

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3

4 HEARING AND ACTION

5 A06-771 D.R. HORTON-SCHULER HOMES, LLC)
Honouliuli, Ewa, Oahu)

6)

7)

8

9

10 TRANSCRIPT OF PROCEEDINGS

11

12 The above-entitled matter came on for a Public Hearing

13 and Action at Conference Room 204, 2nd Floor, Leiopapa

14 A Kamehameha, 235 S. Beretania Street, Honolulu,

15 Hawai'i, commencing at 9:30 a.m. on September 9, 2011,

16 pursuant to Notice.

17

18

19

20

21

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

22

Certified Shorthand Reporter

23

24

25

26

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

2

3 Docket No. A06-771

4

5 Friends of Makakilo: DR. KIONI DUDLEY

6 The Sierra Club: TATYANA CERULLA, ESQ.
 ELIZABETH DUNNE, ESQ.

7

8 Senator Clayton Hee: SHERRIE SEKI, ESQ.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	I N D E X	
2		
3	PUBLIC WITNESS TESTIMONY	PAGE
4	Senator Will Espero	10
5	Lance Yoshimura	13
6	Donovan Lewis	15
7	Peter Lee	17
8	Maurice Morita	19
9	Pane Meatoga	21
10	Georgette Stevens	23
11	Al Lardizabal	24
12	Alicia Maluafiti	26
13	Maeda Timson	32
14	Alfonso Oliver	37
15	Kika Bukoski	39
16	Pearl Johnson	42
17	Sidney Higa	44

18

19 ---

20

21

22

23

24

25

1 CHAIRMAN LEZY: Good morning. This is a
2 meeting of the state of Hawai'i Land Use Commission.
3 This is an action meeting on A06-771 D.R.
4 Horton-Schuler Homes, LLC, a Delaware limited
5 liability company dba D.R. Horton-Schuler Division,
6 Honouliuli, Ewa, Oahu, to amend the Agricultural Land
7 Use District Boundaries into the Urban Land Use
8 District for approximately 1,525.516 acres of land at
9 Honouliuli, Ewa District, O'ahu, Hawai'i, Tax Map Key
10 Nos. (1)9-1-1714 (por.) 059 and 072; (1)9-1-18:001 and
11 004.

12 The purpose of today's agenda matter is to
13 consider Petitions to Intervene from The Sierra Club,
14 and from Senator Clayton Hee. Will the parties please
15 make their appearances.

16 MR. KUDO: Representing the Petitioner
17 Horton-Schuler, Benjamin Kudo. With me is Naomi
18 Kuwaye from my law firm as well as Cameron Nekota who
19 is with Horton-Schuler.

20 CHAIRMAN LEZY: Good morning.

21 MS. TAKEUCHI-APUNA: Good morning. Deputy
22 Corporation Counsel Dawn Takeuchi-Apuna on behalf of
23 the Department of Planning and Permitting. Here with
24 me today is Tim Hata.

25 CHAIRMAN LEZY: Good morning.

1 MR. YEE: Good morning. Deputy Attorney
2 General Bryan Yee on behalf of the Office of Planning.
3 With me today is Mary Lou Kobayashi, the planning
4 program administrator. We ran out of room at the
5 table today so she's sitting behind me. But you will
6 be seeing more of her in the future.

7 CHAIRMAN LEZY: Good morning.

8 MS. SEKI: Good morning. Sherrie Seki. And
9 I'm representing Senator Clayton Hee who's seated to
10 my right.

11 CHAIRMAN LEZY: Good morning.

12 MS. CERULLO: Good morning. I'm Tatyana
13 Cerullo representing Sierra Club. With me is
14 Elizabeth Dunne, also representing Sierra Club.

15 CHAIRMAN LEZY: Good morning.

16 DR. DUDLEY: Good morning. Dr. Kioni Dudley
17 for the Friends of Makakilo.

18 CHAIRMAN LEZY: Dr. Dudley, you're just
19 kinda hanging on right at the end there.

20 DR. DUDLEY: Hangin' on.

21 (Laughter. No table space left)

22 CHAIRMAN LEZY: Let me update the record.

23 On June 30, 2011 the Commission received written
24 correspondence from 92 individuals and OEQC.

25 From July 6 through the 20th the Commission

1 received written correspondence from 19 individuals.

2 On July 11, 2011 the Commission received
3 Petitioner's Notice of Hearing.

4 On July 12, 2011 the Commission received
5 Intervenor Haseko 'Ewa Hawai'i Inc.'s Notice of
6 Withdrawal from Case.

7 On July 25, 2011 the Commission received
8 written correspondence from Petitioner requesting that
9 the Petition be deemed ready for processing as of
10 July 25, 2011.

11 The Commission also received Petitioner's
12 Third Amended Petition for District Boundary Amendment
13 and Exhibits 1B, 2D, 3B, 5B, 8A, 12B, 13B, 14B, 15B,
14 17B, 18B, 19B, 20A, 21A, 22A, 23A, and 25-30.

15 On July 26, 2011 the Commission advised
16 Petitioner and the other parties and also those that
17 filed to intervene in this docket by written
18 correspondence that the "deemed a proper filing" date
19 had been changed from July 7, 2011 to July 26, 2011.

20 On July 29, 2011 the Commission received
21 Petitioner's Amended Notice of Hearing for October 20
22 through 21, 2011.

23 On August 1, 2011 the Commission received
24 Petitioner's Response to Senator Clayton Hee's
25 Petition to Intervene and Exhibits A through C.

1 On August 3, 2011 the Commission received
2 Petitioner's Response to the Sierra Club's Petition to
3 Intervene and Exhibits A through G.

4 Between August 5 and 30, 2011 the Commission
5 received written correspondence from 33 individuals
6 whose names are in the docket file.

7 On August 8, 2011 the Commission received
8 Senator Clayton Hee's Reply to Petitioner's Response
9 to the Senator's Petition to Intervene.

10 On August 9, 2011 the Commission received
11 Senator Hee's Reply to DPP's opposition to the
12 Senator's Petition for Leave to Intervene and Exhibit
13 A.

14 On August 15, 2011 the Commission received
15 the Office of Planning's Statement of No Position as
16 to Senator Clayton Hee's Petition to Intervene.

17 On August 18, 2011 the Commission received
18 Petitioner's Affidavits of Publication of Notice of
19 Hearing and Amended Notice of Hearing.

20 On August 2, 2011 the Commission received a
21 copy of written correspondence to DLNR from DOE.

22 On September 6, 2011 the Commission received
23 written correspondence from 58 individuals whose names
24 are in the docket file.

25 On September 7, 2011 the Commission received

1 written correspondence from Senator Will Espero.

2 On September 8, 2011 the Commission received
3 written correspondence from Kika Bukoski Hawai'i
4 Building and Construction Trades Council.

5 On September 9th, 2011 the Commission
6 received e-mail correspondence from State
7 Representatives Kymberly Pine and Peter Lee.

8 Let me briefly run through our hearing
9 procedure for today. I will first call for those
10 individuals desiring to provide public testimony on
11 either of the Petitions to Intervene that are before
12 us today to identify themselves.

13 All such individuals will be called in turn
14 to our witness box and will be sworn in. After
15 completion of the public testimony the Sierra Club
16 will make its presentation.

17 After the completion of that presentation we
18 will receive any comments from the Petitioner, the
19 City and County of Honolulu and the State Office of
20 Planning and Friends of Makakilo. After we receive
21 the comments of the Petitioner, the City, the State
22 and the Friends of Makakilo, we will conduct our
23 deliberations.

24 Following that, the Commission will consider
25 the Petition to Intervene filed by Senator Clayton

1 Hee. And Senator Hee will make his presentation.

2 After completion of Senator Hee's
3 presentation we will receive any comments from
4 Petitioner, D.R. Horton-Schuler Homes, the City and
5 County of Honolulu, State Office of Planning and
6 Friends of Makakilo.

7 After we have received comments from
8 Petitioner the City, the State and Friends of
9 Makakilo, we will conduct our deliberations. Do the
10 parties have any questions regarding our procedures
11 today?

12 MR. KUDO: No questions.

13 CHAIRMAN LEZY: Thank you. Are there
14 individuals signed up to provide public testimony?

15 MR. DAVIDSON: There are, Chair. The first
16 signed up testifier, Senator Will Espero followed by
17 Lance Yoshimura followed by Donovan Lewis.

18 SENATOR WILL ESPERO
19 being first duly sworn to tell the truth, was examined
20 and testified as follows:

21 THE WITNESS: Yes.

22 CHAIRMAN LEZY: State and spell your name
23 and provide your address, please.

24 THE WITNESS: Will Espero, W-i-l-l
25 E-s-p-e-r-o 91-944 Waihua W-a-i hua Place, 'Ewa Beach.

1 CHAIRMAN LEZY: Please proceed.

2 THE WITNESS: Thank you. Commissioner Lezy,
3 LUC members, thank you for this opportunity to provide
4 my comments regarding the intervention application of
5 Senator Clayton Hee. The primary reason I'm here is
6 to make it very clear that the State Senate has no
7 position on this matter.

8 And if you look at your testimony, which I
9 did provide, there is an e-mail from our Senate
10 president Shan Tsutsui making it clear that his
11 discussion with Senator Hee was that he would be
12 looking at this from the perspective of a private
13 individual and not speaking on behalf of the Senate
14 president, the State Senate.

15 I also want to just question whether
16 legislators should be interjecting themselves in these
17 types of processes before you. As you know we look at
18 just about every issue under the sun. And it would be
19 easy for 76 of us to claim legislative preference or
20 legislative prerogative or the Legislature's intent or
21 how they see certain issues.

22 But there will be an opportunity for
23 everyone to speak when the merits of this Project
24 comes before you. As you know, I believe that is the
25 appropriate place for most of the individuals. The

1 Friends of Makakilo is already an intervenor. And
2 they have laid out before you many issues which I
3 believe the Sierra Club, Senator Hee, and others are
4 going to bring up from transportation, to ag lands to
5 the need for housing, et cetera, et cetera. So again
6 I'm here just to say the Senate has no position and I
7 hope you will consider the other comments I have made.
8 Thank you.

9 CHAIRMAN LEZY: Before you go, Petitioner,
10 any questions?

11 MR. KUDO: No questions.

12 CHAIRMAN LEZY: County?

13 MS. TAKEUCHI-APUNA: No questions.

14 CHAIRMAN LEZY: OP?

15 MR. YEE: No questions.

16 CHAIRMAN LEZY: Senator Hee?

17 MS. CERULLO: No questions.

18 CHAIRMAN LEZY: Sierra Club?

19 MS. CERULLO: No.

20 CHAIRMAN LEZY: Friends of Makakilo?

21 DR. DUDLEY: No questions.

22 CHAIRMAN LEZY: Commissioners, any
23 questions? Thank you, Senator.

24 THE WITNESS: Thank you, Members.

25 MR. DAVIDSON: Lance Yoshimura.

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

4 THE WITNESS: Yes.

5 CHAIRMAN LEZY: Please state and spell your
6 name and provide your address.

7 THE WITNESS: Lance Yoshimura. That's
8 L-A-N-C-E, Y-O-S-H-I-M-U-R-A.

9 CHAIRMAN LEZY: Thank you.

10 THE WITNESS: Good morning, Chairperson Lezy
11 and Commissioners. I'm Lance Yoshimura from the
12 Hawai'i Carpenters Union. I'm here today requesting
13 the Commission to deny Senator Clayton Hee's Petition
14 to Intervene in the LUC proceedings for the D.R.
15 Horton's Ho'opili development in East Kapolei.

16 We at the Carpenters Union and the Hawai'i
17 Construction Allies feel that Senator Hee's
18 intervention is inappropriate for three reasons: First
19 of all, he should not be weighing in on a development
20 that is not in his district that he represents, as
21 evident on this development and Koa Ridge in Central
22 O'ahu, especially when his constituents who represents
23 West O'ahu supports Ho'opili.

24 I want to say political grandstanding or
25 influence or a slap in the face, but it seems that

1 way, especially to Senator Espero. He should be more
2 concerned about the Windward District that he
3 represents.

4 Secondly, if Senator Hee's petition is
5 granted he may be using Senate legal services for his
6 intervention. We as supporters of Ho'opili and
7 taxpayers fund these services that would be used to
8 oppose development, which is ironic.

9 Senator Hee's position and actions regarding
10 Ho'opili does not reflect the position or beliefs of
11 the Senate. And, finally, the Hawaii Revised Statutes
12 section 205-4E.4 states that: The Commission may deny
13 an application to intervene when in the Commission's
14 discretion that the position of the Applicant for
15 intervention is substantially the same position of a
16 party already admitted to the proceeding.

17 And the admission of additional parties will
18 render the proceedings inefficient as in the case with
19 Sierra Club. Thank you for your time and opportunity
20 to testify.

