

1	LAND USE COMMISSION	
2	STATE OF HAWAI'I	
3	ACTION	PAGE
4	A06-771 D.R. HORTON-SCHULER HOMES, LLC )	1
	)	
5	A11-793 CASTLE & COOKE HOMES HAWAII )	
6	_____ )	43

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## 8 TRANSCRIPT OF PROCEEDINGS

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10 The above-entitled matters came on for a Public  
11 Hearing at Conference Room 405, 4th Floor, Leiopapa A  
12 Kamehameha, 235 S. Beretania Street, Honolulu,  
13 Hawai'i, commencing at 9:35 a.m. on December 1, 2011,  
14 pursuant to Notice.

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

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

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3 For Intervenor The Sierra Club: ELIZABETH DUNNE, ESQ.

4 For Intervenor Senator Clayton Hee: ERIC SEITZ, ESQ.

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8 Docket No. A11-793 CASTLE & COOKE HOMES, HAWAII

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10 For the Petitioner: BENJAMIN MATSUBARA, ESQ.  
CURTIS TABATA, ESQ.

11

12 For the County: DAWN TAKEUCHI-APUNA, ESQ.  
Deputy Corporation Counsel  
13 RANDY HARA, DPP

14 For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
15 JESSE SOUKI  
Director Office of Planning  
16

17 For The Sierra Club: JAMILA JARMON, ESQ.

18

19 For Neighborhood Board No. 25: RICHARD POIRIER

20 For Senator Clayton Hee: ERIC SEITZ, ESQ.

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1 December 1, 2011

2 CHAIRMAN LEZY: (gavel) 'Morning. This is  
3 a meeting of the State Land Use Commission. We're  
4 actually missing one Commissioner, but we have quorum  
5 so we'll go ahead and proceed. First item on the  
6 agenda today is the adoption of the minutes from the  
7 November 17, 18, 2011 meeting. Commissioners, any  
8 changes? Hearing none, do I hear a motion?

9 COMMISSIONER CONTRADES: So moved.

10 COMMISSIONER TEVES: Second.

11 CHAIRMAN LEZY: All in favor? (Aye). All  
12 opposed. Thank you. Mr. Davidson, would you provide  
13 the tentative meeting schedule, please.

14 MR. DAVIDSON: Thank you, Chair. You have  
15 the schedule sort of filled in through March. The  
16 next meeting will be January 5 and 6. January 5 will  
17 be on the Horton docket here. January 6 will be on  
18 Maui doing a variety of matters. As always, any  
19 questions, conflicts, contact either Riley or me.  
20 Thanks.

21 CHAIRMAN LEZY: Thank you. The next matter  
22 on the agenda is a scheduled executive session. The  
23 Chair will entertain a motion to move into executive  
24 session.

25 COMMISSIONER CONTRADES: So moved.

1 COMMISSIONER HELLER: Second.

2 CHAIRMAN LEZY: All in favor? All opposed?  
3 It's unanimous. Thank you. Folks, please stay in  
4 place and we'll leave.

5 (9:32-10:05 recess)

6 CHAIRMAN LEZY: (Gavel). We're back on the  
7 record. Thank you for your patience. Next item on  
8 the agenda is action on Docket A06-771 D.R.  
9 Horton-Schuler Homes, LLC, O'ahu on Intervenor Friends  
10 of Makakilo's Motion for Leave to File Amended Witness  
11 and Exhibit Lists and to consider objections, if any,  
12 to the Witnesses and Exhibits offered by Intervenor  
13 Friends of Makakilo and the Sierra Club. Will the  
14 parties please identify themselves.

15 MR. KUDO: Good morning. Ben Kudo and Naomi  
16 Kuwaye, attorneys representing Schuler Horton. With  
17 me is Cameron Nekota from Schuler.

18 CHAIRMAN LEZY: Good morning.

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

23 MR. YEE: Good morning. Deputy Attorney  
24 General Bryan Yee on behalf of the Office of Planning.  
25 With me is Mary Lou Kobayashi from the Office of

1 Planning.

2 CHAIRMAN LEZY: Morning.

3 DR. DUDLEY: Good morning. Dr. Kioni Dudley  
4 from the Friends of Makakilo. And with me this  
5 morning is my counsel Linda Paul.

6 CHAIRMAN LEZY: Good morning.

7 MS. DUNNE: Good morning. Elizabeth Dunne  
8 representing the Sierra Club.

9 CHAIRMAN LEZY: Morning.

10 MR. SEITZ: Good morning. Eric Seitz  
11 representing Intervenor Senator Clayton Hee, who is  
12 not present this morning.

13 CHAIRMAN LEZY: Good morning. Let me update  
14 the record relative to this hearing. On October 17,  
15 2011 the Commission received a Motion for Second Site  
16 Visit from Intervenor The Sierra Club signed by  
17 Intervenor The Sierra Club, Friends of Makakilo and  
18 Senator Clayton Hee.

19 On November 10, 2011 the Commission received  
20 Friends of Makakilo's Motion for Leave to File Amended  
21 Witness List and Amended Exhibits.

22 On November 16, 2011 the Commission received  
23 written correspondence from Intervenor The Sierra Club  
24 and Intervenor Friends of Makakilo regarding plans to  
25 submit their Amended Exhibit Lists on Monday

1 November 21, 2011.

2           On November 21, 2011 the Commission received  
3 Sierra Club's First Amended Exhibit List and  
4 Intervenor Friends of Makakilo's Second Amended List  
5 of Witnesses and Second Amended List of Exhibits for  
6 the Third Amended Petition.

7           On November 23, 2011 the Commission received  
8 Intervenor Friends of Makakilo's Second Amended  
9 Exhibits.

10           On November 25, 2011 the Commission received  
11 Petitioner's Response to Sierra Club's First Amended  
12 Exhibit List and Intervenor Friends of Makakilo's  
13 Second Amended List of Witnesses and Second Amended  
14 List of Exhibits for the Third Amended Petition.

15           On November 29, 2011 the Commission received  
16 Intervenor Friends of Makakilo's Reply to Petitioner's  
17 Response to Friends of Makakilo's Second Amended List  
18 of Witnesses and Second Amended List of Exhibits for  
19 the Third Amended Petition.

20           I'll now call for those individuals desiring  
21 to provide public testimony on the limited issue of  
22 Intervenor Friends of Makakilo's Motion for Leave to  
23 File Amended Witness and Exhibit Lists and objections,  
24 if any, to the Witnesses and Exhibits offered by  
25 Intervenor Friends of Makakilo and Sierra Club to



1 identify themselves.

2 All such individuals will be called in turn  
3 to our witness box where they will be sworn in. I ask  
4 you to please limit your testimony to the motions that  
5 are before the Commission. Mr. Davidson.

6 MR. DAVIDSON: It appears we have one  
7 witness, Chair, Victoria Cannon.

8 WITNESS: Good morning, Commissioners. I was  
9 not intending on testifying today, but when I saw the  
10 agenda --

11 CHAIRMAN LEZY: Ma'am, I need to swear you  
12 in.

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

16 THE WITNESS: I do.

17 CHAIRMAN LEZY: Please state your name and  
18 your address.

19 THE WITNESS: 92-102 Oloa Place O-l-o-a  
20 Place in Makakilo.

21 CHAIRMAN LEZY: Please proceed.

22 THE WITNESS: I was not intending to testify  
23 today until I saw the agenda. I will limit my  
24 comments to these three items. The amended lists are  
25 full of information that will help you folks make a

1 wise decision. Commissioners should support witnesses  
2 and exhibits that bring facts surrounding this  
3 Petition to the table.

4           Regarding any objections to the witnesses  
5 and exhibits, I have no problem with your considering  
6 any objections. But I ask you to please realize the  
7 Petitioner has reason to keep information contained in  
8 the exhibits and witness testimony from you.

9           Support of any objections to facts could  
10 possibly be tantamount to suppression of evidence.  
11 I'm not an attorney. I'm a common sense person. I  
12 support a second site visit. I was told your first  
13 visit was simply not complete. You need complete,  
14 truthful details of the site. The consequences of the  
15 actions in this Petition are going to be grave. And  
16 they're too grave for us to overlook any of these  
17 agenda items. Thank you for your time again.

