96762. Thank
8 you, Commissioner Devens and the rest of the
9 Commissioners for a long day had by all. I'm not here
10 to speak against or for the Ho'opili project. As a
11 former blue collar worker and carpenter, member of the
12 Carpenters Union 745 I understand the need of my
13 brothers to have work.

14 However, I think that during these times
15 that we're entering, this new, still fresh millennium,
16 that there other issues that we as an island people
17 need to address first. I'm wearing my favorite hat,
18 always wear this hat. It's a hat that was given to me
19 by First Wind, First Wind that installed our wind
20 turbines out in Kahuku.

21 I'm also a member of the Kahuku Community
22 Association and the Ko'olauloa Neighborhood Board.
23 Our community supported that Project because we can
24 recognize that as island people we need to learn how
25 to be sustainable. And there will be a point sometime

1 in our future that we will be needing to generate our
2 own electricity without having to depend on shipping
3 in foreign oil or even domestic oil. And to take it a
4 next step further besides power, I think there are
5 some things that come before electricity. Number one
6 of those things is food.

7 I think that for myself, like I said, I'm
8 not against the Project. I'm actually for certain
9 aspects of their development including -- anybody
10 here, nobody looking -- I'm actually for rail. Good.
11 There's nobody else from my Defend O'ahu Coalition
12 Here. (Laughter) So being for some things because I
13 can understand them.

14 However, if the developers and you folks and
15 everybody else can find a way to move forward while
16 still preserving our critical ag lands, you'd have a
17 lot of people on board if the two of them can be done
18 simultaneously. And I think that it can be done. I
19 think that it's gonna take a little realignment of
20 their plans.

21 But I try to be an optimist about things
22 like that. And I just hope that you folks can take
23 all this information, wave a magic wand over it and
24 everybody will be happy and pono. Thank you.

25 CHAIRMAN DEVENS: Thank you. Any questions

1 for this witness? There being none, thank you very
2 much, sir. Aloha.

3 THE WITNESS: Aloha.

4 BEN SCHAFER

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

7 THE WITNESS: Yes, I do.

8 CHAIRMAN DEVENS: Name and address, please.

9 THE WITNESS: Ben Schafer, 52-210 Kamehameha
10 Highway, Hau'ula, Hawai'i 96717. Mr. Chairman, first
11 I would like to thank you the way you're conducting
12 the meeting. You know, I've been to a lot of
13 different meetings and some of them aren't so nice,
14 the chairmans aren't, but I'm glad that you're doing a
15 wonderful job as far as conducting it and the group
16 here.

17 Before I start I'd like to read something
18 that I found up on the Internet just now.

19 In 1961 the Hawai'i State Legislature
20 determined that a lack of adequate controls had caused
21 the development of Hawai'i's limited and valuable
22 lands for a short-term gain for a few while resulting
23 in long-term loss to the income potential of our
24 State's economy.

25 Development of scattered subdivisions

1 creating problems of expensive yet reduced public
2 services and the conversion of prime agriculture land
3 to residential use were key reasons for establishing
4 the statewide zoning system. To administer the
5 statewide zoning law the Legislature established the
6 Land Use Commission.

7 The Commission is responsible for preserving
8 and protecting Hawai'i's land and encouraging those
9 uses to which lands are best suited."

10 I bring that up because, e kala mai, because
11 I'm from the Windward side, Ko'olauloa. That is not
12 my district but I'm speaking up because we're talking
13 about the island, islandwide. And on the General Plan
14 basically it says the Windward side was going to be
15 kept country. Right? But we keep encroaching
16 development, more development. La'ie has a whole
17 bunch of stuff going on. Turtle Bay still has plans
18 for the hotels going up, all not part of the General
19 Plan.

20 So the give was that they were going to
21 build the Second City out at Kapolei. However, when
22 you look at the way how things are developing so fast
23 without anybody thinking, whatever land that we have
24 that is the best for agriculture we want to save it.
25 Right? You know, shortsighted, yeah, we want to make

1 some money right now and bang 'em right out, whether
2 it goes to another group or whether they put up the
3 housing it's a good idea.

4 But what is the best use of that land? And
5 if that land can be used for agriculture because we
6 can get more out of it then that's what the land
7 should go for. Number one. That should be the first
8 priority.

9 There are other areas which you can build on
10 like from the airport all the way to over here. Ugly
11 area. Ugly area. Instead of building all in Ewa to
12 fight the traffic why don't they start building this
13 way so people don't have to be in the traffic?

14 There is a whole bunch of options that are
15 still open and only picking on areas which they have
16 prime land. There are much more we can do with the
17 city and the state to find out, hey, what else can we
18 do to bring jobs over here? Because I'm a union
19 member too.

20 My whole family were teamsters, were
21 carpenters, laborers' union, masons' union, just about
22 every union you can think of. But we need to have
23 jobs that are sustainable for our communities that's
24 gonna last.

25 There's a whole bunch that we can do over

1 here. But building on prime agriculture land would be
2 hewa, would be wrong. We need those lands, the only
3 lands we have left. It's not only feeding our people
4 it's what our people can afford to eat more than
5 anything else. Yeah?

6 Because as the land -- as the land prices go
7 up higher, food prices go up higher, more people will
8 be out of food as well. What can they afford to eat?
9 We need to save those. That the mandate. That's the
10 mandate of the Land Use Commission. I urge you to
11 weigh it and try to set the tone so that we're looking
12 at the overall picture.

13 What are we saving? Not so much what are we
14 building. What are we saving for 50 to a hundred, 150
15 years from now? What are we saving for our future
16 generations?

17 That's what I tell our groups that come out
18 to Kahana. Our job is to malama the land to take care
19 of the land for the next generation and the next one
20 and the next one.

21 What are you folks doing here to ensure that
22 we are saving it for that the next one and the next
23 one and the next one? Or do we want it to all be
24 developed and we all gotta move somewhere else because
25 we couldn't afford to stay over here. Yeah? You

1 folks set that tone. Thank you.

2 CHAIRMAN DEVENS: Thank you very much, sir.

3 Any questions for the witness? There being none,

4 thank you very much. Any other witnesses? There

5 being none we stand adjourned. Thank you.

6 (The proceedings were adjourned at 2:25 p.m.)

7 --oo00oo--

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C E R T I F I C A T E

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

That I was acting as court reporter in the foregoing LUC matter on the 30th day of June 2011;

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

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

DATED: This 10th day of July 2011

Holly M. Hackett

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