21 CHAIRMAN LEZY: Thank you. Petitioner,
22 questions?

23 MR. KUDO: No questions.

24 CHAIRMAN LEZY: County?

25 MS. TAKEUCHI-APUNA: No questions.

1 CHAIRMAN LEZY: OP?

2 MR. YEE: No questions.

3 CHAIRMAN LEZY: Senator Hee?

4 MS. SEKI: No questions.

5 CHAIRMAN LEZY: Sierra Club?

6 MS. CERULLO: No questions.

7 CHAIRMAN LEZY: Friends of Makakilo?

8 DR. DUDLEY: No questions.

9 CHAIRMAN LEZY: Commissioners? Thank you
10 very much.

11 MR. DAVIDSON: Donovan Lewis followed by
12 Peter Lee followed by Richard Hargrave.

13 DONOVAN LEWIS

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

16 THE WITNESS: Yes.

17 CHAIRMAN LEZY: State and spell your name
18 please and provide your address.

19 THE WITNESS: Donovan Lewis D-o-n-o-v-a-n
20 L-e-w-i-s. Address 91-1035 Haulele Street, Kapolei
21 Hawai'i 96707.

22 Aloha, Chair and Members of the State Land
23 Use Commission. My name is Donovan Lewis. I'm
24 testifying on behalf of our business manager,
25 financial secretary, Reginald Castanares and the 1900+

1 active members and retirees of the Plumbers & Fitters
2 Local 675.

3 Local 675 is opposed to the admission of the
4 Sierra Club and Senator Clayton Hee as intervenors of
5 docket A06-771. Intervenor Friends of Makakilo is
6 representing the issues of traffic, education, open
7 space, agriculture lands and other sociological
8 concerns.

9 The participation of Sierra Club and Senator
10 Clayton Hee as intervenors should only be allowed if
11 they can come forth with new issues that are not being
12 represented by the Friends of Makakilo or anyone else.
13 Therefore the Plumbers and Fitters Local 675 opposes
14 the admission into docket A06-771 of the Sierra Club
15 and Senator Hee as intervenors.

16 Thank you for the opportunity to testify. I
17 have copies of my testimony, respectfully submitted
18 Donovan Lewis, President Local 675.

19 CHAIRMAN LEZY: Thank you. Petitioner,
20 questions?

21 MR. KUDO: No questions.

22 CHAIRMAN LEZY: County?

23 MS. TAKEUCHI-APUNA: No questions.

24 CHAIRMAN LEZY: OP?

25 MR. YEE: No questions.

1 CHAIRMAN LEZY: Senator Hee?

2 MS. SEKI: No questions.

3 CHAIRMAN LEZY: Sierra Club?

4 MS. CERULLO: No questions.

5 CHAIRMAN LEZY: Friends of Makakilo?

6 DR. DUDLEY: No questions.

7 CHAIRMAN LEZY: Commissioners? Thank you.

8 MR. DAVIDSON: Peter Lee.

9 PETER LEE

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

12 THE WITNESS: Yes.

13 CHAIRMAN LEZY: Please state and spell your
14 name and provide your address.

15 THE WITNESS: Peter Lee, P-E-T-E-R, L-E-E,
16 address 94-1012A Kikepa K-I-K-E-P-A Street Waipahu,
17 Hawai'i, 96797.

18 Good morning, Commissioner Lezy and Members
19 of the Commission. My name is Peter Lee. I'm
20 testifying as a private citizen. I'm a life-long
21 resident of O'ahu, the last 15 years in Waipahu.

22 Mahalo for this opportunity to testify.
23 I've already submitted my written testimony and I
24 stand by that. In brief, I'm strongly opposed to both
25 Sierra Club and Mr. Hee's request as intervenor.

1 There are issues of traffic, education, open space, ag
2 lands are substantially the same issues already being
3 represented by Friends of Makakilo. In essence
4 allowing them to intervene will be duplicative and
5 counterproductive.

6 I would like to add I'm also a member of the
7 Waipahu Neighborhood Board. And in the July 2011
8 meeting the Waipahu Neighborhood Board voted
9 overwhelmingly in support of Ho'opili, the 16 members
10 in support, none against.

11 In June Kapolei Neighborhood Board voted
12 overwhelmingly in support. Eight in support, none
13 against, one absent. And just last night the 'Ewa
14 Neighborhood Board voted in support, ten in support,
15 none against, and one absent. Mahalo again for this
16 opportunity.

17 CHAIRMAN LEZY: Petitioner, questions?

18 MR. KUDO: No questions.

19 CHAIRMAN LEZY: County?

20 MS. TAKEUCHI-APUNA: No questions.

21 CHAIRMAN LEZY: OP?

22 MR. YEE: No questions.

23 CHAIRMAN LEZY: Senator Hee?

24 MS. SEKI: No questions.

25 CHAIRMAN LEZY: Sierra Club?

1 MS. CERULLO: No questions.

2 CHAIRMAN LEZY: Friends of Makakilo?

3 DR. DUDLEY: No questions.

4 CHAIRMAN LEZY: Commissioners? Thank you.

5 MR. DAVIDSON: Richard Hargrave followed by,
6 I believe, it's Maurice Morita.

7 THE WITNESS: Just for the record my name is
8 not Richard Hargrave, but I'm Maurice Morita.

9 M-A-U-R-I-C-E M-O-R-I-T-A.

10 CHAIRMAN LEZY: Allow me to swear you, sir.

11 THE WITNESS: Oh, yes.

12 MAURICE MORITA

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

15 Yes, I do.

16 CHAIRMAN LEZY: Please provide your address.

17 THE WITNESS: My address is 1142 Aloalo,
18 apple, orange; apple orange, A-l-a Aloalo Street,
19 Honolulu, 96818. I have my testimony in front of me
20 so I'll give copies to everyone. But I'm the
21 assistant director for the Hawaii Laborers Employers
22 Corporation and Education Trust, called the Hawaii
23 Labor/Management Trust. And we strongly oppose
24 Senator Hee and the Sierra Club to be admitted as
25 Intervenors for the docket A06-771 and for most of the

1 reasons already testified and given, but I just wanted
2 to add too that.

3 For State Senator Hee we feel it's a
4 conflict of interest that the legislators do make the
5 laws and should not be involved as a Senate Senator.
6 But as a private individual I think they have the
7 right like everyone else like us.

8 As for both Senators Espero and Gabbard
9 support this Project. So, and they both live in that
10 area. So we feel that the other State Senator
11 shouldn't be involved.

12 As far as the Sierra Club I've seen in my
13 past years attending the Land Use Commission's and
14 other meetings, that after the developer does comply
15 to the Sierra Club's environmental issues, once they
16 do comply then a group becomes an anti-development
17 group.

18 So though they're pro-environment I see them
19 once the developer complies to all their environmental
20 issues that they have, then they're still against the
21 Project. And I think that's because they become an
22 anti-development group, no matter where the project
23 is. Thank you.

24 CHAIRMAN LEZY: Petitioner?

25 MR. KUDO: No questions.

1 CHAIRMAN LEZY: County?

2 MS. TAKEUCHI-APUNA: No questions.

3 CHAIRMAN LEZY: OP?

4 MR. YEE: No questions.

5 CHAIRMAN LEZY: Senator Hee?

6 MS. SEKI: No questions.

7 CHAIRMAN LEZY: Sierra Club?

8 MS. CERULLO: No questions.

9 CHAIRMAN LEZY: Friends of Makakilo?

10 DR. DUDLEY: No questions.

11 CHAIRMAN LEZY: Commissioners? Thank you.

12 MR. DAVIDSON: Sidney Higa followed by Pane
13 Meatoga.

14 PANE MEATOGA, JR.

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

17 THE WITNESS: Yes.

18 CHAIRMAN LEZY: Please state and spell your
19 name and provide your address.

20 THE WITNESS: My name is name is Pane --

21 MR. DAVIDSON: Excuse me.

22 THE WITNESS: My name is Pane P-A-N-E,
23 Meatoga M-E-A-T-O-G-A JR. As the district
24 representative for Operating Engineers Local 3 we
25 strongly oppose the Petition filed by the Sierra Club

1 and Senator Hee for the reasons stated previously. We
2 also feel that the environmental issues that have been
3 addressed and will continue to be addressed, which is
4 the focus of the Sierra Club, will go through the
5 normal process and the public input.

6 We also feel as far as Senator Clayton Hee
7 has stated in the last introduction that he made as
8 Chair of the Labor Committee, we feel that
9 inappropriate that a lawmaker is allowed to make laws
10 protecting our working men and women and on the other
11 hand, deny jobs for them to exercise those rights and
12 laws that they have. That's all I have to say. Thank
13 you.

14 CHAIRMAN LEZY: Petitioner, questions?

15 MR. KUDO: No questions.

16 CHAIRMAN LEZY: County?

17 MS. TAKEUCHI-APUNA: No questions.

18 CHAIRMAN LEZY: OP?

19 MR. YEE: No questions.

20 CHAIRMAN LEZY: Senator Hee?

21 MS. SEKI: No questions.

22 CHAIRMAN LEZY: Sierra Club?

23 MS. CERULLO: No questions.

24 CHAIRMAN LEZY: Friends of Makakilo?

25 DR. DUDLEY: No questions.

1 CHAIRMAN LEZY: Commissioners? Thank you.

2 MR. DAVIDSON: Georgette Stevens followed by
3 Al Ardizabal.

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

7 THE WITNESS: Yes, I do.

8 CHAIRMAN LEZY: Please state and spell your
9 name and provide your address.

10 THE WITNESS: Georgette Stevens,
11 G-E-O-R-G-E-T-T-E Stevens S-T-E-V-E-N-V-S, P. O. Box
12 75-414 Kapolei, Hawai'i 96707. Aloha, Members of the
13 Land Use Commission. Mahalo for allowing me this
14 opportunity to testify on the Sierra Club and Senator
15 Clayton Hee's Application as Intervenor in docket
16 A06-771 D.R. Horton-Schuler Division's Petition to
17 reclassify approximately 1500 acres of land in east
18 Kapolei Island of O'ahu.

19 I oppose both of them as intervenors because
20 their positions are already being represented by the
21 Friends of Makakilo, an existing Intervenor. Friends
22 of Makakilo has already been admitted as an Intervenor
23 with respect to issues in traffic, education, open
24 space, ag lands and sociological issues.

25 Both Sierra Club and Senator Hee are

1 requesting intervenor status on mostly the same
2 issues.

3 In the event the Sierra Club and/or Senator
4 Hee are admitted as intervenors, I respectfully
5 request that their participation be limited to those
6 issues not already represented by the Friends of
7 Makakilo. Mahalo.

8 CHAIRMAN LEZY: Thank you. Petitioner?

9 MR. KUDO: No questions.

10 CHAIRMAN LEZY: County?

11 MS. TAKEUCHI-APUNA: No questions.

12 CHAIRMAN LEZY: OP?

13 MR. YEE: No questions.

14 CHAIRMAN LEZY: Senator Hee?

15 MS. SEKI: No questions.

16 CHAIRMAN LEZY: Sierra Club?

17 MS. CERULLO: No questions.

18 CHAIRMAN LEZY: Friends of Makakilo?

19 DR. DUDLEY: No questions.

20 CHAIRMAN LEZY: Commissioners? Thank you
21 very much.

22 MR. DAVIDSON: Al Lardizabal followed by
23 Alicia Maluafiti.

24 AL LARDIZABAL

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

1 and testified as follows:

2 THE WITNESS: Yes.

3 CHAIRMAN LEZY: Please state and spell your
4 name, and provide your address.

5 THE WITNESS: My name is Al Lardizabal
6 L-A-R-D-I-Z-A-B-A-L. The address is 2222 Citron
7 Street, 303, Honolulu, Hawai'i 96826. Good morning,
8 Commissioners.

9 I'm the political coordinator for the Hawaii
10 Laborers Union. As such I lobby for the union.
11 Previous speakers have well articulated the positions
12 of denial for the two potential petitioners for
13 intervenors. With respect to Senator Hee I've known
14 Senator Hee for a number of years. We served
15 together. He's a man of integrity. He's a powerful
16 leader in the Senate. He's well liked. He's busy.
17 He heads two committees. Therefore his time is
18 valuable and needed.

19 Our concern is any potential delay of the
20 decision process by this Commission. At the Laborers
21 Union we have over 650 unemployed men and women, some
22 more than a year. There have been family
23 dislocations. There are delays and delays and delays
24 in investments in projects.

25 As you know last night the president, the US

1 Senate, the House, Congress, the mayors, governors,
2 legislators all have one objective: Job creation.
3 Any delay in job creation is unfortunate. We're
4 trying to avoid that.

5 Senator Hee is very passionate about
6 agriculture and we respect that, so with the Sierra
7 Club about the environment. We too are passionate
8 about putting our members back to work. We need this
9 now. Thank you very much.

10 CHAIRMAN LEZY: Petitioner?

11 MR. KUDO: No questions.

12 CHAIRMAN LEZY: County?

13 MS. TAKEUCHI-APUNA: No questions.

14 CHAIRMAN LEZY: OP?

15 MR. YEE: No questions.

16 CHAIRMAN LEZY: Senator Hee?

17 MS. SEKI: No questions.

18 CHAIRMAN LEZY: Friends of Makakilo?

19 DR. DUDLEY: No questions?

20 CHAIRMAN LEZY: Commissioners? Thank you.

21 MR. DAVIDSON: Alicia Maluafiti followed by
22 Maeda Timson.

23 THE WITNESS: Aloha.

24 ALICIA MALUAFITI

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

1 and testified as follows:

2 THE WITNESS: Oh, yes, absolutely. I talk
3 loud, yeah.

4 CHAIRMAN LEZY: Please state and spell your
5 name.

6 THE WITNESS: Alicia Maluaviti.

7 CHAIRMAN LEZY: And provide your address.

8 THE WITNESS: Alicia Maluafiti. A-L-I-C-I-A
9 M-A-L-U-A-F-I-T-I. And my address is 91-285 Fort
10 Weaver Road, Ewa Beach, 96706. All the way at the end
11 of Fort Weaver, dead end of Fort Weaver.