18           CHAIRMAN LEZY: Thank you. Is there anybody  
19 else who wishes to provide public testimony? Ma'am,  
20 I'm sorry, could you return to the witness box. I  
21 neglected to ask the parties if they had any  
22 questions. Parties, questions? None.  
23 Commissioners, questions? Thank you.

24           THE WITNESS: Thank you.

25           CHAIRMAN LEZY: On November 17, 2011 the

1 Chair allowed Intervenor the Sierra Club and Friends  
2 of Makakilo to file their Final Witness and Exhibit  
3 Lists by November 21, 2011, and indicated that  
4 objections to any proposed witnesses or exhibits would  
5 be heard at this hearing. We'll proceed directly to  
6 the merits of any objections to Intervenor, the  
7 Sierra Club and Friends of Makakilo Witness and  
8 Exhibit Lists starting with the Sierra Club.

9           Before we do that, though, I would like to  
10 just state one thing. I'm a little bit disappointed,  
11 and I certainly don't speak for the other members of  
12 the Commission, but I suspect that they join me, that  
13 there hasn't been more cooperation between the  
14 Intervenor regarding their witnesses and exhibits.

15           When the Intervenor were granted the  
16 intervention status, there were representations made  
17 that there would be cooperation, that there would be  
18 an attempt made to combine exhibits, to combine  
19 witnesses so that the process could move along more  
20 expeditiously so that we could avoid redundancy. I  
21 haven't seen that.

22           I'm certainly not saying Intervenor aren't  
23 allowed to put on the witnesses and the exhibits that  
24 they believe they need to put on their case. But, you  
25 know, I will be curious to see as we move further

1 through this process whether we do encounter the kind  
2 of inefficiency and redundancy that I, unfortunately,  
3 expect we are going to. So I'll leave it at that.  
4 The Commission had hoped that the Intervenors would be  
5 able to be more cooperative given that you do seem to  
6 have a common purpose in your cases.

7               With that, what I'd like to do is have the  
8 Sierra Club in order offer your exhibits into  
9 evidence. If I understand correctly only Petitioner  
10 is going to be presenting objections to those  
11 exhibits. So what I'd like to do is have each exhibit  
12 offered, then a response provided by Petitioner. So,  
13 Sierra Club.

14              MS. DUNNE: Okay. Thank you. So you want  
15 me to just go through one at a time?

16              CHAIRMAN LEZY: Please.

17              MS. DUNNE: Okay. So Exhibit 40B, resumé of  
18 Hector Valenzuela written testimony.

19              CHAIRMAN LEZY: Mr. Kudo.

20              MR. KUDO: We have no objection to the  
21 exhibits.

22              CHAIRMAN LEZY: Okay. 40B is admitted into  
23 the record.

24              MS. DUNNE: 41B --

25              CHAIRMAN LEZY: I'm sorry. Let me get a

1 clarification. Mr. Kudo, you said the "exhibits"?

2 MR. KUDO: Exhibit.

3 CHAIRMAN LEZY: Exhibit. I'm sorry.

4 Proceed.

5 MS. DUNNE: 41B, which is the resumé of

6 Dr. Terry Shintani and written testimony.

7 CHAIRMAN LEZY: Mr. Kudo?

8 MR. KUDO: No objection to that.

9 CHAIRMAN LEZY: 41B is admitted.

10 MS. DUNNE: 42B resumé of Tom Giambelluca,

11 written testimony.

12 MR. KUDO: No objection to that resumé.

13 CHAIRMAN LEZY: 42B is admitted.

14 MS. DUNNE: 43B resumé of Gary

15 Maunakea-Forth and written testimony.

16 MR. KUDO: No objection.

17 CHAIRMAN LEZY: 43B is admitted.

18 MS. DUNNE: 44B resumé of Dr. Jonathan

19 Deenik and written testimony.

20 MR. KUDO: No objection.

21 CHAIRMAN LEZY: 44B is admitted.

22 MS. DUNNE: And we withdrew 45B. 46B resumé

23 of Linda Cox and written testimony.

24 CHAIRMAN LEZY: 45B is withdrawn. 46B?

25 MR. KUDO: No objection to the exhibit.

1 CHAIRMAN LEZY: 46B is admitted.

2 MS. DUNNE: 47B Food Self-sufficiency and  
3 Department of Agriculture white paper.

4 CHAIRMAN LEZY: I'm sorry. That exhibit  
5 number was?

6 MS. DUNNE: 47B.

7 MR. KUDO: We would like the Intervenor to  
8 lay foundation for that particular exhibit.

9 CHAIRMAN LEZY: Can you offer some  
10 foundation for the presentation of that exhibit into  
11 evidence?

12 MS. DUNNE: We were intending to do that at  
13 the time that we used the exhibit, but we anticipate  
14 using it in examination of Department of Agriculture  
15 witnesses. It's a document. It's a public document,  
16 basically a white paper generated by the Department of  
17 Agriculture.

18 CHAIRMAN LEZY: Thank you. 47B is admitted.

19 MS. DUNNE: 48B is an article entitled  
20 "Importance of Open Space Value for Land Use Policy in  
21 Hawai'i" by Linda Cox and Gary Vieth.

22 MR. KUDO: Again, we reserve to object to  
23 it based on the lack of foundation. And what we mean  
24 by "foundation" is that the authors of these white  
25 papers and articles generally need to show up and

1 testify that that's what they wrote and the contents  
2 of it. So, you know, if they're not going to be  
3 producing these witnesses we would object at this time  
4 to their admission.

5 CHAIRMAN LEZY: Certainly it can be offered  
6 if they have evidentiary value as a treatise.  
7 Certainly if it is a preparation in the proceeding  
8 with regard to the preceding document by the  
9 Department of Agriculture I don't see that as a  
10 problem. I think it goes, it goes to weight.

11 Certainly it could be the witnesses who are  
12 being cross-examined using that information can  
13 respond accordingly if they feel that there are flaws  
14 with the document. So I will allow it. 48B is  
15 admitted.

16 MS. DUNNE: We withdrew 49B and 50B?

17 CHAIRMAN LEZY: 49B and 50B are withdrawn.

18 MS. DUNNE: We have 51B, which is another  
19 article about agriculture in Hawai'i published by  
20 CTAHR, the College of Tropical Agriculture at UH.

21 MR. KUDO: Again, the same objection on  
22 their lack of foundation.

23 CHAIRMAN LEZY: I understand, Mr. Kudo and  
24 the same rationale applies. 51B is admitted.

25 MS. DUNNE: Our final exhibit is 52B,

1 Economic Impacts of Increasing Hawai'i's Food  
2 Self-sufficiency, also a CTAHR publication.

3 MR. KUDO: Again, lack of foundation  
4 objection.

5 CHAIRMAN LEZY: Understood. Same rationale  
6 applies too. 52B is admitted.

7 MS. DUNNE: That's all.

8 CHAIRMAN LEZY: That concludes the Sierra  
9 Club's exhibits?

10 MS. DUNNE: Yes.

11 CHAIRMAN LEZY: Moving on to Intervenor  
12 Friends of Makakilo's Exhibit List. I have one  
13 comment to make before we take up the substance of  
14 that. Dr. Dudley, you seem to have some difficulties  
15 complying with deadlines. And the Commission sets its  
16 deadlines not to inconvenience parties, but to provide  
17 for the orderly procedure that we have to have if the  
18 Commission is going to do its business, and also in  
19 fairness to other parties so that they have proper  
20 advanced notice and can respond to information that's  
21 submitted by opposing parties.

22 Now, I understand, and the other  
23 Commissioners understand, the staff understands, that  
24 you're not a trained attorney. And so we've given you  
25 leeway because of that. You are getting ready to



1 begin the presentation of your case. And necessarily  
2 there are going to be a lot of obligations placed on  
3 you in connection with presentation of your case  
4 including, I'm sure, some additional filing deadlines.

5 I guess the caution I would give to you is I  
6 think that I, speaking for myself as the Chair, am  
7 going to be less inclined to give you leeway if you  
8 fail to comply with the deadlines that are imposed  
9 upon you. So please pay careful attention to those  
10 deadlines.