12 (Laughter)

13 Aloha, members. Thank you for letting me
14 come and testify on this intervenors. I want you to
15 know I did my homework. I read the petition submitted
16 by Sierra Club. I was up late last night doing
17 homework to make sure that I do try to address the
18 issues surrounding the intervenor.

19 I guess the question is is their kuleana
20 here in their Petition to actually intervene on this
21 case. I actually disagree with that. I'll give you
22 some of the reasons why.

23 Clearly their issues overlap with Friends of
24 Makakilo. But the Sierra Club's concerns about
25 agriculture I believe are disingenuous. And I'll

1 explain why.

2 In the past five years I've advocated on
3 behalf of the agricultural industry. I do at the
4 state and county level. This past session we
5 monitored 570 bills that impact farmers ranging from
6 agricultural theft, aquaculture taxes, funding,
7 irrigation, water, food safety, invasive issues,
8 Important Ag Lands, infrastructure. So you name the
9 gamut, 570 bills.

10 Out of those bills' crossover -- we had 113
11 bills -- the Sierra Club, Friends of Makakilo, Save
12 O'ahu Farmlands never showed up to support these
13 bills, never testified. I actually went through all
14 the bills that we ended up testifying on. I found two
15 bills that the Sierra Club testified on, and one was
16 in opposition to the ag community.

17 So I guess -- so my question would be, you
18 know, how genuine is the concern over of the
19 preservation of the ag lands, one of the reasons to
20 justify their involvement in this?

21 I believe they, along with others, sort of
22 these astro-turf organizations, advocacy
23 organizations, they really kind of ride the coattails
24 of the agriculture community to push this
25 anti-development, anti-rail, pro-environmental

1 position. They value only agricultural lands if
2 they -- because of their contribution to open space --
3 and they actually prefer ag lands stay fallow because
4 they would prefer that over the farmers' ability to
5 use herbicides or pesticides to grow their crops, to
6 till the crops, to use up the water.

7 And to make matters worse, they've actually
8 testified on a lot of the water issues. They actually
9 preferred that the water not be diverted to
10 agriculture purposes but prefer the water go back to
11 the streams which everybody here knows -- I'm the
12 animal lover and I love our forests and our wildlife
13 but farmers gotta farm. Farmers need water.

14 So I just feel like there's a little bit of
15 conflict over sort of walking the walk and talking the
16 talk.

17 The other issue is really the fact that, you
18 know, between the Sierra Club and some of these other
19 advocates for ag theses, I call them fake farmers, you
20 know, food security, food sustainability, these are
21 very core issues to some of the challenges we're
22 dealing with.

23 MR. DAVIDSON: Excuse me, 30 seconds.

24 THE WITNESS: 30 seconds for...? To wrap
25 up? Okay. Let me move on to another reason why -- I

1 wish you would have told me that prior. But let me
2 tell you why I don't think they also represent the
3 people. In their petition they do talk about
4 representing the people. They actually don't.

5 For most of us that live on the west side
6 you've heard we all support this Project.
7 Unfortunately I don't believe the majority of their
8 3,000 members in the state, of which some live on
9 O'ahu, of which some live in West O'ahu, I don't
10 believe that that's another genuine concern.

11 For those of us that live on that side of
12 the island we support the Project on behalf of our
13 keiki, on behalf of the future of housing on our
14 island, on behalf of what we believe's going to be an
15 affordable and reliable transportation alternative.

16 The last point I would make is they don't
17 appear to really be honoring the General Growth Plan.
18 I mean in their statements in the petition they talk
19 about land use as being one of their core issues.

20 Well, it seems like if that was the case you
21 would actually look at that General Plan, take a look
22 at it, read it and understand that the growth on the
23 west side, 35 percent of the population growth of the
24 island, 350 percent in 'Ewa Beach alone, this growth
25 on the west side we need houses. We need houses for

1 our people today and our keiki tomorrow.

2 So this actual Project fits beautifully
3 within the Sierra Club's Position Statement if they
4 would sit down and take a look at the General Plan and
5 what it means for the island. And you as Land Use
6 Commission members I'm sure I'm the last person have
7 to tell you how to do your job. But this really is a
8 necessity.

9 This Project is a perfect fit for how we
10 envision this island. And as rail is built around it
11 it provides us the solutions we need for our traffic
12 congestion. Is that 30 seconds?

13 MR. DAVIDSON: More or less. (Laughter).

14 CHAIRMAN LEZY: Petitioner, questions?

15 MR. KUDO: No questions.

16 CHAIRMAN LEZY: County?

17 MS. TAKEUCHI-APUNA: No questions.

18 CHAIRMAN LEZY: OP?

19 MR. YEE: I'm sorry, I have a question. You
20 testified that you appeared before the Legislature on
21 various agriculture bills. Were you appearing on
22 behalf of an organization?

23 THE WITNESS: Yes. The Hawai'i Crop
24 Improvement Association.

25 MR. YEE: And today are you testifying on

1 behalf of that organization? Or on your own?

2 THE WITNESS: Absolutely not.

3 MR. YEE: On your own.

4 THE WITNESS: Yes. Me, my family. Can I
5 just add one more thing? Because I know a lot of us
6 work with Senator Hee. And out of all the petitioners
7 from Save O'ahu Farmland to Friends of Makakilo and
8 Sierra Club, the actual only person who actually cares
9 deeply and passionate about ag is Senator Hee. I
10 don't agree with him on this, but that at a minimum I
11 can respect.

12 MR. YEE: Thank you. I have nothing further.

13 CHAIRMAN LEZY: Senator Hee?

14 MS. SEKI: No questions.

15 CHAIRMAN LEZY: Sierra Club?

16 MS. CERULLO: No questions.

17 CHAIRMAN LEZY: Friends of Makakilo?

18 DR. DUDLEY: No questions.

19 CHAIRMAN LEZY: Commissioners? Thank you.

20 MR. DAVIDSON: Maeda Timson followed by
21 Alphonso Oliver.

22 MAEDA TIMSON

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

25 THE WITNESS: Only the truth.

1 CHAIRMAN LEZY: Please state and spell your
2 name, provide your address.

3 THE WITNESS: First name is M-A-E-D-A, last
4 name is Timson T-I-M-S-O-N. My address is 92-684
5 Nohona Street, Kapolei, Hawai'i.

6 Aloa, Members of the Land Use Commission.
7 Thanks for this opportunity. As was said before
8 there's so many reasons to oppose the participation of
9 Senator Hee and the Sierra Club. And I too echo that
10 sentiment. Friends of Makakilo, they are already
11 admitted as a party under your docket.

12 Senator Hee and the Sierra Club, they meet
13 with him, they're all the same body. They're the same
14 people. I see Kioni Dudley at the Legislature going
15 into his office. They're all the same persons.

16 So I think their admission into this docket
17 is not only going to render the proceedings to be
18 redundant but it's gonna really create an unmanageable
19 case for the Land Use to proceed in an orderly and
20 timely fashion. It's just another ploy to delay this
21 Project.

22 I find it kind of awkward having Senator Hee
23 as a potential party because he has an unfair
24 advantage. He's a senator. He has legislative and
25 political influence. I know him. I love him. We

1 just always fight, you know, and he knows that. But
2 it's apparent in the fact alone that he's recognized
3 by, as a senator.

4 You guys just keep referring to him as a
5 "senator". You're not referring to him as a person of
6 personal interest.

7 And I was sitting back there and I looked
8 around. And I was wondering out loud, I don't know,
9 but did he, like, nominate or confirm any of you folks
10 to be on this Commission? Is there a conflict? I
11 don't know. I wonder.

12 So you can see why the community who is
13 going to start wondering why is a senator involved in
14 a project and is he paying for his own research and
15 presentations? And do the people on the board support
16 his efforts or not?

17 I mean it's just -- it's just kind of fuzzy
18 for me and I think for the community in general. You
19 know, I've been a long-time advocate of the Kapolei
20 community which most of you probably don't want to see
21 me all the time. But anyway here I am.

22 But, you know, again, back in June -- I have
23 chaired the Makakilo/Kapolei/Honokai Hale Neighborhood
24 Board for more than 13 years so I know how the
25 community feels -- we took up the vote on Ho'opili.

1 There was over a hundred members from the community.
2 They attended. They showed support, and they asked to
3 be counted. And we counted them throughout that room.

4 Just last night an encore of unanimous
5 support here came from the 'Ewa Neighborhood Board who
6 never agrees in anything in years. But, you know,
7 they had over 100+ members. They had a unanimous
8 vote.

9 And, then, of course, the Waipahu
10 Neighborhood Board did the same thing too.

11 These boards represent thousands of people
12 on the west side. It's the folks who live, they love,
13 they breathe their communities. And we know what's
14 good for our community. And I want to know who these
15 people are that -- all these intervenors, who are
16 they? Where were they --

17 MR. DAVIDSON: Maeda, 30 seconds.

18 THE WITNESS: Where were they -- I'm going
19 to use it to the end -- where were they when we
20 tried -- when we were trying to build our community?
21 Where were they? They're not there. They don't even
22 live here. They don't feel our pain of what we are
23 trying to do.

24 And we have been working. As community
25 folks we have been following the rules. Okay. Do

1 this. Vote for that. We do it. Then now it's do it
2 again, you know. So does that mean every time
3 somebody doesn't like something, you feel it's not
4 going your way, let's do it again?

5 So now let's bring in more intervenors. So
6 now let's make it longer. Let's make -- it's like the
7 rules don't follow for everybody. And I'm a taxpayer.
8 I want a fair advantage like everybody else. Thanks
9 very much.

10 CHAIRMAN LEZY: Thank you. Petitioner,
11 questions?

12 MR. KUDO: No questions.

13 CHAIRMAN LEZY: County?

14 MS. TAKEUCHI-APUNA: No questions.

15 CHAIRMAN LEZY: OP?

16 MR. YEE: No questions.

17 CHAIRMAN LEZY: Senator Hee?

18 MS. SEKI: No questions.

19 CHAIRMAN LEZY: Sierra Club?

20 MS. CERULLO: No questions.

21 CHAIRMAN LEZY: Friends of Makakilo?

22 DR. DUDLEY: No questions.

23 CHAIRMAN LEZY: Commissioners? Thank you.

24 MR. DAVIDSON: The final two signed up
25 testifiers Alfonso Oliver followed by Mitchell

1 Shimabukuro.

2 ALFONSO OLIVER

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

5 THE WITNESS: Yes.

6 CHAIRMAN LEZY: Please state and spell your
7 name and provide your address. Alfonso Oliver
8 A-L-F-O-N-S-O. Oliver O-L-I-V-E-R 91-2020 Na'apuna
9 Place, Ewa Beach, Hawai'i 96706.

10 Good morning, Mr. Chair. Thank you, Land
11 Use Commission. I want to read a written statement by
12 our business management secretary-treasurer Peter
13 Ganaban, Laborers Local 368.

14 "Dear Members of the Land Use Commission:
15 The Hawaii Laborers Union Local 368 strongly opposes
16 Sierra Club and Senator Clayton Hee's request to admit
17 an intervenor docket A06-771 D.R. Horton-Schuler
18 Division, Petition to reclassify approximately
19 1,500 acres of land in East Kapolei, Island of O'ahu.
20 Both respective parties should not be intervenors as
21 their positions are already being requested --
22 represented by the Friends of Makakilo, an existing
23 Intervenor in Docket A06-771.

24 The FOM has already been admitted as a party
25 under Docket A06-771 with respect to issues of

1 traffic, education, open space, ag lands and
2 sociological issues. Both Sierra Club and Senator Hee
3 are requesting intervenor status substantially in the
4 same issues already being represented by FOM.

5 Their admission to Docket A06-771 would not
6 only render the proceedings inefficient but create an
7 unmanageable case for the Land Use Commission to
8 proceed in an orderly fashion.

9 In the event the LUC determines that the
10 Sierra Club and/or Senator Hee should be admitted as
11 parties under this docket, we respectfully request
12 their participation to be aligned with FOM whose
13 interests and positions concerning the proposed
14 development is substantially the same, or limit their
15 participation to those issues not represented by FOM.

16 "Thank you for this opportunity to testify
17 on this subject that is very important to our laborers
18 union and our 5,000 members. Sincerely Peter A.
19 Ganapan business manager, secretary treasurer,
20 Hawaii's Laborers Union of North America Local 368."
21 Thank you.

22 CHAIRMAN LEZY: Thank you. Petitioner,
23 questions?

24 MR. KUDO: No questions.

25 CHAIRMAN LEZY: County?

1 MS. TAKEUCHI-APUNA: No questions.

2 CHAIRMAN LEZY: OP?

3 MR. YEE: No questions.

4 CHAIRMAN LEZY: Senator Hee?

5 MS. SEKI: No questions.

6 CHAIRMAN LEZY: Sierra Club?

7 MS. CERULLO: No questions.

8 CHAIRMAN LEZY: Friends of Makakilo?

9 DR. DUDLEY: No questions.

10 CHAIRMAN LEZY: Commissioners? Thank you
11 very much.

12 THE WITNESS: I have copies I can give you.

13 CHAIRMAN LEZY: You can give them to our
14 clerk. Thank you. Mitchell Shimabukuro?

15 (No response)

16 It does not appear there are any additional
17 folks on the public witness list who signed up. Are
18 there any people who wish to provide public testimony
19 who did not sign up? If so, please step forward.

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

23 THE WITNESS: Yes.

24 CHAIRMAN LEZY: Please state and spell your
25 name and provide your address.

1 THE WITNESS: My name is Kika Bukoski,
2 K-I-K-A B-U-K-O-S-K-I, an address is 46-118 Kiowai
3 Street, Kaneohe, 96744.

4 Good morning, Chair, Vice-chairs, Members of
5 the Commission. Appreciate this opportunity to
6 testify. Would like to preface my comments by saying
7 that on behalf of the Building Trades Council, which
8 is comprised of 16 affiliate members from the
9 construction trades unions as well as our president
10 Reginald Catanares and myself, we hold high regard for
11 the senator from Windward O'ahu.

12 However, on this particular issue we differ,
13 and therefore oppose his position to intervene on this
14 particular case, as well as the Sierra Club. And I
15 don't want to -- no pun intended -- be redundant on
16 some of the statements that we already made, so I'd
17 like to stand on our written testimony as submitted to
18 this Commission on September 7th with just a few
19 additional comments if I may.

20 I just want to point out specific to the
21 senator from Windward O'ahu on his Petition to
22 Intervene that it seems incomplete, I believe, in
23 chapter 15. He basically disregarded item No. 2. And
24 if I recall correctly it was just left. So on the
25 contention that maybe his application is incomplete

1 we'd like to add that for a matter of record.

2 Also on the point of redundancy, I'd just
3 like to read, especially with regard to Sierra Club,
4 I'm going to read real briefly Kioni Dudley's reason
5 for opposing or intervening. "We are concerned to
6 preserve our best farmland to grow our own food and
7 biofood for survival. Our members have other
8 educational, cultural, recreational, esthetic,
9 scientific, environmental interests."

10 And then to read right from the Petition
11 from the Sierra Club it's almost verbatim, "The Sierra
12 Club and its members have educational, cultural,
13 recreational, esthetics, scientific and environmental
14 interests."

15 So, you know, in reading the Petition from
16 the Sierra Club it did come across as very
17 disingenuous and almost as a last case resort where
18 they just kinda cut and pasted some of the comments
19 presented by the previous Petitioner Friends of
20 Makakilo.

21 And for those reasons we'd like to ask for
22 this Commission's denial of both Petitions to
23 Intervene.

24 CHAIRMAN LEZY: Petitioner, questions?

25 MR. KUDO: No questions.

1 CHAIRMAN LEZY: County?

2 MS. TAKEUCHI-APUNA: County has none.

3 CHAIRMAN LEZY: Senator Hee?

4 MS. SEKI: No questions.

5 CHAIRMAN LEZY: Sierra Club?

6 MS. CERULLO: No questions.

7 CHAIRMAN LEZY: Friends of Makakilo?

8 DR. DUDLEY: No questions.

9 CHAIRMAN LEZY: Commissioners? Thank you.

10 Is there anybody else who'd like to provide public
11 testimony? Ma'am, if I could swear you in.

12 PEARL JOHNSON

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

15 THE WITNESS: Yes.

16 CHAIRMAN LEZY: Please state and spell your
17 name and provide your address.

18 THE WITNESS: I'm Pearl Johnson. P-E-A-R-L
19 J-O-H-N-S-O-N 2404 Kaneali'i, Avenue Honolulu. I'm
20 speaking for the League of Women Voters of Honolulu.
21 The League has long worked to protect open space and
22 to preserve farmland.

23 The fact that Kioni Dudley did not have
24 legal representation at the June hearing shows that we
25 really do need more intervenors. The Petitioner has a

1 formidable array of lawyers. There are unions, there
2 are many, many people who would be arrayed against
3 Dr. Dudley and he doesn't even have a lawyer.

4 We really need more intervenors. The forces
5 against Dudley for this Project are formidable and
6 Dudley stands alone. He should not be standing alone.
7 Sierra Club has resources. Senator Hee has resources.
8 And they are needed to represent the point of view of
9 people opposed to this Project.

10 Senator Hee should not only represent his
11 Windward constituents. This Project affects the whole
12 island. It would remove the best farmland in the
13 state. This affects the whole island. I'm glad
14 Senator Hee wishes to intervene. Thank you very much.

15 CHAIRMAN LEZY: Thank you. Petitioner,
16 questions?

17 MR. KUDO: No questions.

18 CHAIRMAN LEZY: County?

19 MS. TAKEUCHI-APUNA: No questions.

20 CHAIRMAN LEZY: OP?

21 MR. YEE: No questions.

22 CHAIRMAN LEZY: Senator Hee?

23 MS. SEKI: No questions.

24 CHAIRMAN LEZY: Sierra Club?

25 MS. CERULLO: No objection.

1 CHAIRMAN LEZY: Friends of Makakilo?

2 DR. DUDLEY: No questions.

3 CHAIRMAN LEZY: Commissioners? Thank you,
4 ma'am. Is there anybody else who wishes to provide
5 public testimony? Please step forward.

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

9 THE WITNESS: Yes, I do.

10 CHAIRMAN LEZY: Please state and spell your
11 name and provide your address.

12 THE WITNESS: My name is Sidney Higa. When
13 I was called a little earlier but unfortunately I had
14 to work during that earlier session. S-I-D-N-E-Y
15 H-I-G-A address 92-739 Makakilo Drive.

16 I've been a long-time resident of Makakilo,
17 over 30 years. I do believe that we should be looking
18 at more development in this area. In the case of
19 Friends of Makakilo it appears that their Docket
20 A06-771 is aligned almost identically to a docket that
21 the Sierra Club and Senator Hee is opposing.

22 So my opinion is that they should be all
23 considered together, not as three separate entities as
24 this would waste a lot of time, energy, taxpayer
25 dollars and just cause more delays to the Project.

1 I am a small business owner. I'm looking
2 for opportunities for my children and grandchildren.
3 And I believe that this development will afford them
4 the opportunity to have a better life to work in the
5 area that they grew up in.

6 So basically my request is that Sierra Club
7 and Senator Hee's Petition be aligned with Friends of
8 Makakilo.

9 CHAIRMAN LEZY: Thank you. Petitioner,
10 questions?

11 MR. KUDO: No questions.

12 CHAIRMAN LEZY: County?

13 MS. TAKEUCHI-APUNA: No questions.

14 CHAIRMAN LEZY: OP?

15 MR. YEE: No questions.

16 CHAIRMAN LEZY: Senator Hee?

17 MS. SEKI: No questions.

18 CHAIRMAN LEZY: Sierra Club?

19 MS. CERULLO: No questions.

20 CHAIRMAN LEZY: Friends of Makakilo?

21 DR. DUDLEY: No questions.

22 CHAIRMAN LEZY: Commissioners? Thank you.

23 Is there anyone else who wishes to provide public
24 testimony? Hearing none, that concludes public
25 testimony in this agenda item. Before we move on to

1 the Intervenor's petitions the Chair will entertain a
2 motion to enter in executive session.

3 COMMISSIONER CHOCK: So moved, Mr. Chair.

4 COMMISSIONER JUDGE: Second.

5 CHAIRMAN LEZY: All in favor? (raising
6 hands) Opposed? Thank you. We'll leave so you folks
7 can stay in place. 10:30.

8 (Executive session recess was held. 10:30)

9 CHAIRMAN LEZY: (10:40) We're back on the
10 record. We will take up Sierra Club's Petition to
11 Intervene first. Ms. Cerullo, are you prepared to
12 proceed?

13 MS. CERULLO: Yes.

14 CHAIRMAN LEZY: Please do.

15 MS. CERULLO: Thank you. good morning,
16 Commissioners. My name is Tatyana Cerullo
17 representing Sierra Club. We appreciate the testimony
18 of all of the public witnesses. We'd like to
19 highlight, though, the actual standard for
20 intervention. The spirit of it is lenience in
21 allowing public involvement. Actual standard in the
22 Hawai'i Revised Statutes is "leave to intervene shall
23 be freely granted," and that needs to be stressed.

24 The rest of it is that "provided that the
25 Commission may deny an application when it appears

1 that..." and there's two criteria and that needs to be
2 looked at. The first one: "Is the position
3 substantially the same as the position of a party
4 already admitted?

5 "And the admission will render the
6 proceedings inefficient and unmanageable." You have
7 to have both to satisfy the two criteria.

8 We view the fact that no parties present in
9 the docket right now have opposed our intervention,
10 that the Sierra Club's motion should be freely
11 granted.

12 As far as the other criteria regarding
13 denial, like I said, both A and B must be met. In
14 here neither criteria is met and therefore there are
15 no grounds for denial of our motion.

16 While our position might be similar to
17 Friends of Makakilo it is by no means the same. We
18 have ultimate goals. But Sierra Club will provide a
19 very different perspective and add value by providing
20 a more complete record on the topics.

21 Sierra Club's perspective stems from the
22 fact that Sierra Club is a completely different type
23 of organization. It's not a neighborhood coalition.
24 It is the State's largest and most active grass roots
25 environmental organization with 7,000 statewide dues

1 paying members, with over 3,000 members on the Island
2 of O'ahu.

3 We have an ambitious agenda to improve the
4 sustainability of our island home. Sierra Club has
5 had statewide involvement in environmental issues for
6 over 40 years. It's been involved in the passage of
7 many important environmental laws in the state of
8 Hawai'i, has a long history of voicing environmental
9 concerns and has been involved in these types of
10 proceedings before.

11 And as a statewide and national organization
12 Sierra Club has access to numerous experts and
13 consultants of the pertinent topics.

14 In sum, Sierra Club is a completely
15 different type of organization than the Friends of
16 Makakilo and we should be treated as such. No other
17 party has such a depth of perspective that Sierra Club
18 does and the resources to present a broader and more
19 diverse record and that speaks to the interest of the
20 Sierra Club members.

21 As far as the second prong of the standard
22 is concerned, Sierra Club will work in good faith with
23 Friends of Makakilo and Senator Hee, if allowed to
24 intervene, to present a cohesive and concise record,
25 presentation to ensure that the Commissioners have all

1 the information they need to make the best and most
2 well-informed decision.

3 If anything Sierra Club's involvement will
4 make the case easier and more efficient. It will make
5 it more manageable by helping to keep the testimony on
6 track and pertinent. We may or may not share
7 witnesses.

8 However, if we do, the parties intend to
9 cooperate and coordinate the testimony and the
10 witnesses and make sure that testimony is not
11 duplicative.

12 As to the issue of sustainability and the
13 what is the definition of sustainability, we would
14 like to speak to that because this is a very important
15 Project considering its size and location on prime
16 agriculture land.

17 There is a definition of sustainability.
18 It's a defined term. And it's located in the Hawai'i
19 2050 Sustainability Plan, portions of which were
20 adopted by the Legislature in its long-term plan last
21 year. I won't recite the definition.

22 There are many topics on the issue of
23 sustainability. Sierra Club comes at it from a
24 completely different -- it's a different perspective.
25 It's similar topics, but a different perspective.

1 Agriculture, transportation, traffic, food security,
2 all those things are not black and white. There are
3 nuances and different perspectives within each topic.

4 So to the extent that Sierra Club has added
5 information or added resources to add to that topic we
6 will. To the extent that it's duplicative we would
7 not -- we would not make it duplicative. Thank you.

8 CHAIRMAN LEZY: Thank you. Petitioner?

9 MR. KUDO: Good morning. As indicated in
10 our response to the Sierra Club's Petition to
11 Intervene we've taken no position on whether the
12 Commission should or should not grant Sierra Club's
13 Petition to Intervene in this proceeding.

14 However, in light of the Sierra Club's
15 Petition being filed midway through this particular
16 contested case, we are concerned that adding a new
17 party or parties to this proceeding at this juncture
18 could render the proceedings inefficient and
19 unmanageable unless certain measures are taken into
20 consideration.

21 As was stated by Ms. Cerullo the Hawai'i
22 Supreme Court has ruled in a previous case years ago
23 that intervention by the public should be freely
24 granted.

25 But it caveated its rules by allowing

1 administrative bodies such as the State Land Use
2 Commission to use its own judgment in determining
3 whether it would be repetitive or whether the
4 introduction of additional parties would make the
5 proceedings unmanageable or inefficient.

6 By doing so it gave administrative bodies
7 such as the State Land Use Commission the power and
8 authority to fashion the case in such a way to provide
9 efficiency and manageability.

10 When this Commission considered Friends of
11 Makakilo's original Petition to Intervene, which was
12 filed February 13, 2009, it granted FOM's Petition on
13 the condition that its participation would be limited
14 to certain issues. These were five issues: Traffic,
15 education, open space, agriculture lands and
16 sociological issues.

17 Accordingly, FOM has been presenting
18 arguments and questioning our witnesses regarding only
19 these particular issues.

20 Based on our review of the Sierra Club's
21 Petition to Intervene we found that all of its issues
22 that affect the Ho'opili Project are also the same
23 issues raised by FOM. Sierra Club in response stated
24 that its interests are broader and more diverse. And
25 you heard Ms. Cerullo talk about that, how unique

1 their position might be on traffic or food
2 sustainability.

3 But it failed to respond to our position or
4 any position of the parties in educating this
5 Commission on how that differentiation affects each
6 issue that they're asserting.