11 If you run into problems, work with the  
12 other parties to see if they are willing to give you  
13 relief, and speak with the staff about that. But you  
14 cannot unilaterally decide you're not going to comply  
15 with the deadline and simply submit something late.  
16 Understand that?

17 DR. DUDLEY: Thank you.

18 CHAIRMAN LEZY: Thank you. We'll follow the  
19 same process. Am I correct in understanding, again  
20 only Petitioner has objections to the exhibits that  
21 have been offered by the Friends of Makakilo?

22 MR. YEE: Correct.

23 CHAIRMAN LEZY: All right. So let's do the  
24 same, please, Dr. Dudley. We will march down the line  
25 of your proposed exhibits and allow Mr. Kudo to lodge

1 his objections.

2 DR. DUDLEY: Are we starting, then, from the  
3 very beginning with the 2009 exhibits? This would be  
4 starting with Exhibit No. 2?

5 MR. DAVIDSON: It's not exhibits that have  
6 been admitted.

7 MR. KUDO: I believe those have already been  
8 admitted.

9 CHAIRMAN LEZY: It's only exhibits that have  
10 not previously been admitted, Dr. Dudley. I think it  
11 starts with Exhibit 4.

12 DR. DUDLEY: 4.

13 CHAIRMAN LEZY: I think it starts with  
14 Exhibit 4, if I'm correct.

15 DR. DUDLEY: What list are you using? Are  
16 you saying B4 or just 4? 4 would be from the 2009  
17 group?

18 CHAIRMAN LEZY: The executive director's  
19 asked if we could take a brief break. Let's take a  
20 brief break and let you get organized and we'll come  
21 back. Okay? Five minute break.

22 DR. DUDLEY: Chair Lezy, where are we  
23 starting? Are we starting with the 2009 group?

24 CHAIRMAN LEZY: Dr. Dudley, the exhibits  
25 that have not yet been admitted. So take a moment,

1 perhaps maybe speak with Mr. Seitz, and we'll come  
2 back on the record and you can offer your exhibits.  
3 Okay. Thank you.

4 (Recess was held. 10:25)

5 CHAIRMAN LEZY: Back on the record. We'll  
6 resume taking up Intervenor Friends of Makakilo's  
7 further exhibits. Dr. Dudley, you ready to proceed?

8 DR. DUDLEY: Yes. First on the list then  
9 would be No. 20 resumé for Dr. Panos Prevedorous.

10 CHAIRMAN LEZY: And before we go further,  
11 just to make sure, none of the parties are objecting  
12 to exhibits or.... Mr. Yee?

13 MR. YEE: OP has no objections to the  
14 exhibits.

15 CHAIRMAN LEZY: Okay. Nobody. Okay.

16 MR. SEITZ: No.

17 CHAIRMAN LEZY: Thank you. Mr. Kudo,  
18 Exhibit 20?

19 MR. KUDO: No objection.

20 CHAIRMAN LEZY: Exhibit 20 is admitted.

21 DR. DUDLEY: Then we will skip down to the  
22 latter end. This would be on Page 3.

23 CHAIRMAN LEZY: Describe the exhibit,  
24 please, Dr. Dudley.

25 DR. DUDLEY: Okay. The "Developer revives

1 11,750-unit project." This is an article in the  
2 Star-Advertiser on May 18, 2011.

3 CHAIRMAN LEZY: Mr. Kudo.

4 MR. KUDO: Again, foundation.

5 CHAIRMAN LEZY: What's the purpose of this?  
6 Let me ask that first, Dr. Dudley.

7 DR. DUDLEY: Okay. This is a ....

8 CHAIRMAN LEZY: Briefly.

9 DR. DUDLEY: This is an article that talks  
10 about their urban agricultural initiative, which is  
11 proved to be such a problem. It's the article that  
12 initially describes it.

13 CHAIRMAN LEZY: Are there any admissions  
14 made in the article by any of the Petitioner's  
15 representatives?

16 DR. DUDLEY: I believe so, yes.

17 CHAIRMAN LEZY: Okay. It's admitted. N is  
18 as admitted.

19 DR. DUDLEY: Then O. O is an article  
20 "Traffic Congestion in the U.S." It's in INRIX,  
21 National Traffic Score Card. Provides a revealing  
22 in-depth look at America's most frustrating problem by  
23 Michele Large and Michelle Blaya. It's an article  
24 from June 17th, 2011 found at the website multi  
25 vu.prnewswire.com.

1                   CHAIRMAN LEZY: Mr. Kudo.

2                   MR. KUDO: Objection both on grounds of  
3 relevancy and lack of foundation. And we have no  
4 opportunity to cross-examine the authors of this  
5 article and as to its authenticity, accuracy  
6 legitimacy.

7                   CHAIRMAN LEZY: I understand. Subject to  
8 the same rationale and going to weight it will be  
9 admitted. Exhibit O is admitted.

10                  DR. DUDLEY: Okay. P is the amended version  
11 of P. It's the copy of the Farmland Impact -- I'm  
12 sorry, Farmland Conversion Impact Rating for the  
13 Petition property. It is found as an appendix in the  
14 Geology, Soils, Farmlands, and Natural Hazards  
15 Technical. Report dated October 16, 2008 which was  
16 prepared to support the draft environmental impact  
17 statement of the Honolulu High-Capacity Transit  
18 Corridor Project.

19                  MR. KUDO: Same objection on the grounds of  
20 relevancy and lack of foundation.

21                  CHAIRMAN LEZY: Understood. Same rationale,  
22 P is admitted.

23                  DR. DUDLEY: The next is a letter from  
24 Lawrence Yamamoto of the National Resources  
25 Conservation Service addressed to Wayne Yoshioka dated

1 January 7, 2009. This is Exhibit Q.

2 CHAIRMAN LEZY: Mr. Kudo, same objections?

3 MR. KUDO: Same objection. I also have to  
4 clarify that in regard to this particular exhibit  
5 letter P and Q, that these were rail exhibits.

6 CHAIRMAN LEZY: P was already admitted.  
7 Please address Q.

8 MR. KUDO: That these are exhibits with  
9 regard to the rail which we believe are irrelevant to  
10 this particular Petition. So on that basis we would  
11 add that as an additional objection as well as the  
12 lack of foundation and relevancy.

13 CHAIRMAN LEZY: Understood. Same rationale,  
14 q is admitted.

15 DR. DUDLEY: R is a map titled "Figure 1-3,  
16 the Fixed Guideway Transit Alternative Features."  
17 This is a map of the rail project. It's also a map of  
18 the area, though.

19 CHAIRMAN LEZY: Mr. Kudo?

20 MR. KUDO: Same objection.

21 CHAIRMAN LEZY: Same rationale.

22 MR. KUDO: As Q and P.

23 CHAIRMAN LEZY: Same rationale. Exhibit R  
24 is admitted.

25 DR. DUDLEY: S. S is a phasing map from the

1 'Ewa Development Plan of 1997. It's found on Page 158  
2 of the 'Ewa Development Plan.

3 MR. KUDO: No objection to that.

4 CHAIRMAN LEZY: Exhibit S is admitted.

5 DR. DUDLEY: B1 is the Development Study for  
6 the Honouliuli lands for December 1955.

7 MR. KUDO: Objection on the grounds of no  
8 foundation being laid for that document.

9 CHAIRMAN LEZY: Who is that study prepared  
10 by Dr. Dudley?

11 MR. KUDO: I believe the author has passed  
12 away, Mr. Bartholomew.

13 DR. DUDLEY: It's a -- it's for the Estate  
14 of James Campbell. It was prepared by Parland  
15 Bartholomew Associates, the City Planner in St. Louis.  
16 It's dated December 1955. It's from the public  
17 library. It's a reference No. RH-7113HHSL.

18 CHAIRMAN LEZY: Same rationale, B1 is  
19 admitted.

20 MR. KUDO: The second B2 is "Honouliuli, a  
21 self-contained city in 'Ewa."

22 CHAIRMAN LEZY: Mr. Kudo.

23 MR. KUDO: Same objection. The author has  
24 passed away so there's a lack of foundation for this  
25 particular document.

1                   CHAIRMAN LEZY: Same rationale. Exhibit B2  
2 is admitted.

3                   DR. DUDLEY: B3 is the testimony of Panos  
4 Prevedorous.

5                   MR. KUDO: No objection.

6                   CHAIRMAN LEZY: B3 is admitted.

7                   DR. DUDLEY: B5 is the Fort Weaver Road.

8                   CHAIRMAN LEZY: Sorry, Dr. Dudley. You  
9 skipped B4.

10                  DR. DUDLEY: We withdrew B4.

11                  CHAIRMAN LEZY: B4 withdrawn. B5?

12                  DR. DUDLEY: B5 is Fort Weaver Road  
13 northbound, the restriping over Farrington Highway.  
14 This is from the State Department of Transportation.

15                  MR. KUDO: Again, objection. Lack of  
16 foundation.

17                  CHAIRMAN LEZY: Same rationale. B5 is  
18 admitted.

19                  DR. DUDLEY: B6 is a report, the Crop  
20 Acreage, Livestock and Farms between 1980 and 2008  
21 from the Department of Planning and Permitting.

22                  MR. KUDO: Same objection. Lack of  
23 foundation.

24                  CHAIRMAN LEZY: Same rationale, B6 is  
25 admitted.



1 DR. DUDLEY: B7 is the resumé of William M.  
2 Tam.

3 MR. KUDO: We are objecting to this resumé  
4 because it basically goes, we believe, beyond what the  
5 FOM was permitted to argue in this particular case by  
6 the Commission. He was limited to five areas. And  
7 what Mr. Tam is supposedly going to be testifying to  
8 is not one of the areas that FOM was supposedly  
9 allowed to be putting on as a case, as part of his  
10 case.

11 CHAIRMAN LEZY: We'll give further  
12 consideration to that at the time Mr. Tam is offered  
13 as a witness, Mr. Kudo. As far as the exhibit itself  
14 is concerned, any other objections?

15 MR. KUDO: No.

16 CHAIRMAN LEZY: B7 is admitted.

17 DR. DUDLEY: Okay. B9 is a report on the  
18 State of Physical Infrastructure in Hawai'i. This is  
19 a U.S. Department of Commerce report from July 2010.

20 MR. KUDO: Again, objection on the grounds  
21 of relevancy and lack of foundation.

22 CHAIRMAN LEZY: Before we decide that,  
23 Dr. Dudley, B8 has been withdrawn.

24 DR. DUDLEY: B8 has been withdrawn. I'm  
25 sorry, I'll start trying to do that.

1                   CHAIRMAN LEZY: I'm sorry, Mr. Kudo, please  
2 restate your objection.

3                   MR. KUDO: Objection on the grounds of  
4 relevancy and lack of foundation.

5                   CHAIRMAN LEZY: Same rationale B9 is  
6 admitted.

7                   DR. DUDLEY: B10 is the Water Resource  
8 Protection Plan Existing and Future Demands from  
9 June 2008.

10                  MR. KUDO: We would object to that, again,  
11 similar to the resumé of Mr. Tam, that it goes beyond  
12 the scope of what FOM was permitted to present to this  
13 Commission. We also object that it was untimely  
14 filed.

15                  CHAIRMAN LEZY: Subject to those objections  
16 B10 is admitted.

17                  DR. DUDLEY: B11 is the testimony of Peter  
18 Apo, one of our expert witnesses.

19                  MR. KUDO: Our objection to that particular  
20 testimony, because it goes beyond what FOM was  
21 permitted to present to this Commission.

22                  CHAIRMAN LEZY: Again, we'll take that issue  
23 up when the witness is offered. No objections other  
24 than that, Mr. Kudo?

25                  MR. KUDO: No.

1 CHAIRMAN LEZY: B11 is admitted.

2 DR. DUDLEY: B12 is the resumé of Peter Apo.

3 MR. KUDO: Same objection.

4 CHAIRMAN LEZY: B12 is admitted.

5 DR. DUDLEY: B13 is the testimony of Donna  
6 Wong.

7 MR. KUDO: Same objection.

8 CHAIRMAN LEZY: For the same rationale B13  
9 is admitted.

10 DR. DUDLEY: No. B14 is the resumé of Donna  
11 Wong.

12 MR. KUDO: Same objection.

13 CHAIRMAN LEZY: Same rationale, B14 is  
14 admitted.

15 DR. DUDLEY: B15 is the Table 19.02 Farms  
16 and Land in Farms by County, the State of Hawai'i Data  
17 Book 2007.

18 MR. KUDO: Objection. Lack of foundation.

19 CHAIRMAN LEZY: Same rationale, B15 is  
20 admitted.

21 DR. DUDLEY: B16 is the map of Pearl Harbor  
22 extant from the Pearl Harbor Aquifer of O'ahu by Megan  
23 Flory. 2007.

24 MR. KUDO: Objection as it goes beyond the  
25 permitted issues of Friends of Makakilo.

1           CHAIRMAN LEZY: Same as prior rationale, B16  
2 is admitted.

3           DR. DUDLEY: We skipped 17 and 18.

4           CHAIRMAN LEZY: You've withdrawn 17 and 18?

5           DR. DUDLEY: We've withdrawn 17 and 18, yes.

6           CHAIRMAN LEZY: B17 and B18 are withdrawn.

7           DR. DUDLEY: Yes. B19 is a map of Ho'opili  
8 titled "Ho'opili Plan." This is taken from the  
9 "Star-Advertiser" . And I don't have a date for it.

10          MR. KUDO: No objection.

11          CHAIRMAN LEZY: 19 is admitted.

12          DR. DUDLEY: B20 is a picture of Kanehili  
13 which is provided by the Department of Hawaiian Home  
14 Lands. Kanehili is a homestead area.

15          MR. KUDO: Objection. No foundation.

16          CHAIRMAN LEZY: Same rationale as before  
17 B20 is admitted.

18          DR. DUDLEY: We, unfortunately, initially  
19 put down two B20s so the next one I went through this  
20 time I renumbered it as B20A. This is a picture of  
21 the coral base at Kanehili. And this is a picture by  
22 Mike Hinchley which was taken in August 2011.

23          MR. KUDO: Objection on the ground of  
24 relevancy and lack of foundation.

25          CHAIRMAN LEZY: Based on prior rationale

1 B20A is admitted.

2 DR. DUDLEY: B21 is a picture closeup of the  
3 coral base on the DHHL land by Mike Hinchley in  
4 August 2011.

5 MR. KUDO: Same objection on the grounds of  
6 relevancy and lack of foundation.

7 CHAIRMAN LEZY: Based on the same rationale  
8 B20 is admitted.

9 DR. DUDLEY: B22 is a picture of the rail  
10 route. This is taken from Geology, Soils, Farmlands,  
11 and Natural Hazards in October 2008.

12 MR. KUDO: Question. Is that the same as  
13 Exhibit R?

14 DR. DUDLEY: I think this is the same as the  
15 picture we had earlier.

16 CHAIRMAN LEZY: Are you withdrawing this  
17 Exhibit, Dr. Dudley?

18 DR. DUDLEY: We could withdraw this one,  
19 yes.

20 CHAIRMAN LEZY: B22 is withdrawn.

21 DR. DUDLEY: B23 is a picture of the Orchard  
22 and Aloun Farm Center. This is done by Mike Hinchley  
23 in August of 2011.

24 MR. KUDO: Objection. Lack of foundation.

25 CHAIRMAN LEZY: Same rationale as before.

1 B23 is admitted.

2 DR. DUDLEY: B24 is a land use map of the  
3 Pearl Harbor Area from the Pearl Harbor Aquifer of  
4 O'ahu by Megan Kim Flory in Spring of 2007.

5 MR. KUDO: Objection as this goes beyond the  
6 FOM's permitted issues and there was no foundation for  
7 this particular photograph.

8 CHAIRMAN LEZY: One question, Dr. Dudley. I  
9 can't recall off the top of my head. Is Ms. Flory  
10 going to be offered as a witness?

11 DR. DUDLEY: No.

12 CHAIRMAN LEZY: Same rationale as before.  
13 B24 is admitted.

14 DR. DUDLEY: B25 is a cross-section of a  
15 typical island aquifer from the state of Hawai'i  
16 Commission on Water Resource Management website.