7 This docket is a continuation of an open
8 docket in 2009. And most of the Petitioner's case in
9 chief has already been presented to this body and is
10 part of the record on this case.

11 Sierra Club's late participation in an
12 ongoing proceeding can engender repetitive testimony
13 and a redundant proceeding by creating a duplicate
14 record to bring new parties up to speed where the case
15 left off in September of 2009.

16 So, for instance, if Sierra Club desires
17 that Petitioner put on its full case from the very
18 beginning, it would surely be duplicative and I think
19 a waste of many of the people's here and the
20 Commissioners' time.

21 We have no problem with the participation of
22 interested parties in this ongoing proceeding so long
23 as duplicative arguments are avoided, and that the
24 parties who share similar interests can efficiently
25 ask questions so as not to take up more of this

1 Commission's time, especially since seven months of
2 hearings on the Petitioner's case has already been
3 concluded.

4 I did a matrix, just for my own use, of the
5 various issues raised by FOM--Friends of Makakilo,
6 Sierra Club and Petitioner Hee which I will address
7 later. But when we compare the Friends of Makakilo's
8 five areas that they have talked about or were limited
9 to, it duplicates the same areas that are raised in
10 the Petition by Sierra Club.

11 For instance, Friends of Makakilo raised
12 agriculture and in particular the preservation of ag
13 lands, food security and the constitutional duty to
14 protect ag lands. Those were all raised by the FOM.

15 Second, open space was raised by FOM. Third
16 was traffic. And this was quality of life, regional
17 roadways, the Ewa Development Plan, the planning
18 process, et cetera and rail.

19 The fourth were sociological issues: Will
20 houses be built for outsiders, the psychological
21 impact on drivers that have to wait in traffic, et
22 cetera. They always raised education as an issue but
23 they never argued it.

24 In addition FOM raised groundwater. Now,
25 they weren't supposed to but they did raise that in

1 one of the proceedings that we have the transcript on.

2 And if you would like the citation I can
3 give you the citation where are all of these issues
4 have been raised by FOM in the last 7 months of
5 proceedings.

6 When you compare that to Sierra Club's
7 issues they're almost identical. 1. Ag lands, food
8 security sustainability, open space and view planes,
9 traffic and transportation, groundwater. Now, there
10 are two additional issues that Sierra Club raised that
11 are not part of FOM's case.

12 One is drainage, which was actually Haseko's
13 issue but they have dropped out. And the last one is
14 state and county tax resources for infrastructure.

15 So there are only two different issues that
16 Sierra Club has raised and the rest of the issues are
17 duplicative of FOM's issues.

18 Our recommendation to this Commission to
19 make it more manageable and not to waste the
20 Commission's time, is that if you allow the Sierra
21 Club to intervene in these proceedings, our first
22 recommendation is that they be consolidated into the
23 FOM as one party. And they can add the additional two
24 issues to them.

25 If you feel that Sierra Club should be added

1 only as a separate party, then they should be limited
2 to only the two additional issues that they've raised
3 and not be able to question witnesses or submit
4 evidence on the other five issues that have already
5 been raised by FOM.

6 Our preference is that Sierra Club be merged
7 or consolidated as a party into the Friends of
8 Makakilo's case because a majority of the issues are
9 very similar. That's all I have.

10 CHAIRMAN LEZY: Thank you. County?

11 MS. TAKEUCHI-APUNA: The City does not
12 oppose Sierra Club's intervention. Thank you.

13 CHAIRMAN LEZY: Thank you. OP?

14 MR. YEE: The Office of Planning will rest
15 on its pleadings. I think the only question we might
16 raise is in the reference to merging the parties. I
17 can understand having two parties represented by a
18 single attorney with a single representation. I
19 assume that's what's meant, as I don't think the
20 entities themselves aren't going to merge, but just
21 for the record. That's it.

22 CHAIRMAN LEZY: Senator Hee.

23 MS. SEKI: We have no comment.

24 CHAIRMAN LEZY: Friends of Makakilo?

25 DR. DUDLEY: In the first place the Friends

1 of Makakilo would very much like to have some other
2 support here. I think one of the earlier testifiers
3 made a very good point about the fact that we're
4 outmanned and outgunned.

5 When you're up against America's largest
6 home builder, and when you're up against one of the
7 finest houses of lawyers and three of them sit at the
8 table, you know, even if I do finally find somebody
9 who's willing to work with me, you know, we're up
10 against an awful lot to be representing the entire
11 public.

12 So I would really like to see Senator Hee
13 and the Sierra Club allowed to be intervenors. Let me
14 tell you there are really important areas which I
15 don't have under me. And one of them is water. I
16 mean this whole case could rise and fall on water
17 alone.

18 Another is the real need for housing. That
19 really needs to be thoroughly discussed. What is the
20 effect on tourism? Tourism is not really something
21 that is my baby. So it's something that really needs
22 to be brought out in great detail.

23 The impact of the rail, which as the months
24 have gone on, this has become more important. It's a
25 major, major aspect. I don't know anything about the

1 law. The other intervenors can bring in things about
2 the law.

3 The drainage problem that we no longer have
4 someone to defend against drainage, I think that's
5 good. The idea of the tax resources for
6 infrastructure, you know, I have education but I don't
7 have anything about the costs we're going to have for
8 police and the cost for fire departments and the costs
9 for this and that and the other thing, and the costs
10 of schools themselves that we're going to have to
11 bear.

12 So I would like to have some support to open
13 up other areas so that the Commission is really fully
14 informed. I really think that-- I really think that
15 having one man trying to stand and offer everything is
16 just -- that isn't fair to the people of the state.
17 That isn't fair to the people of the state.

18 I'd like to point out that there are three
19 new Commissioners. And I think that we need to go
20 back and start the whole thing over again.

21 (Laughter). Well, I do. I think that the -- I think
22 the idea of saying somebody should be added to me as
23 one intervenor, nobody is adding anything to the
24 lawyers as one lawyer. Why should anybody try to
25 infringe upon my intervenor-ship?

1 So I really -- I think that there are a
2 great number of reasons why the Commission should
3 really seriously think how are we going to best
4 represent the people? And I think that's by allowing
5 the other two candidates to become Intervenors.

6 I think that they do offer a different
7 perspective. And I think that it's something, you
8 know, that the ability to intervene shall be freely
9 granted. I really hope that you do that. Thank you
10 very much.

11 CHAIRMAN LEZY: Thank you. Sierra Club
12 rebuttal?

13 MS. CERULLO: Like to make three points in
14 rebuttal. First it's our position that the Petition
15 must start over. There are new Commissioners. This
16 is a new Petition.

17 Second we're a separate party. We're a
18 separate organization. We have a long-standing
19 history and a depth of perspective which I highlighted
20 earlier in my statement. We need to speak to the
21 issues of sustainability. We need to have all of the
22 issues to be able to speak to.

23 We need to have the flexibility to address
24 issues that Friends of Makakilo can't address or
25 doesn't have the resources to address so that the

1 Commissioners have that complete record upon which
2 they can make the best and most informed decision in
3 this case.

4 This is a tremendous case. It's very
5 important for the public and the public interest and
6 to our members. And we want to be able to assist
7 Friends of Makakilo and present our view, position to
8 the Commissioners.

9 Third. I want to emphasize the devotion and
10 complete commitment that we will have to work very
11 closely with Friends of Makakilo and Senator Hee, if
12 allowed to intervene, in working together.

13 We need to be separate, but we need to be in
14 this together. And we will facilitate the process.
15 We will not waste your time. We will be efficient and
16 cohesive and concise. And for that you will have a
17 much better record before you to make your decision.
18 Thank you.

19 CHAIRMAN LEZY: Thank you. Commissioners,
20 questions?

21 COMMISSIONER JUDGE: I have one question.

22 CHAIRMAN LEZY: Commissioner Judge.

23 COMMISSIONER JUDGE: This is for Mr. Dudley.
24 I heard you talking and I heard the Sierra Club say
25 that they're very willing to work with you and have it

1 cohesive.

2 But I wasn't sure that I heard you say --
3 you want them but I didn't hear you say that you were
4 willing to be efficient and where your needs overlap
5 you will present, you won't be duplicative as well.

6 DR. DUDLEY: Okay. I want to assure you
7 that we will work together so that there will be no
8 duplication. And that where I have something they
9 will work with me so that I do the questioning.

10 We haven't worked all this out at all. But
11 what I do want to assure you is that we will work
12 together so as to make the presentations clear,
13 concise and non-duplicative.

14 COMMISSIONER JUDGE: Thank you.

15 CHAIRMAN LEZY: Commissioners, any other
16 questions? Dr Dudley, I just had a follow-up question
17 on what Commissioner Judge just asked you.

18 There was the suggestion that if Sierra Club
19 is granted Intervenor status that because of the
20 overlapping issues that have been raised by Sierra
21 Club and Friends of Makakilo, it may be appropriate to
22 have a single representative speak for both
23 Intervenor because of that sameness of the issues.

24 And since you were first in line is that
25 something you would entertain merging Friends of

1 Makakilo with Sierra Club for that purpose so that a
2 single representative is appearing during the course
3 of the hearings on behalf of those interests?

4 And I would anticipate that if that occurred
5 that that would not necessarily prevent you and the
6 Sierra Club's attorneys from making a decision with
7 regard to any particular witness or any particular
8 presentation as to who would conduct questioning or
9 who would be making a presentation.

10 Is that something you would entertain?

11 DR. DUDLEY: Yes. Yes. I think that what
12 you're describing is really just what I have in mind.
13 There would be separate parties. They would be able
14 to question separately. But as far as representatives
15 are concerned, when somebody was speaking about an
16 issue we would all put our eggs in the same basket.

17 CHAIRMAN LEZY: Okay. I think maybe you
18 misunderstood the question I was asking. I was asking
19 you whether you would be willing to merge with Sierra
20 Club, whether Friends of Makakilo, more accurately,
21 would be willing to merge with Sierra Club.

22 DR. DUDLEY: You mean entirely merge with
23 Sierra Club?

24 CHAIRMAN LEZY: Yes.

25 DR. DUDLEY: No. No. I really think I've

1 been accepted as an Intervenor separately. And I
2 don't think my status as an Intervenor should be
3 infringed upon. And I really -- I think that their's
4 is a different issue. If they're approved as
5 intervenors, though, we will work very closely
6 together in order to make things move smoothly and
7 without duplication.

8 CHAIRMAN LEZY: Thank you. Commissioners,
9 anything else? Parties, anything else? Sierra Club?

10 MS. CERULLO: I'd like to just add one last
11 point. We are a different organization. We may have
12 different perspectives. And you can't just merge our
13 interests into one voice. We will have different
14 perspectives. And that will just add to the pool of
15 information. So we need to be separate but working
16 together.

17 CHAIRMAN LEZY: Thank you. Commissioners,
18 I'll entertain a motion. Commissioner Judge.

19 COMMISSIONER JUDGE: I have a question. I
20 don't know if I need to ask this in executive session,
21 but the Sierra Club brought up something that they
22 want this to go back to square one. And I don't think
23 that's -- I mean I don't know if -- that's not going
24 to happen because that's not my understanding of
25 what's going to happen. You're being admitted

1 mid-stream.

2 So understanding that rule, does that change
3 your -- any of your intentions? Because if you're
4 going to try to make everything go back to square one,
5 then I do have a concern about the duplicativeness of
6 this. You would have to understand our process and
7 understand where you're coming in at and be willing
8 to -- be willing to accept that process.

9 MS. CERULLO: If that's the decision of the
10 Commission that we would come in mid-stream we would
11 honor that, but we disagree. We feel that it should
12 start from the beginning. It's a new Petition. There
13 are new Commissioners that need to hear the
14 information in order for all of you to make a well
15 informed decision.

16 CHAIRMAN LEZY: I think that the issue of
17 the Petitioner's case is separate and apart from the
18 issue of the intervention. I'll entertain a motion.

19 COMMISSIONER CHOCK: Just a question.

20 CHAIRMAN LEZY: I'll entertain another
21 question.

22 COMMISSIONER CHOCK: Question for Sierra
23 Club. When this case initiated in 2009 why didn't you
24 come forward to intervene at that time?

25 MS. CERULLO: The Sierra Club is a grass

1 roots volunteer-based organization. We have limited
2 resources. At that time we were involved in another
3 proceeding similar to this one, Koa Ridge.

4 And we weren't -- Sierra Club didn't have
5 the resources to intervene. If it could have it
6 probably would have, but it was still following it,
7 and felt it very important. Thank you.

8 COMMISSIONER CHOCK: Wouldn't you agree that
9 Friends of Makakilo is a similar nonprofit
10 organization with limited resources as well and yet
11 they came forward at the appropriate time and you did
12 not?

13 MS. CERULLO: We weren't able at the time.
14 We do have the opportunity under the law to intervene
15 at this time. So we would like to take that
16 opportunity. Also Friends of Makakilo is a different
17 organization. They're a neighborhood coalition.
18 Their members live in the neighborhood.

19 Ours is different. It's more diverse. It's
20 broader. We will have different resources and
21 perspective to add to the pool of information.

22 CHAIRMAN LEZY: Commissioner Heller.

23 COMMISSIONER HELLER: Yes. I'd like to make
24 a motion. My motion is to grant the Petition for
25 Leave to Intervene by Sierra Club subject to two

1 conditions. And those would be: The first condition
2 is that the Order Granting Leave to Intervene
3 specifically say that we are not granting them the
4 right to retroactively object to testimony or evidence
5 that's already in the record in this docket.

6 And second: That we request or require that
7 they work with Friends of Makakilo to avoid any
8 duplication of exhibits and arguments and to avoid any
9 repetitive or duplicative testimony.

10 COMMISSIONER MATSUMURA: Second the motion.

11 CHAIRMAN LEZY: Motion by Commission Heller,
12 second by Commissioner Matsumura. Discussion.

13 COMMISSIONER JUDGE: Could I just make a
14 friendly amendment to number two, to recommend that
15 they say they work with any and all intervenors.

16 COMMISSIONER HELLER: I'll accept that as a
17 friendly amendment.

18 CHAIRMAN LEZY: Commissioner Matsumura, as
19 the second do you accept that amendment?

20 COMMISSIONER MATSUMURA: Yes, I do.

21 CHAIRMAN LEZY: Further discussion? Before
22 we poll, the Chair would entertain a motion to enter
23 executive session.

24 COMMISSIONER MATSUMURA: So moved.

25 MS. CERULLO: Mr. Chairman, excuse me. May

1 I add something before you do that? Will you allow me
2 to say something?

3 CHAIRMAN LEZY: Sure. Go ahead.

4 MS. CERULLO: As far as point one and not
5 being allowed to retroactively object to the
6 testimony, we're not quite sure what that means. We
7 are wondering if that's maybe more appropriate to
8 discuss how we would proceed at a different time and
9 our intervention now just be what's before the
10 Commission.

11 It's very limiting not to be able to
12 retroactively object to any testimony that's in the
13 record. We're not quite sure what is meant by that.

14 CHAIRMAN LEZY: Your point's noted.
15 Anything else?

16 MS. CERULLO: No, that's all.

17 MR. KUDO: I'd like to clarify what exactly
18 the two issues are. One is if Sierra Club is
19 intervening on the basis that they want to start these
20 hearings anew, I agree with Commissioner Judge that
21 this clearly would be duplicative, and in a sense
22 unmanageable as we don't know how to prepare the case
23 other than bring back, all our witnesses back for
24 another seven months of hearing.

25 They have transcripts on these proceedings

1 and they are available for people to review and read.
2 So I don't see the necessity of that. Now, that could
3 be an issue that's decided at a later point.

4 But I think it has a bearing as to whether
5 the basis for intervention, which Sierra Club is
6 appearing before you today, would promote
7 unmanageability and inefficiency of these proceedings
8 so is relevant to that.

9 The second issue raised by Commissioner
10 Heller I'm not sure what "working together" means.
11 From my standpoint in past proceedings this Commission
12 has merged parties with similar interests, not
13 identical, but similar interests, to work together so
14 that only one lawyer gets to question a witness on a
15 particular topic.

16 So if it's traffic you have one lawyer
17 representing the one or two parties questioning them
18 on traffic. Now, they can consolidate questions if
19 they want from the other attorneys that are working on
20 the case, et cetera, et cetera. But not to have three
21 lawyers question the same witness about the same thing
22 because it's going to overlap.

23 And that's what I'm afraid of. We don't
24 mind them questioning our witnesses about whatever
25 they want to question them about the topics that they

1 have raised. But what we didn't want to do is have
2 multiple sets of lawyers representing each of the
3 Intervenors questioning the same witness about the
4 same thing. And I don't think the Commission wants to
5 sit through all of that. If the Commission could
6 consider clarifying that.

7 CHAIRMAN LEZY: Point's noted. I'm sorry,
8 Who moved for executive session? Commissioner Heller.
9 Seconded it?

10 COMMISSIONER CHOCK: Second.

11 CHAIRMAN LEZY: All in favor? All opposed?
12 Thank you. We'll leave. Please stay in place.

13 (Executive session recess was held.)

14 CHAIRMAN LEZY: (11:45) We are back on the
15 record. Thank you very much for your patience.
16 Commissioner Heller, your motion is pending.

17 COMMISSIONER HELLER: Yes. Mr. Chair, I
18 seem to have unintentionally created some confusion.
19 So what I would like to do is amend my motion to
20 simply say that: We grant the request by the Sierra
21 Club to intervene in this docket. Period.

22 I think that's a lot simpler and easier to
23 understand. I do want to note for the record, though,
24 that as restated the motion does not imply any
25 decision either way as to whether or not we're going

1 back to square one in terms of putting on a case here.

2 Thank you.

3 COMMISSIONER MATSUMURA: Second.

4 CHAIRMAN LEZY: Commissioners, discussion?

5 I would just echo one comment. I think I actually
6 made it earlier. I believe that the question of
7 intervention is separate from any attempt or down the
8 line by Intervenor to take any action regarding the
9 status or the stage of the proceedings.

10 So I think the only issue before us right
11 now is whether or not it's appropriate for the Sierra
12 Club to be granted Intervenor status.

13 With that, Executive Officer, please poll.

14 MR. DAVIDSON: This is a motion to grant
15 Sierra Club's Petition to Intervene in A06-771.

16 Commissioner Heller?

17 COMMISSIONER HELLER: Yes.

18 MR. DAVIDSON: Commissioner Matsumura?

19 COMMISSIONER MATSUMURA: Yes.

20 MR. DAVIDSON: Commissioner Judge?

21 COMMISSIONER JUDGE: Yes.

22 MR. DAVIDSON: Commissioner McDonald?

23 COMMISSIONER McDONALD: Yes.

24 MR. DAVIDSON: Commissioner Contrades?

25 COMMISSIONER CONTRADES: Yes.

1 MR. DAVIDSON: Commissioner Chock?

2 COMMISSIONER CHOCK: Yes.

3 MR. DAVIDSON: Chair Lezy?

4 CHAIRMAN LEZY: Yes.

5 MR. DAVIDSON: Motion passes 7-0, Chair.

6 CHAIRMAN LEZY: Thank you. We'll move on
7 now to Senator Clayton Hee's Petition to Intervene.

8 Ms. Seki, are you prepared to proceed?

9 MS. SEKI: Yes, I am.

10 CHAIRMAN LEZY: Please proceed.

11 MS. SEKI: I want to thank you for allowing
12 us to appear before you today, Chair and Commissioners
13 this morning. Senator Hee has a very distinctive view
14 and perspective to add to the proceedings considering
15 the development -- or excuse me, the amendment of
16 boundaries in the Ho'opili matter.

17 He's a farmer. He's a strong advocate of
18 agriculture. He's also a strong supporter of labor.
19 And he's a legislator. He understands the value of
20 the prime A and B agricultural land and its importance
21 to the entire state of Hawai'i, especially the
22 proximity of this land to transportation to bring the
23 products to market, the topography of that area, the
24 water, the quality of soils, sun, and the long growing
25 season, the ability to grow multiple crops.

1 He understands the importance of all these
2 things. And he recognizes that the consideration of
3 taking this out of agriculture will not only impact
4 the immediate vicinity of Ho'opili, but will impact
5 the entire state.

6 It will impact the State's efforts to
7 sustain or develop a sustainable economy, a
8 sustainable state that can take care of itself should
9 things change with regards to transportation and that
10 sort of thing where we only have about a week's supply
11 of food on the island at any given time.

12 If we are able to maintain and produce more
13 food here in concert with our Hawai'i Sustainability
14 Plan, the 2050 Plan, then we have a much better, safer
15 way of taking care of our citizenry.

16 Much has been said about Senator Hee's being
17 limited to his district or being only responsible to
18 his constituency. Actually as a state senator his
19 kuleana goes well beyond the district that he
20 represents. He has to consider issues that come
21 before him that are brought from citizens across the
22 state. Every island can come to Senator Hee's office
23 and has. People from everywhere have come to ask him
24 to support legislation or efforts to pass legislation
25 in order to create a better Hawai'i.

1 As has been noted already by the other
2 parties, the Hawaii Administrative Rules does leave,
3 give leave to intervene. And it specifies that should
4 be freely granted.

5 Case Law also follows that idea of freely
6 granting interventions in matters such as the Land Use
7 Commission issues that are presented here.

8 They're only -- the applications are denied
9 if the position is substantially the same as another
10 party already admitted and the admission will render
11 the proceedings inefficient and unmanageable.

12 Similar to Sierra Club we do not plan to
13 muck up the works. We are going to be working in
14 conjunction with the other intervenors to ensure that
15 this matter goes efficiently, that there's no
16 repetition, that everything is done in a manageable
17 fashion so that this matter can proceed efficiently.

18 No objections have been filed by the state
19 Office of Planning who's represented by the Attorney
20 General's Office. And no objection has been filed by
21 D.R. Horton with regard to the intervention of Senator
22 Hee in this matter. The only thing that D.R. Horton
23 has requested is to align Senator Hee with the Friends
24 of Makakilo.

25 There is one objection filed to the

1 intervention and that was by the Department of
2 Planning and Permitting. And they're represented by
3 the corporation counsel.

4 So really there are two issues here that we
5 need to consider with regard to the intervention
6 application. One is: Should Senator Hee be aligned
7 with Friends of Makakilo?

8 And two: Whether Senator Hee is prohibited
9 from participating in this matter under the doctrine
10 of separation of powers? And this was brought up by
11 the corporation counsel.

12 Senator Hee and Friends of Makakilo have a
13 substantially different position from each other.
14 Senator Hee is a state legislator and a farmer. The
15 Friends of Makakilo is an association of neighborhoods
16 around Ho'opili.

17 Senator Hee's concerns focus on the impact
18 to broader issues, statewide issues: For example,
19 food security. Do we have enough safe, ready supplies
20 of fresh food for the state? Is this sustainable?
21 Have the, I guess, the issues of functional
22 legislation, are they being followed? Is the Hawai'i
23 2050 Plan being followed?

24 He's also concerned about the impact to the
25 taxpayer as far as the infrastructure, the cost of

1 transportation, the water supply, the cost of a
2 possible desalination plant, staff and maintenance of
3 schools that are going to be put up.

4 Those are all costs to the state. And these
5 will come out of the statewide budget. These are
6 things that he's concerned about and would like to
7 address.

8 I guess a similar analogy would be to say
9 we have both State Office of Planning here who looks
10 at the statewide impact of these developments. We
11 also have the City and County Department of Planning
12 and Permitting who is allowed to also appear with
13 regard to the county level issues. You have two
14 different levels of, I guess, concern. And that would
15 be statewide versus local.

16 Similarly, there's a difference between the
17 perspectives of Senator Hee and the Friends of
18 Makakilo. An example of the kind of statewide issues
19 that Senator Hee has to deal with, he's not just
20 representing his district on these matters. One of
21 the things, general laws impact everybody.

22 And Senator Hee as a senator passes or
23 writes and promotes general laws. One of the general
24 laws that Senator Hee recently worked on was in 2007
25 as the Chair of the Judiciary and Labor Committee.

1 And this had to do with the Carpenters and
2 also Pacific Resources Partnership who, by the way,
3 won a national award for promoting this piece of
4 legislation. It was with regard to a swab test, a
5 drug test that would be available to the employers to
6 test for drugs by using the swab, which is not FDA
7 approved.

8 Now, this legislation was put out statewide
9 to support all businesses and all employers. Senator
10 Hee wrote this bill and sponsored the bill and saw
11 that it went through. And this was something that
12 benefited all of our employers and businesses.

13 He's not limited to just issues that are
14 affecting his constituency. And, granted, Senator
15 Espero is concerned for his constituency just like
16 Senator Hee would be, but all of the senators have to
17 take a wider view of things as.

18 Well. And some things that affect a certain
19 area like Ho'opili actually have ramifications
20 throughout the state.

21 Taking agricultural land, A and B land, out
22 of our limited supply of really good agricultural land
23 is one of those issues that impacts our entire state.
24 And it doesn't matter where you live.

25 Now, the Department of Planning and

1 Permitting through the City and County Corporation
2 Counsel has raised the issue of separation of powers
3 in objecting to Senator Hee's participation. Senator
4 Hee is not asking to decide the Petition. He is not
5 asking to exert power or control over the issues that
6 are within the kuleana of the Land Use Commission.

7 The Land Use Commission hears the evidence,
8 decides the petitions. Senator Hee would like to be a
9 voice and a party to make sure that this is open and
10 there's sunshine on it, and all of the important
11 issues are heard before a decision is made so that the
12 Land Use Commission will have a complete record before
13 it.

14 Finally, the Intervenors have been working
15 to discuss who they are going to be using as witnesses
16 and also exhibits.

17 And although our purview, our perspectives
18 are very different and our approach and our concerns
19 are different from each other, we are trying to
20 consolidate things as far as making it streamlined,
21 making it go efficiently, and making this process very
22 manageable for the Commission as well as the parties.

23 As we stated that we just would like to
24 encourage you to remember the mantra that intervention
25 is freely granted. And that even if we do add

1 additional parties to this, that it is with regard to
2 making this a better process and making sure that all
3 of the concerns are heard and addressed and so a
4 decision can be made that has aired all of the
5 concerns of the parties that are affected by this
6 Petition to amend boundaries.

7 A famous legislator once told me, "A free
8 democracy takes its time and is not rushed." So it's
9 important that we hear all the sides of the issue and
10 hear all the evidence and make a really good decision
11 on this.