17 MR. KUDO: Again, objection, as the exhibit  
18 goes beyond FOM's permitted issues and there's no  
19 foundation for this particular exhibit.

20 CHAIRMAN LEZY: Same rationale as before.  
21 B25 is admitted.

22 DR. DUDLEY: B26 is the Water Management  
23 Areas from the DLNR Commission on Water Resource  
24 Management website.

25 MR. KUDO: Same objection.

1               CHAIRMAN LEZY: Same rationale, B26 is  
2 admitted.

3               DR. DUDLEY: And B27 is a map, 1020  
4 Hydrologic Units. That's from the Commission on Water  
5 Resource Management website.

6               MR. KUDO: Same objection.

7               CHAIRMAN LEZY: Same rationale, B27 is  
8 admitted.

9               DR. DUDLEY: B27 shows the -- I'm sorry, 28,  
10 B28 shows the gulch by the freeway on the Ho'opili  
11 land. And this is by Mike Hinchley, August 2011.

12              MR. KUDO: Objection, lack of foundation.

13              CHAIRMAN LEZY: Same rationale, B28 is  
14 admitted.

15              DR. DUDLEY: B29 shows the gulch below  
16 Farrington Highway. This, again, on the Ho'opili  
17 property by Mike Hinchley in August 2011.

18              MR. KUDO: Lack of foundation.

19              CHAIRMAN LEZY: Same rationale, B29  
20 admitted.

21              DR. DUDLEY: B30 is a picture of the Fat Law  
22 Farm. This is also Ho'opili land, land owned by the  
23 owners of Ho'opili and it's by Mike Hinchley in August  
24 of 2011.

25              MR. KUDO: Again, lack of foundation.

1                   CHAIRMAN LEZY: Same rationale, B30  
2 admitted.

3                   DR. DUDLEY: The B31 is a picture of the  
4 dropoff of the hillside the way it drops down by Mike  
5 Hinchley in August 2011.

6                   MR. KUDO: Lack of foundation.

7                   CHAIRMAN LEZY: Same rationale, B31 is  
8 admitted.

9                   DR. DUDLEY: B32 is a picture of the gulch  
10 by the 'Ewa Village by Mike Hinchley. This is  
11 August 2011.

12                  MR. KUDO: Same objection.

13                  CHAIRMAN LEZY: Same rational, B32 is  
14 admitted.

15                  DR. DUDLEY: B33 is a picture of Fort Weaver  
16 Road overpassing Farrington Highway. This is by Mike  
17 Hinchley in August of 2011.

18                  MR. KUDO: Same objection.

19                  CHAIRMAN LEZY: B33 subject to the same  
20 rationale is admitted.

21                  DR. DUDLEY: B34 is a picture of Kunia Road.  
22 This is just north of that other picture. It's also  
23 by Mike Hinchley on August of 2011.

24                  MR. KUDO: Objection. Untimely filing and  
25 lack of foundation.



1                   CHAIRMAN LEZY: Subject to the same  
2   rationale B34 is admitted.

3                   DR. DUDLEY: B35 is the testimony of Tom  
4   Coffman and includes the biographical material on  
5   Mr. Coffman.

6                   MR. KUDO: No objection.

7                   CHAIRMAN LEZY: B35's admitted.

8                   DR. DUDLEY: And B36 is the resumé of Zuri  
9   Aki.

10                  MR. KUDO: Again, we would object to his  
11   resume as Mr. Aki is expected to testify on an issue  
12   that's beyond FOM's permitted issues.

13                  CHAIRMAN LEZY: Understood. Again, that  
14   will be taken up at the time the witness is offered.  
15   But other than that no objections to the exhibit,  
16   Mr. Kudo?

17                  MR. KUDO: No.

18                  CHAIRMAN LEZY: Exhibit B36 is admitted.

19                  DR. DUDLEY: And that's it.

20                  CHAIRMAN LEZY: It looks like there is some  
21   confusion about some hanging exhibits that Intervenor  
22   Friends of Makakilo has. Let's take another brief  
23   break. Dr. Dudley, Mr. Davidson is going to speak  
24   with you briefly about that.

25                               (Recess was held.)

1                   CHAIRMAN LEZY: We're back on the record.  
2 Dr. Dudley, during the break were you able to  
3 determine what additional exhibits you wish to seek  
4 admission for?

5                   DR. DUDLEY: Yes. We withdrew No. 21, 22  
6 and 23. And the next one is 24 which is the resumé  
7 for Dr. James Brewbaker.

8                   MR. KUDO: Again, the objection the same as  
9 the other experts that he's offering in this area.

10                  CHAIRMAN LEZY: Okay. Exhibit 24 is  
11 admitted.

12                  DR. DUDLEY: We withdrew No. 25, 26 and 27.  
13 No. 28 is the Transportation Alternatives Analysis for  
14 Mitigating Traffic Congestion Between leeward O'ahu  
15 and Honolulu. This the study done by the UH graduate  
16 students in the engineering department.

17                  MR. KUDO: Objection on no foundation.

18                  CHAIRMAN LEZY: Same rationale. Exhibit 28  
19 is admitted.

20                  DR. DUDLEY: Exhibit 29 is the crops  
21 irrigated with the Wahiawa Irrigation System. This is  
22 produced by Element Environmental, LLC.

23                  MR. KUDO: Same objection.

24                  CHAIRMAN LEZY: Same rationale. Exhibit 29  
25 is admitted.

1 DR. DUDLEY: We withdrew Exhibit 30, 31 and  
2 32. No. 33 is the testimony of Dr. James Brewbaker as  
3 an expert witness.

4 MR. KUDO: Again, objection. Goes beyond  
5 FOM's permitted area.

6 CHAIRMAN LEZY: Subject to the same  
7 rationale Exhibit 33 is admitted.

8 DR. DUDLEY: No. 34 is the resumé of Leon  
9 Sollenberger.

10 MR. KUDO: 37.

11 DR. DUDLEY: So after 33, we withdrew  
12 No. 34, 35 and 36. No. 37 is the resumé of Leon  
13 Sollenberger. This is the agriculture witness expert.

14 MR. KUDO: Same objection.

15 CHAIRMAN LEZY: Subject to the same  
16 rationale Exhibit 37 is admitted.

17 DR. DUDLEY: 38 is the testimony of Leon  
18 Sollenberger.

19 MR. KUDO: Same objection.

20 CHAIRMAN LEZY: Exhibit 38 is admitted.

21 DR. DUDLEY: 39 is the testimony of Paul  
22 Brewbaker.

23 MR. KUDO: Same objection.

24 CHAIRMAN LEZY: Subject to the same  
25 rationale, Exhibit 39 is admitted.

1 DR. DUDLEY: And 40 is the resumé of Paul  
2 Brewbaker as an expert witness.

3 MR. KUDO: Same objection.

4 CHAIRMAN LEZY: Exhibit 40 is admitted.

5 DR. DUDLEY: R2 is -- we withdrew -- R1 was  
6 actually struck by the Commission back in 2009. R2 is  
7 the Department of Planning and Permitting annual  
8 report for 2007.

9 MR. KUDO: Objection. Lack of foundation.

10 CHAIRMAN LEZY: Subject to the same  
11 rationale Exhibit R2 is admitted.

12 DR. DUDLEY: R3 is the Central O'ahu  
13 Sustainable Communities Plan Housing Projected  
14 Housing.

15 MR. KUDO: Objection. Lack of foundation.

16 CHAIRMAN LEZY: Subject the same rationale  
17 Exhibit R3 is admitted.

18 DR. DUDLEY: Back in 2009 R4 was struck by  
19 the Commission. R5 is the Highways Modernization Plan  
20 from the state Department of Transportation.

21 MR. KUDO: Objection. Untimely filing and  
22 also we did not receive all of the pages of this  
23 document.

24 DR. DUDLEY: I don't know what their problem  
25 is. Everybody else got them.

1 MR. KUDO: I believe Page 2 is missing.

2 CHAIRMAN LEZY: Dr. Dudley, can you provide  
3 Page 2 is the Petitioner?

4 DR. DUDLEY: Yes. Yes, I can. Let me say  
5 Page 2 has been a part of this whole set from the very  
6 beginning. But I would be happy to provide another  
7 Page 2 for them.