12 Because this decision will impact the state
13 of Hawai'i for centuries to come, and will impact the
14 way our children and children's children live. Thank
15 you very much.

16 CHAIRMAN LEZY: Thank you. Mr. Kudo.

17 MR. KUDO: Before I start my argument I
18 wasn't clear from counsel's argument on the motion, on
19 the Petition to Intervene as to what capacity Senator
20 Hee is appearing before this Commission. Is he
21 appearing as a senator or is he appearing in his
22 individual capacity? I was wondering whether counsel
23 could address that.

24 CHAIRMAN LEZY: You want to address that
25 now?

1 MS. SEKI: Yes. Senator Hee is here as a
2 senator and as an individual.

3 MR. KUDO: I think we have a couple
4 concerns. Again, not to be repetitive, but the two
5 issues that the Petition to Intervene raised by
6 Senator Hee deal with conservation of prime ag land
7 and the food scarcity issues.

8 And these are both issues that are clearly
9 issues that were allowed by this Commission for FOM to
10 raise in these proceedings.

11 There are no other issues that I could see.
12 And although counsel has said that Senator Hee has a
13 unique position on these issues, we didn't see in the
14 response what the uniqueness was with regard to these
15 two issues as talked about by FOM.

16 Just to give you an example: FOM has raised
17 the issues both of prime ag land and food scarcity.
18 And I quote, this is from their -- FOM's Petition, "We
19 are concerned to preserve our best farmland to grow
20 our own food and biofuel for survival and the
21 maintenance of sufficient prime ag lands on O'ahu.
22 This land has been and still is among the highest
23 producing farmlands in the state. We can't make the
24 mistake of putting its housing on its best ag lands
25 and no longer be able to food its people."

1 They also addressed the food sufficiency.
2 "This is the paper that has the governor's..." he was
3 referring to an exhibit that was submitted on March
4 19, 2009 --"This is the paper that has the governor's
5 statement on food self-sufficiency and the section of
6 growing food from the governor's State of the State
7 address in 2009. And he was addressing agriculture
8 and sustainability of food crops."

9 So to me clearly the issues being raised by
10 FOM in the last seven months of hearing are
11 duplicative of the issues that I see and read in the
12 Petition to Intervene.

13 And I haven't seen anything from the
14 response of the Petitioner as to how it differentiates
15 from those two issues.

16 I have a second concern with regards to
17 manageability. And that's why I asked the question of
18 what capacity the Senator is appearing here. As you
19 just heard he's appearing here both as a senator, in
20 his official capacity as a senator and as an
21 individual citizen. One of the concerns I have is
22 that these hearings, which will start in October, may
23 very well go over to next year. That is January
24 through April. January through April is when the
25 Legislature is in session.

1 Senator Hee is a very powerful chairman of a
2 committee there. And he has to conduct a lot of work
3 and is a very busy person. And his counsel, I
4 believe, also works for that committee.

5 What I'm concerned about is whether these
6 hearings will be delayed because of the schedule of
7 hearings and other meetings that the senator will have
8 at the Legislature. I don't want to see our hearings
9 being delayed because he was not able to show up at a
10 scheduled hearing of the State Land Use Commission.
11 That's another concern that we have.

12 So long as they can represent that that will
13 not occur, we're okay with his participation. But,
14 again, we reiterate our position that we believe that
15 the Petition for Senator Hee's Petition should be
16 consolidated with FOM. And, in fact, we believe that
17 all three parties should be consolidated into one
18 party. Thank you.

19 CHAIRMAN LEZY: County?

20 MS. TAKEUCHI-APUNA: Thank you. DPP
21 opposes Senator Hee's Petition for Leave to Intervene
22 because his intervention and his capacity as a state
23 senator would unconstitutionally offend the separation
24 of powers doctrine.

25 Fundamental to our constitutional state

1 government the separation of powers doctrine is a
2 separation of our three branches of government:
3 Legislative, executive and judicial.

4 The separation of powers doctrine is to
5 safeguard against concentrations of power in a single
6 branch, to resist encroachments of the others and to
7 maintain a co-equal balance among the three.

8 The separation of powers doctrine would be
9 violated where the legislative department tries to
10 control the execution of its enactments directly
11 through the administrative process instead of through
12 the legislative process.

13 It is the way in which Senator Hee brings
14 his intervention that clearly violates the separation
15 of powers doctrine. Senator Hee states in his
16 Petition to Intervene that, quote, "He has a
17 responsibility to ensure that his interests as a
18 member of the Legislature representing the people of
19 Hawai'i, chair of Judiciary and Labor Committee and
20 past chair of Water, Land, Agriculture and Hawaiian
21 Affairs Committee, are fully considered in the process
22 of hearing the request for amendment of boundaries for
23 prime, actively cultivated agricultural land to Urban
24 use," end quote.

25 However, there's no constitutional or

1 statutory provision vesting responsibility in Senator
2 Hee to ensure that his interests as a member of the
3 Legislature is fully considered in Land Use Commission
4 proceedings.

5 The only directive article 11 section 3 of
6 the Hawai'i Constitution provides the Legislature is
7 that the "Legislature shall provide standards and
8 criteria to conserve and protect agriculture lands."

9 This means that Senator Hee's role goes no
10 further than providing standards and criteria through
11 the development and adoption of legislation.

12 Importantly, there are more appropriate means for
13 Senator Hee to fulfill his interests in this
14 proceeding. He could request the appropriate
15 executive state department to act as an intervenor
16 based on his concerns.

17 Hawaii Administrative Rules section
18 15-15-52(c)-1 allows all departments and agencies of
19 the state and the county in which the land is situated
20 to intervene. DPP would not object to Senator Hee's
21 participation in the hearings as a witness called by
22 another party during the proceedings.

23 Finally, Senator Hee can attend the
24 proceedings as a member of the audience. And if he
25 sees that the state laws are not being executed

1 properly he can go back to the Legislature and
2 initiate the legislative amendment process to ensure
3 their proper implementation.

4 The Legislature does not act through a
5 single legislator. It acts as a body and through a
6 deliberate process. Senator Will Espero's public
7 testimony and Senate President Shan Tsutsui's attached
8 letter both state that the State Senate does not take
9 a position on this petition.

10 So how can Senator Hee intervene in
11 opposition to the Petition as a senator in these
12 proceedings? In Senator Hee's written rebuttal to our
13 opposition he cites the fact that there are numerous
14 occasions that overlap between the three branches.

15 Many of the examples that Senator Hee puts
16 forth serve as check and balances to prevent one
17 branch from becoming too powerful. Checks and
18 balances enable each branch of government to limit one
19 another.

20 This committee's rejection of Senator Hee's
21 intervention here would serve as a proper check and
22 balance on the encroachment of the legislative branch
23 into the executive.

24 Though Senator Hee may neither be in control
25 nor exercising his powers to determine the fate of the

1 Petition, as an intervenor he will attempt to exert
2 his influence as a party to the proceedings.

3 What distinguishes his influence from the
4 influence of the other parties is that he's a state
5 senator who has not only helped to draft the laws that
6 this Commission may consider, but he participated in
7 the advice and consent of the nominations of a number
8 of the Commissioners here today.

9 Senator Hee's involvement must stop there.
10 He should not become an intervenor to implement or
11 interpret the laws he's helped draft or to remind this
12 Commission of their advice and consent nomination
13 hearings. Thank you.

14 CHAIRMAN LEZY: Thank you. I have just a
15 quick question for you, Ms. Takeuchi-Apuna. If I
16 understand you correctly you're saying that the County
17 would object to Senator Hee's intervention regardless
18 of whether he does so in the capacity of a senator or
19 as an individual.

20 MS. TAKEUCHI-APUNA: We object to his
21 intervention in the capacity of a senator. We would
22 not necessarily object if he entered as an individual,
23 a private individual.

24 CHAIRMAN LEZY: If he intervened as a
25 private individual, notwithstanding the comments you

1 just made about the fact that you really can't
2 separate him as a private individual from a senator,
3 given the fact that he performs legislative functions
4 and passes laws, things that you just pointed out,
5 would the County still maintain the same position?

6 MS. TAKEUCHI-APUNA: I think that's true if
7 you say there's a lot of interwoven aspects to his
8 role as a senator and as an individual. So, yes, I
9 think the City could object on those grounds as well.

10 CHAIRMAN LEZY: OP?

11 MR. YEE: Office of Planning rests on its
12 pleadings.

13 CHAIRMAN LEZY: Sierra Club?

14 MS. CERULLO: No comment.

15 CHAIRMAN LEZY: Friends of Makakilo?

16 DR. DUDLEY: Just like to make a couple
17 comments. I'd like to point out that this is the
18 largest case, I believe, that's ever been brought
19 before the Land Use Commission. And I think that we
20 need to really be fully, fully informed about every
21 aspect of it.

22 I think that Senator Hee comes from a
23 totally different background than I do. He was an OHA
24 leader, a legislator, a farmer. I'm a teacher. We
25 think differently. We come from different points of

1 view entirely. And I think that it is important that
2 we get the varied points of view.

3 We have said time and time again that we
4 will not be duplicative. But at the same time we
5 expect to be able to broaden the perspective so that
6 we really get things nailed down.

7 I'd like to point out too that the
8 application doesn't ask people to name the issues.
9 Mr. Kudo has made a point of the fact that some issues
10 are mine and other people have only mentioned such
11 issues. Therefore we're all the same.

12 The application doesn't ask you to nail down
13 the issues you're going to talk about. What it asks
14 you to do is just show how you're different. So I
15 think there are, there are a lot of things that will
16 be brought out by the Sierra Club and by Senator Hee
17 that would not otherwise be brought out.

18 And I really think that's the meaning of the
19 whole law which is to give real freedom to the
20 possibility of other people intervening. So I'd ask
21 you to allow them to intervene.

22 CHAIRMAN LEZY: Thank you. Ms. Seki,
23 rebuttal?

24 MS. SEKI: Yes, thank you. I think it's
25 important to note that when you consider the

1 reclassification of ag land to urban land that it's
2 not just about agriculture.

3 Agriculture is the thing that's going to be
4 most impacted, but everything that happens with that
5 land, whether it's the need for transportation,
6 infrastructure, schools, staffing, payment for, you
7 know, any kind of things that are going to be needed
8 to support those houses that are not paid by the
9 developer, are naturally going to fall either on the
10 city or the state. And every aspect of that is
11 impacted by that reclassification of land.

12 We did not list every single subject that we
13 feel is important for you to consider in this
14 intervention -- excuse me, in the petition. But I
15 think mentioning that this is ag land and it's going
16 to be reclassified is sufficient to cover all the
17 bases, I mean all of the issues that are going to be
18 before you or have been before you during this
19 process.

20 So a limitation would be unnecessary and
21 undesirable, I think, for the Commission to limit
22 Senator Hee to only agricultural issues or only food
23 security when actually this reclassification -- we're
24 a new intervenor -- this reclassification will impact
25 a lot of different issues. And you know that. That's

1 why you require all of these things to be considered
2 when you have petitions filed before you.

3 It's not just about how does this impact ag.
4 It's about how it impacts all of the state, your
5 state, Commission, and all the issues this fall under
6 that. Senator Hee, as I mentioned before, is unique.

7 He's in a unique position to bring his
8 perspective to the Commission so that all of the
9 issues can be fully considered when you're making this
10 huge decision to reclassify prime agricultural land
11 that will never come back again.

12 Once you scrape off this beautiful soil that
13 has been so productive for so many years and you pave
14 it and you lay your foundations for houses and
15 buildings and businesses and schools and shopping
16 centers, we're not going to get that land back for
17 agriculture if something should happen to our food
18 security, if we should require production of more and
19 more of our own produce.

20 There are other places that houses can be
21 built. But they're not too many places that you can
22 produce this quantity and this beautiful a crop to
23 feed our people of Hawai'i across the state.

24 Senator and I -- granted, the staff of the
25 JBL and Senator's office will be very busy in spring

1 with the legislative session. But because of our
2 commitment to the important issues in this Petition,
3 Senator has said that, "I will be free to come and
4 attend every hearing you hold. That I'm not going
5 to" -- you are not going to be held up because Senator
6 is not available. Senator will be represented at the
7 meetings that you schedule. So it's not an issue.
8 And with that agreement I think Mr. Kudo can be
9 satisfied with that representation.

10 I have a little trouble with the City and
11 County's discussion of separation of powers as being
12 so strict and black and white.

13 As I cited in the reply to their objection,
14 there are many situations where different agencies
15 give input to other agencies or different branches of
16 government assist other branches of government in
17 order to come out with the right policy or right
18 decision, or make sure that all of the facts are known
19 before a decision is made in another branch or agency.

20 Everything we do impacts each other. And
21 communication among the agencies and branches and
22 levels of government is critical to us being able to
23 have the right decisions and things that are proper
24 and right for the people of Hawai'i.

25 So things don't happen in a vacuum is what

1 I'm saying. And that there's no prohibition from
2 Senator Hee intervening in this matter as long as he
3 is not the person who is making the decisions.

4 He's just merely providing input so that you
5 can have all of the evidence you need before you to
6 make the best decision for Hawai'i.

7 This is not the first time that a senator
8 has intervened in a Land Use Commission matter. In
9 fact, Senator Hanabusa, now Representative Hanabusa,
10 intervened at least twice with regard to issues on
11 West O'ahu.

12 So it's not an unusual matter that a
13 legislator should intervene in the Land Use Commission
14 consideration of amendments to boundaries.

15 We'd also like to remind you that the
16 attorney general has not objected, has taken, made no
17 objection to the intervention of Senator Hee in its
18 representation of the Office of State Planning.
19 Attorney Generals are also bound by the oath that they
20 take and the requirement that they support the
21 Constitution of the United States.

22 In this matter if there was a constitutional
23 issue I would think that the Attorney General's office
24 would have made an objection to this as well.

25 The other thing to know is that there's no

1 separation of powers clause in the constitution. That
2 this is not a constitutional right or mandate. It's
3 something that's implied from a reading or
4 interpretation of the constitution, similar to the
5 concept of checks and balances.

6 And there is no prohibition in the
7 constitution from Senator Hee as a senator and
8 individual to participate in a hearing where he is not
9 the decision-maker.

10 And for this reason we would ask that you
11 consider his Petition to Intervene and grant his
12 request to intervene, grant his request to be
13 represented separately and apart from other
14 intervenors.

15 And I think -- excuse me, it will be the
16 best thing for this process if Senator Hee can enter
17 into this process and add his insight with regard to
18 all the issues that occur when someone is -- when a
19 petitioner is requesting the reclassification of
20 agricultural land to urban land. Thank you very much.

21 CHAIRMAN LEZY: Mr. Kudo, briefly.

22 MR. KUDO: Just a few comments. I believe
23 that the comments of Counsel Seki concerns me because
24 what I believe she was trying to say was that the
25 basis upon which Senator Hee or Mr. Hee is

1 participating in these proceedings goes beyond the two
2 stated issues in their Petition to Intervene.

3 As she stated urbanization involves all
4 issues. Now, what "all issues" means I'm not quite
5 sure of. But I think as far as we're concerned this
6 is a quasi-judicial proceeding. The Commissioners sit
7 as triers of fact.

8 It's an evidentiary process. There are due
9 process issues when parties appear and don't
10 specifically state why they're intervening in your
11 proceeding or opposing your particular petition.

12 We don't have the ability to prepare our
13 case to address the issues specifically that they have
14 a problem with when they're not telling us what the
15 issues are.

16 I don't think this Commission proceeding
17 and the quasi-judicial proceeding were meant to be
18 trial by ambush. I think everybody has to lay their
19 cards out with specificity so that all parties have a
20 due process right and can adequately prepare for their
21 case.

22 And I'm a little concerned at this stage
23 that the petitioner is trying to open up the issues
24 beyond the two stated issues as a basis for their
25 participation in these proceedings. And this goes to

1 the unmanageability of it. We don't know how to
2 prepare our case and to move forward.

3 I would also like to comment that she
4 mentioned that Senator Colleen Hanabusa, former
5 senator and Senate President Colleen Hanabusa appeared
6 before.

7 I believe she was referring to the Waimanalo
8 Gulch proceedings. In that proceeding Senator
9 Hanabusa appeared as an individual, if I'm correct.
10 And, in fact, this Commission consolidated her case
11 with Maile Shimabukuro and the Ko Olina Association
12 together as one party.

13 That's what we're proposing here because the
14 parties' issues are very closely aligned for purposes
15 of efficiency and manageability. And I think that it
16 makes a lot of sense to do that. The more I'm hearing
17 their arguments the more I'm getting a little more
18 concerned that this thing is getting wider and wider.

19 And the uncertainty as to the issues before
20 this Commission and for us to prepare are unknown at
21 this point. How are we going to prepare by October 20
22 when the hearings beginning, I'm not sure. So I'm a
23 little concerned that this thing is getting out of
24 hand.

25 And we need to have some kind of controls on

1 what the parties' issues are and whether the parties
2 can ask multiple questions of the same issue using
3 different attorneys.

4 I mean I don't think that's going to add to
5 any kind of efficiency or manageability of these
6 proceedings before this Commission. Thank you.

7 MS. SEKI: May I address his commends?

8 CHAIRMAN LEZY: Let's hold off further
9 argument for a moment, see if the Commissioners have
10 questions. Commissioners, questions? I have a few
11 questions. I'm struggling a little bit, Ms. Seki,
12 with Senator Hee's attempting to intervene in his
13 official capacity as a senator versus as an
14 individual. That's part of the reason I asked the
15 question of the County.

16 And I will note for the record that the
17 comment that was made by Mr. Kudo I believe is
18 correct. That when Senator Hanabusa intervened she
19 did so as an individual. And although we afforded her
20 the courtesy of referring to her as "Senator Hanabusa"
21 during the proceedings, she was not appearing in her
22 official capacity.

23 So let me pose that question to you. As an
24 intervenor, if Senator Hee is seeking to participate
25 in this proceeding, what substantive difference would

1 there be between him doing so in his official capacity
2 versus as an individual?

3 MS. SEKI: I think with Senator Hee it's
4 probably impossible to separate the fact that he's a
5 senator from himself as an individual. I guess I
6 don't understand the question in the sense that I
7 don't see that there should be an objection to Senator
8 Hee appearing as the senator as well as his individual
9 capacity.

10 Can I pose a question to you because I don't
11 understand why that is a problem?

12 CHAIRMAN LEZY: Let me explain my question.
13 I guess I will turn it on its head to you.

14 MS. SEKI: Okay.

15 CHAIRMAN LEZY: Why shouldn't he just be
16 granted intervenor status as an individual then? Why
17 is it significant for him to appear as a senator in
18 name?

19 MS. SEKI: Just a minute, please. Senator
20 Hee's informed me that he is -- if the Commission so
21 desires he will enter or intervene as an individual
22 and not as a senator in official capacity. If that is
23 something that's of concern it might cause him to fail
24 to be intervened.

25 CHAIRMAN LEZY: And I was just trying to

1 draw from you if there was some distinction, some
2 important distinction for our purposes. I think that
3 answers my question.

4 The next questions I have for you, Ms. Seki,
5 is I too have some concerns about the scope of Senator
6 Hee's involvement as represented in the petition. You
7 argued just a moment ago that the question of
8 urbanization of agricultural land draws in all issues.

9 You've made reference, for instance, to
10 schools. And that seems to be a bit beyond the scope
11 of what I expected the senator to be focusing on as he
12 presented his case, assuming he was allowed to
13 intervene here.

14 So I guess the question I would pose to you
15 is: Understanding that necessarily parties have to be
16 given some leeway as they present their cases, but
17 would the senator be willing to limit the areas that
18 he will be presenting his case on to those concerning
19 agricultural lands and the food security issue?

20 MS. SEKI: Just a minute, please.

21 CHAIRMAN LEZY: Sure.

22 (Pause)

23 MS. SEKI: Okay. As scary as this may sound
24 I think Senator Hee and I have an agreement on this.
25 And really my point, I think, in bringing up the issue

1 of not being limited is that you really cannot -- I
2 mean if we say we're going to be discussing
3 agriculture or we say we're going to be discussing
4 food security, it is impossible to separate that from
5 water, from issues that are -- labor, all of these
6 matters are impacted by agriculture and food security.

7 There are many issues that are interrelated
8 here. That's why they're being presented to the Land
9 Use Commission.

10 And that's why they're required to be
11 addressed in the petitions when people are asking for
12 the reclassification of ag land to urban.

13 I think it's a bit facetious of counsel for
14 Horton to say that they're caught blindsided or
15 something like that by us saying that we're interested
16 in all these issues when those issues have been,
17 already been presented or addressed in some form or
18 another, maybe not all the issues yet in the seven
19 months that you were hearing, but they're all on the
20 table.

21 We are new intervenors. And we would like
22 the opportunity to be able to address the issues
23 without being repetitive and without being
24 unmanageable, but be able to address the issues that
25 fully are impacted by the reclassification of ag land

1 into urban land.

2 So that's my answer. I hope it's an answer.

3 If you want to pose another question, I'll try to
4 answer.

5 CHAIRMAN LEZY: No, I understand. And I'm
6 certainly not trying to again -- assuming the senator
7 is granted intervention -- trying to hamstring his
8 presentation.

9 What I am starting to develop some concerns
10 about, though, is how these proceedings are going to
11 go forward. It's a mouthful just to address all of
12 the parties at this juncture.

13 And so I have to start thinking about how
14 the proceedings are going to move forward and how we
15 can do so so that we can get the work that we need to
16 get done here done.

17 And it's for that reason I was trying to set
18 some bookends, some parameters so that we don't go too
19 far afield. Because, again, the point in particular
20 that caused some concern for me was when you started
21 talking about schools in the context of ag to urban
22 classification.

23 MS. SEKI: That was mentioned because of the
24 costs and his concern for the taxpayers.

25 CHAIRMAN LEZY: But that's -- my point

1 though is --

2 MS. SEKI: Broad.

3 CHAIRMAN LEZY: Exactly.

4 MS. SEKI: We really have pledged to work
5 separately but in conjunction with the other
6 intervenors. And we have had several meetings to try
7 to cull down the amount of work that we have as well
8 to separate them into areas because, you know, it is a
9 difficult task to address all of it.

10 So we have our own issues with trying to
11 cover all the bases as well.

12 CHAIRMAN LEZY: Okay. Thank you. I
13 appreciate that. Just to address a concern that was
14 raised by the Petitioner. Certainly the Petitioner, I
15 believe, if intervention status is granted, you'll be
16 provided with all of the Intervenors' witness lists,
17 their exhibit lists. You'll have an opportunity on
18 rebuttal.

19 So I'd like to think you that you will not
20 be completely blindsided or stonewalled about the case
21 that you have to respond to, given those things that
22 would be provided, again assuming -- well, certainly
23 with regard to Sierra Club and Friends of Makakilo and
24 if Senator Hee is granted intervention status.

25 And I guess the last point or last question

1 I would pose, Ms. Seki, and again this presumes that
2 intervenor status will be granted to Senator Hee --
3 and you touched on this a little bit, but again
4 because of the sensitivities about getting through
5 this docket matter in the time it is allotted,
6 certainly if you weren't able to appear or the senator
7 weren't able to appear, can you represent to the
8 Commission that somebody with the authority to act on
9 behalf of the senator, if he's granted intervenor
10 status, would be dispatched to appear at all the
11 hearings regardless of when they may be scheduled?

12 MS. SEKI: Absolutely.

13 CHAIRMAN LEZY: Okay. Thank you.
14 Commissioners, any other questions? Parties, anything
15 else?

16 MR. KUDO: Just a clarification. I believe
17 Ms. Seki is counsel to the legislative committee.
18 Will she remain as counsel of record since you're
19 considering a Petition to Intervene by Mr. Hee as an
20 individual?

21 Will she remain as counsel of record? Do we
22 send everything to her? Are they going to change
23 lawyers or what?

24 CHAIRMAN LEZY: Let me say first I don't
25 think there's been a change in the Petition. I think

1 simply there was a representation made that that was a
2 concern that the senator would not have objection to
3 it. But with that, assuming that were to occur,
4 Ms. Seki, would there be an issue there?

5 MS. SEKI: I have a private practice as
6 well. So it is likely that I will be retained by my
7 client if that should occur.

8 CHAIRMAN LEZY: Okay. Anything else?

9 MS. TAKEUCHI-APUNA: I just wanted to point
10 out a distinction between Senator Hanabusa's
11 admittance as an intervenor and this attempt here is
12 that Senator Hanabusa was a resident of the area in
13 which the project took place.

14 And she represented that -- she was
15 representing the constituents in her district. But
16 here Senator Hee is not within the same location of
17 the Petition Area. And I'd just like to add that.

18 CHAIRMAN LEZY: Thank you. Chair will
19 entertain a motion. Commissioner Judge.

20 COMMISSIONER JUDGE: I would make a motion
21 that we grant intervention status to Clayton Hee as an
22 individual in this matter.

23 CHAIRMAN LEZY: Do I have a second?

24 COMMISSIONER HELLER: I'll second so that we
25 can discuss and vote.

1 CHAIRMAN LEZY: Motion by Commissioner
2 Judge, second for discussion purposes by Commissioner
3 Heller. Commissioners, discussion? Hearing none,
4 Mr. Davidson would you poll.

5 MR. DAVIDSON: Motion to admit Clayton Hee
6 as an individual intervenor in A06-771.

7 Commissioner Judge?

8 COMMISSIONER JUDGE: Yes.

9 MR. DAVIDSON: Commissioner Heller?

10 COMMISSIONER HELLER: Yes.

11 MR. DAVIDSON: Commissioner Matsumura?

12 COMMISSIONER MATSUMURA: Yes.

13 MR. DAVIDSON: Commissioner McDonald?

14 COMMISSIONER McDONALD: Yes.

15 MR. DAVIDSON: Commissioner Contrades?

16 COMMISSIONER CONTRADES: No.

17 MR. DAVIDSON: Commissioner Chock?

18 COMMISSIONER CHOCK: Yes.

19 MR. DAVIDSON: Chair Lezy?

20 CHAIRMAN LEZY: Yes.

21 MR. DAVIDSON: Motion passes 6-1, Chair.

22 CHAIRMAN LEZY: Thank you. Parties,
23 anything else before we adjourn? Thank you very much.
24 We stand adjourned.

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

1

2

C E R T I F I C A T E

3

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

6

7 That I was acting as court reporter in the
8 foregoing LUC matter on the 9th day of September
9 2011;

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

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

15

16 DATED: This _____ day of _____ 2011

17

18

19

20

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

22

23

24

25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