8 CHAIRMAN LEZY: Please make sure to provide  
9 that to the Petitioner by next week.

10 DR. DUDLEY: Okay.

11 CHAIRMAN LEZY: So the pending is R5,  
12 correct, subject to Dr. Dudley's provision on missing  
13 page, Exhibit R5 is admitted.

14 DR. DUDLEY: R6, R7, R8 were struck by the  
15 Commission back in 2009. This is R9 which is the  
16 vacant houses on O'ahu and in the state.

17 MR. KUDO: Objection, grounds of relevancy  
18 and lack of foundation.

19 CHAIRMAN LEZY: Same rationale, Exhibit R9  
20 is admitted.

21 DR. DUDLEY: And R10 was also struck by the  
22 Commission back in 2009. And I think that's it.

23 CHAIRMAN LEZY: Okay. I think that  
24 completes Intervenor Friends of Makakilo's exhibits.  
25 Again, Dr. Dudley, some leeway has been provided in

1 the admission of exhibits. You've seen already the  
2 objections that the Petitioner is going to have to  
3 your witnesses and substance of their testimony.

4 I think it would be a very good idea for you  
5 to carefully consider those objections and be prepared  
6 to respond to them as the time comes for you to call  
7 your witnesses.

8 DR. DUDLEY: Thank you.

9 CHAIRMAN LEZY: Turning back to the pending  
10 motion by Intervenor Friends of Makakilo for Leave to  
11 File Amended Witness and Exhibit Lists, the Chair will  
12 entertain a Motion to Deny that motion since it's been  
13 rendered moot by our actions.

14 MS. PAUL: Mr. Chair, we would like to  
15 withdraw that motion.

16 CHAIRMAN LEZY: Thank you very much. Motion  
17 is withdrawn. Moving on to the next item on the  
18 agenda. This is the Non-hearing Motion for Second  
19 Site Visit filed by Intervenor The Sierra Club,  
20 Friends of Makakilo and Senator Clayton Hee.

21 MR. KUDO: Are we covering the witnesses?

22 CHAIRMAN LEZY: No. Witnesses will be taken  
23 up at the time they're offered.

24 MR. KUDO: Oh, okay.

25 CHAIRMAN LEZY: Back to the next agenda

1 item. This is a Non-hearing Motion for Second Site  
2 Visit filed by Intervenor The Sierra Club, Friends of  
3 Makakilo and Senator Clayton Hee.

4 This is an action meeting on docket A06-771  
5 D.R. Horton-Schuler Homes, LLC, a Delaware limited  
6 liability company, dba D.R. Horton-Schuler Division,  
7 to deliberate and decide on Non-hearing Motion for  
8 Second Site Visit filed by Intervenor The Sierra  
9 Club, Friends of Makakilo, and Senator Clayton Hee.

10 I'll now call for those individuals desiring  
11 to provide public testimony on the limited issue of  
12 the Non-hearing Motion for a Second Site Visit filed  
13 by the Intervenor. Is there anybody signed up for  
14 public testimony?

15 MR. DAVIDSON: Nobody signed up, Chair.

16 CHAIRMAN LEZY: Is there anybody who wishes  
17 to provide public testimony on this motion? Hearing  
18 none, as noted this is a non-hearing motion for a site  
19 visit. The Movant specifically stated that it was a  
20 non-hearing.

21 So pursuant to the Land Use Commission's  
22 Administrative Rules section 15-15-70(j) the  
23 Commission will conduct deliberations and decide the  
24 matter upon the pleadings and submissions filed with  
25 the Commission relating to this non-hearing motion.

1 Commissioners, discussion?

2 COMMISSIONER TEVES: Mr. Chair.

3 CHAIRMAN LEZY: Commissioner Teves.

4 COMMISSIONER TEVES: Mr. Chairman, it's my  
5 understanding the site visit is for the benefit of the  
6 Commissioners, not the public and other parties  
7 involved. I make the motion to deny the request for  
8 site visit.

9 CHAIRMAN LEZY: Do I hear a second?

10 COMMISSIONER HELLER: Second.

11 CHAIRMAN LEZY: Any discussion? Hearing  
12 none, Mr. Davidson would you please poll the  
13 Commission.

14 MR. DAVIDSON: Motion to deny the Motion for  
15 Second Site Visit.

16 Commissioner Teves?

17 COMMISSIONER TEVES: Yes.

18 MR. DAVIDSON: Commissioner Heller?

19 COMMISSIONER HELLER: Yes.

20 MR. DAVIDSON: Commissioner Matsumura?

21 COMMISSIONER MATSUMURA: Yes.

22 MR. DAVIDSON: Commissioner Judge?

23 COMMISSIONER JUDGE: Yes.

24 MR. DAVIDSON: Commissioner McDonald?

25 COMMISSIONER McDONALD: Yes.



1 MR. DAVIDSON: Commissioner Contrades?

2 COMMISSIONER CONTRADES: Yes.

3 MR. DAVIDSON: Commissioner Chock?

4 COMMISSIONER CHOCK: Yes.

5 MR. DAVIDSON: Chair Lezy?

6 CHAIRMAN LEZY: Yes.

7 MR. DAVIDSON: Motion passes 8-0, one  
8 excused, Chair.

9 CHAIRMAN LEZY: I believe that concludes the  
10 agenda items for the Docket A06-771 D.R. Horton  
11 matter. Are there any other issues?

12 MR. KUDO: Mr. Chairman, yes. I just wanted  
13 to make one statement. And that is I know this  
14 Commission has bent over backwards to accommodate the  
15 Intervenors, in particular Friends of Makakilo, who  
16 have been participating in these proceedings for over  
17 three years now.

18 And I know -- realize you're going to be  
19 taking up the witnesses as they come up. But  
20 collectively, amongst the three Intervenors, just on  
21 the issue of ag they have listed 19 witnesses. I mean  
22 the Petitioner only had one witness. And we have the  
23 burden of proof. I think 19 is a little too much.

24 And I hope that the Commission will take  
25 that into consideration as these witnesses come up,

1 are put up by the parties to testify before you, that  
2 I think it's overly redundant and renders these  
3 particular proceedings unmanageable.

4 On that basis we would have strong  
5 objections to all 19 being allowed to testify before  
6 the Commission. Just wanted to make that statement.

7 CHAIRMAN LEZY: We understand the  
8 Petitioner's position, Mr. Kudo. I think we've offered  
9 some suggestions to the Intervenors. I don't think  
10 it's in the Intervenors' or anybody else's interest to  
11 drag the proceedings along longer than necessary. So  
12 I'm sure that the Intervenors are going to be  
13 sensitive to that as they make their final decisions  
14 about the witnesses they decide to present.

15 MR. KUDO: Thank you.

16 CHAIRMAN LEZY: Any other issues that we  
17 need to take up before we move on to the next item on  
18 the agenda? Hearing none, thank you. Let's take a  
19 5-minute break.

20 (Recess was held. 11:15-11:20)

21 xx

22 xx

23 xx

24 xx

25 xx

1 Docket A11-793

2 CHAIRMAN LEZY: Back on the record. The  
3 next item on the agenda is an action meeting on Docket  
4 No. A11-793 to amend the Agricultural Land Use  
5 District Boundary into the Urban District for  
6 approximately 767.649 acres at Waipio and Waiawa  
7 Island of O'ahu, state of Hawai'i to consider  
8 Petitions to Intervene from The Sierra Club, the  
9 Mililani/Melemanu/Waipio Neighborhood Board No. 25 and  
10 Senator Clayton Hee.

11 Would the parties please identify  
12 themselves.

13 MR. MATSUBARA: Good morning, Mr. Chair,  
14 members of the Commission. Ben Matsubara and Curtis  
15 Tabata on behalf of Castle & Cooke Homes Hawaii, Inc.  
16 With me today is Lora Kodama and Rodney Funakoshi.

17 CHAIRMAN LEZY: Good morning.

18 MS. TAKEUCHI-APUNA: Good morning. Deputy  
19 Corporation Counsel Dawn Takeuchi-Apuna on behalf of  
20 the Department of Planning and Permitting. Here with  
21 me today is Randy Hara.

22 CHAIRMAN LEZY: Good morning.

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

1 Planning.

2 CHAIRMAN LEZY: Good morning. Nice to see  
3 you, Mr. Souki.

4 MS. JARMON: Good morning. Jamila Jarmon on  
5 behalf of the Sierra Club.

6 CHAIRMAN LEZY: Good morning.

7 MR. POIRIER: Good morning. Dick Poirier,  
8 Board #25.

9 CHAIRMAN LEZY: Good morning.

10 MR. SEITZ: Good morning. Eric Seitz. I'm  
11 appearing especially for Senator Clayton Hee. We are  
12 discussing whether I will represent him and  
13 potentially also the Sierra Club in this matter, but  
14 we are in a very preliminary stage.

15 CHAIRMAN LEZY: Developing a new practice,  
16 Mr. Seitz?

17 (Audience laughter)

18 MR. SEITZ: Could be.

19 CHAIRMAN LEZY: Let me update the record.

20 On October 3, 2011 the Commission received the  
21 Petition for District Boundary Amendment.

22 On October 12, 2011 the Commission received  
23 written correspondence via email from Robin Glass and  
24 Rick Ralston.

25 On October 28, 2011 the Commission received

1 The Sierra Club's Notice of Intent to File Petition to  
2 Intervene.

3 On November 22, 2011 the Commission received  
4 The Sierra Club's Petition to Intervene.

5 On November 23, 2011 the Commission received  
6 The Sierra Club's letter to correct the Caption on its  
7 Petition to Intervene; Neighborhood Board No. 25's  
8 Petition to Intervene and Senator Clayton Hee's  
9 Petition for Leave to Intervene.

10 On November 28, 2011 the Commission received  
11 Office of Planning's Statements of No Objection to the  
12 Petitions to Intervene from The Sierra Club  
13 Neighborhood Board #25 and Senator Clayton Hee.

14 On November 29, 2011 the Commission received  
15 Department of Planning and Permitting's Opposition to  
16 Senator Clayton Hee's Petition for Leave to Intervene.

17 Let me briefly describe our hearing  
18 procedure for today. I'll first give opportunity for  
19 the Petitioner to comment on the Commission's policy  
20 concerning reimbursement of hearing expenses. I will  
21 then call for those individuals desiring to provide  
22 public testimony on any of the three Petitions to  
23 Intervene to identify themselves. All such  
24 individuals will be called in turn to our witness box  
25 where they will be sworn in.

1           After completion of the public testimony the  
2 Commission will hear argument from the proposed  
3 Intervenor and the parties.

4           Mr. Matsubara, has our staff informed you of  
5 the Commission's policies regarding the reimbursement  
6 of hearing expenses?

7           MR. MATSUBARA: Yes, it has. And we have no  
8 objections.

9           CHAIRMAN LEZY: Thank you. Mr. Davidson,  
10 are there any individuals who signed up to provide  
11 public testimony?

12          MR. DAVIDSON: We have no sign-ups, Chair.  
13 Also, I believe we did receive Petitioner's Statements  
14 of No Opposition to the Petitions to Intervene  
15 yesterday. Just to finalize the record.

16          CHAIRMAN LEZY: Thank you for that  
17 clarification. Is there anyone who wishes to provide  
18 public testimony on the pending motions for  
19 intervention? Hearing none, taking up first The  
20 Sierra Club's Petition to Intervene. It's the Chair's  
21 understanding that there is no opposition to that  
22 intervention; is that correct?

23          MR. MATSUBARA: That's correct, Mr. Chair.

24          CHAIRMAN LEZY: Given, that, Sierra Club, do  
25 you have anything to add?

1 MS. JARMON: Ah, yes.

2 MR. SEITZ: There's no opposition.

3 MS. JARMON: No.

4 (Laughter).

5 CHAIRMAN LEZY: I can tell you some stories

6 about when I first started in practice. (Laughter)

7 Commissioners, what's your pleasure on the motion?

8 COMMISSIONER CONTRADES: So moved to accept.

9 CHAIRMAN LEZY: Do I hear a second?

10 COMMISSIONER JUDGE: Second.

11 CHAIRMAN LEZY: Discussion? Hearing none,

12 Mr. Davidson.

13 MR. DAVIDSON: Motion to approve petition by

14 Sierra Club.

15 Commissioner Contrades?

16 COMMISSIONER CONTRADES: Aye.

17 MR. DAVIDSON: Commissioner Judge?

18 COMMISSIONER JUDGE: Yes.

19 MR. DAVIDSON: Commissioner Matsumura?

20 COMMISSIONER MATSUMURA: Yes.

21 MR. DAVIDSON: Commissioner Teves?

22 COMMISSIONER TEVES: Yes.

23 MR. DAVIDSON: Commissioner McDonald?

24 COMMISSIONER McDONALD: Yes.

25 MR. DAVIDSON: Commissioner Chock?

1 COMMISSIONER CHOCK: Yes.

2 MR. DAVIDSON: Chair Lezy?

3 CHAIRMAN LEZY: Yes.

4 MR. DAVIDSON: Motion is approved, Chair,  
5 7-0 with two excused.

6 CHAIRMAN LEZY: Thank you. Moving on then  
7 to Mililani/Melemanu/Waipio Neighborhood Board #25's  
8 Petition. Similarly it's my understanding that the  
9 Petition to Intervene is uncontested, is that correct?

10 MR. MATSUBARA: That's correct.

11 CHAIRMAN LEZY: Given that does the  
12 neighborhood board have anything to add?

13 MR. POIRIER: No way. (Laughter).

14 CHAIRMAN LEZY: Commissioners, what's your  
15 pleasure on Neighborhood Board No. 25's?

16 COMMISSIONER CONTRADES: Move to approve.

17 COMMISSIONER JUDGE: Second.

18 CHAIRMAN LEZY: Any discussion? Hearing  
19 none, Mr. Davidson?

20 MR. DAVIDSON: Motion to approve  
21 Neighborhood Board petition, Commissioner Contrades?

22 COMMISSIONER CONTRADES: Yes.

23 MR. DAVIDSON: Commissioner Judge?

24 COMMISSIONER JUDGE: Yes.

25 MR. DAVIDSON: Commissioner Matsumura?



1 COMMISSIONER MATSUMURA: Yes.

2 MR. DAVIDSON: Commissioner Teves?

3 COMMISSIONER TEVES: Yes.

4 MR. DAVIDSON: Commissioner McDonald?

5 COMMISSIONER McDONALD: Yes.

6 MR. DAVIDSON: Commissioner Chock?

7 COMMISSIONER CHOCK: Yes.

8 MR. DAVIDSON: Chair Lezy?

9 CHAIRMAN LEZY: Yes.

10 MR. DAVIDSON: Motion passes, Chair, 7-0, 2  
11 excused.

12 CHAIRMAN LEZY: Thank you. Moving on to the  
13 final petition, Senator Clayton Hee's Petition. I  
14 understand the only opposition has been filed by the  
15 City and County of Honolulu, is that correct?

16 MS. TAKEUCHI-APUNA: Yes.

17 MR. MATSUBARA: Mr. Chair, just a  
18 clarification. In our filing, to quote what we  
19 indicated, was that we had no objection to the  
20 Honorable Clayton Hee participating in the same  
21 capacity that he has been permitted to participate in  
22 Docket A06-771 the D.R. Horton docket, and that would  
23 be in his capacity as an individual. We have no  
24 objection to that.

25 CHAIRMAN LEZY: Thank you. Parties, any

1 other comments? Mr. Seitz, would you like to make  
2 your argument.

3 MR. SEITZ: Yes, just briefly. I last made  
4 this argument by phone and it was a little  
5 abbreviated. But I don't intend to belabor the  
6 matter. But, again, I want to tell you I'm somewhat  
7 appalled by the fact the City's lawyers even spent the  
8 time, wasted the time to file this kind of objection  
9 which is based on no law whatsoever. I mean it's  
10 frivolous. It's an absolute waste of time.

11 Senator Hee is not purporting to represent  
12 the Senate or the Legislature but he is a senator and  
13 that's who he is. And whether you recognize that or  
14 not basically he's here in that capacity. There's no  
15 law that prevents him from doing that. He doesn't  
16 intend to utilize that in any unfair advantage.

17 And I frankly don't understand the arguments  
18 that counsel are making. There is really no  
19 justification for that. But with that having been  
20 said, we'll rest upon whatever determination the  
21 Commission makes.

22 CHAIRMAN LEZY: Thank you. City and county?

23 MS. TAKEUCHI-APUNA: DPP opposes Senator  
24 Clayton Hee's Motion for Leave to Intervene. Senator  
25 Hee sets forth basically the same arguments set forth

1 in Docket No. A06-771 in his attempt to intervene in  
2 his capacity as a state senator. In that docket this  
3 Commission rejected Senator Hee's intervention as a  
4 state senator by limiting his intervention solely in  
5 his individual capacity.

6 In addition to the precedent set by this  
7 Commission in docket No. A06-771 to reject Senator  
8 Hee's intervention in his capacity as a state senator,  
9 DPP provides the following summarized arguments  
10 against his intervention in this docket.

11 DPP reaffirms its stance that Senator Hee's  
12 intervention in matters before the Land Use Commission  
13 in his capacity as a state senator would  
14 unconstitutionally offend the Separation of Powers  
15 Doctrine as an excessive encroachment by a legislator  
16 in legal matters.

17 The Separation of Powers Doctrine will be  
18 violated when the legislative department tries to  
19 control the execution of its enactments directly  
20 through the administrative process instead of through  
21 the legislative process.

22 In his Petition for Leave to Intervene  
23 Senator Hee states that through this intervention  
24 Senator Hee is faithfully discharging his duty to  
25 defend these provisions of the state constitution to

1 conserve, protect and assure availability of  
2 agricultural lands.

3           However, Senator Hee's duty to defend the  
4 constitution remains within the legislative process  
5 and not in proceedings before the Land Use Commission  
6 in his capacity as a legislator.

7           Implementation, execution and the defense of  
8 legislation is vested in the executive branch, not the  
9 legislative branch. Further, what distinguishes  
10 Senator Hee's influence from the influence of other  
11 parties is that he's a state senator who's not only  
12 helped to draft the laws that this Commission may  
13 consider, but he participated in the Advice and  
14 Consent of the Nominations of a number of the  
15 Commissioners here today. For these reasons DPP  
16 opposes Senator Hee's Motion for Leave to Intervene in  
17 his capacity as a state senator. Thank you.

18           CHAIRMAN LEZY: Mr. Seitz, any response?

19           MR. SEITZ: I don't think those remarks  
20 dignify a response. I think they're really silly. If  
21 there were any constitution or legal basis for it it  
22 would have been provided to you. They're basically  
23 just opinions. And I find them to be, as I said, not  
24 even worthy of consideration.

25           CHAIRMAN LEZY: Commissioners, any questions

1 of the parties? What's your pleasure on this matter?  
2 Commissioner Judge.

3 COMMISSIONER JUDGE: I think for purposes of  
4 consistency I would make a motion that we grant  
5 Senator Hee the same status that we granted him in the  
6 previous docket, that is Petition to Intervene as an  
7 Individual. I understand the arguments made but I  
8 don't think it limits his ability to intervene by  
9 allowing him to intervene as an individual.

10 COMMISSIONER TEVES: I second.

11 CHAIRMAN LEZY: Just for clarifying purpose,  
12 your motion is to grant the Petition with the  
13 modification that he be allowed to intervene as an  
14 individual.

15 COMMISSIONER JUDGE: Correct.

16 CHAIRMAN LEZY: Any discussion? Hearing  
17 none, Mr. Davidson, would you poll the Commission  
18 please.

19 MR. DAVIDSON: Motion to approve as  
20 modified.

21 Commissioner Judge?

22 COMMISSIONER JUDGE: Yes.

23 MR. DAVIDSON: Commissioner Teves?

24 COMMISSIONER TEVES: Yes.

25 MR. DAVIDSON: Commissioner Matsumura?

1 COMMISSIONER MATSUMURA: Yes.

2 MR. DAVIDSON: Commissioner McDonald?

3 COMMISSIONER McDONALD: Yes.

4 MR. DAVIDSON: Commissioner Contrades?

5 COMMISSIONER CONTRADES: Yes.

6 MR. DAVIDSON: Commissioner Chock?

7 COMMISSIONER CHOCK: Yes.

8 MR. DAVIDSON: Chair Lezy?

9 CHAIRMAN LEZY: Yes.

10 MR. DAVIDSON: Motion passes 7-0, Chair with  
11 two excused.

12 CHAIRMAN LEZY: Okay. That is the final  
13 agenda item. Actually there's a deferred agenda item  
14 I think you wanted to mention, Mr. Davidson.

15 MR. DAVIDSON: Simply that our discussion of  
16 administrative rules will be deferred. We're in the  
17 process where we're working with our deputy attorney  
18 general on an internal work product.

19 And if any Commissioners have additional  
20 comments before we kind of move ahead with more of a  
21 public hearing draft, we would appreciate them during  
22 the month of December if possible. That's it, Chair.

23 CHAIRMAN LEZY: Okay. Thank you.

24 MR. SOUKI: Might I quickly comment on the  
25 intervention? Not in opposition but I just wanted to

1 make a brief comment.

2 CHAIRMAN LEZY: Okay.

3 MR. SOUKI: Thank you. This comment, I feel  
4 like I want to point this out to the Commission and  
5 the parties because as the state condition we are in,  
6 underfunded, understaffed, a lot of the work that we  
7 do, the time and money that is spent by the Office in  
8 appearing for the state in these matters is a concern.

9 Because we have three Intervenors in this  
10 case and in the other case, I just wanted to remind  
11 everyone that on 15-15-52 of HAR the analysis for  
12 allowing intervention is contingent on whether the  
13 intervention is substantially the same as the other  
14 parties and whether or not the parties will render the  
15 proceedings inefficient and unmanageable.

16 So we're beyond that. And it's been decided  
17 that they won't, but I think to color the proceedings  
18 as we move forward. I'd also like to point out  
19 15-15-63 of your rules regarding evidence you do have  
20 the authority, although rules of evidence are very  
21 loose, to determine whether or not the evidence being  
22 presented is irrelevant or immaterial or unduly  
23 repetitious.

24 Finally, I point out that the purpose of the  
25 hearing is to see whether or not the Petitioner has

1 met its burden to address the decision-making criteria  
2 under 15-15-77 of your rules and the attendant HRS  
3 provisions that are cited therein. So I hope that the  
4 proceedings are manageable and streamlined and doesn't  
5 go off in too many tangents based on the rules that  
6 are here.

7 CHAIRMAN LEZY: Have you sat through any of  
8 the previous docket matters' meetings? We'll do our  
9 best. And I will continue to encourage the  
10 Intervenor to work together to try to streamline  
11 their cases. I would likewise encourage the Office of  
12 Planning to try to work with the Intervenor, to the  
13 extent you can, to help them with the process as well  
14 along with obviously the Petitioner and the City and  
15 County. Anything else? Mr. Davidson.

16 MR. DAVIDSON: To give all the parties an  
17 opportunity to implement what Mr. Souki just said,  
18 pre-hearing on this will be December 13, I believe, at  
19 10:00 a.m. All of you will get letters. Is that  
20 right, Riley? 10 a.m. the 13th? Riley doesn't  
21 remember. Okay. That's what we believe it is. We'll  
22 get letters out. Thank you.

23 MR. SEITZ: I'm away. So I'll send somebody  
24 but I don't know that we meaningfully participate in  
25 that kind of timeframe. We'll do our best.



1                   CHAIRMAN LEZY: With that we're adjourned.

2 Thank you very much. Happy holidays to everyone.

3                   MR. MATSUBARA: We'd like to wish the

4 Commission and its staff a safe and happy holiday.

5

6                   (The proceedings were adjourned at 11:40 a.m.)

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

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

5 That I was acting as court reporter in the  
6 foregoing LUC matters on the 1st day of December 2011;

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

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

13

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

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

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