

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3 HEARING

4)
AO6-771 D.R. HORTON-SCHULER HOMES, LLC)

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6)

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9 TRANSCRIPT OF PROCEEDINGS

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

12 at Conference Room 205, Second Floor, Leiopapa A

13 Kamehameha, 235 S. Beretania Street, Honolulu,

14 Hawai'i, commencing at 9:30 a.m. on March 15, 2012,

15 pursuant to Notice.

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

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1 CHAIRMAN LEZY: (Gavel) Good morning. This
2 is a meeting of the state of Hawai'i Land Use
3 Commission. The first item on the agenda is adoption
4 of the minutes from the March 1st and 2nd, 2012
5 meeting. Commissioners, any revisions? Hearing none,
6 do I hear a motion?

7 COMMISSIONER CHOCK: So moved.

8 COMMISSIONER McDONALD: Second.

9 CHAIRMAN LEZY: All in favor? (Aye) All
10 opposed? (none) Mr. Davidson, the tentative meeting
11 schedule.

12 MR. DAVIDSON: Thank you, Chair. You have
13 the tentative meeting schedule for the next several
14 meetings with the goal of trying to complete some of
15 the big dockets that are before us in the next several
16 months. As always, any questions about the schedule
17 please contact either Riley or myself. Thank you.

18 CHAIRMAN LEZY: Thank you. Before we move
19 on to the next agenda item I will note for the public
20 that the docket matter A11-793 Castle & Cooke Homes
21 Hawai'i, Inc. will be deferred because of quorum
22 issues. The Commission only has five Commissioners
23 today. We will lose one because of a conflict. So
24 that docket matter will be deferred to a later
25 meeting.

1 Moving on to the next agenda item: This is
2 Docket matter A06-771 D.R. Horton-Schuler Homes, LLC,
3 a Delaware Limited Liability Company d.b.a. D.R.
4 Horton-Schuler Division, Honouliuli, 'Ewa, O'ahu to
5 amend the Agricultural Land Use District Boundaries
6 into the Urban Land Use District for approximately
7 1,525.516 acres of land at Honouliuli, 'Ewa District,
8 O'ahu, Hawai'i, Tax Map Key Nos: (1)9-1-17:4, 059 and
9 072; (1)9-1-18; 001 and 004.

10 Parties, please make your appearances.

11 MR. KUDO: Good morning, Chairman Lezy and
12 members of the Commission. Representing D.R.
13 Horton-Schuler, the Petitioner in this proceeding,
14 Benjamin Kudo and Naomi Kuwaye. And with me is
15 Cameron Nekota vice president of D.R. Horton-Schuler.

16 CHAIRMAN LEZY: 'Morning.

17 MR. JAYARAM: Good morning, Mr. Chair,
18 members of the Commission. Krishna Jayaram, deputy
19 corporation counsel, here on behalf of the Department.
20 To my right is Tim Hata of the Department.

21 CHAIRMAN LEZY: Good morning.

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

1 CHAIRMAN LEZY: Good morning.

2 DR. DUDLEY: Good morning. Dr. Kioni Dudley
3 from the Friends of Makakilo. With me is my lawyer
4 Linda Paul.

5 CHAIRMAN LEZY: Good morning.

6 MS. DUNNE: Good morning. Elizabeth Dunne
7 on behalf of the Sierra Club.

8 CHAIRMAN LEZY: Good morning.

9 MR. SEITZ: Good morning. Eric Seitz
10 appearing for Senator Clayton Hee. With me is my
11 associate Sarah Devine. We anticipate that Senator
12 Hee will be here shortly.

13 CHAIRMAN LEZY: Good morning. Let me update
14 the record relative to this hearing. From March 1,
15 2012 to March 13, 2012 the Commission received written
16 correspondence or e-mail from 230 individuals and
17 organizations whose names are on file.

18 On March 8, 2012 the Commission received a
19 copy of Intervenor Senator Clayton Hee's
20 correspondence to the County of Honolulu's Attorney
21 Donald Kitaoka, regarding the city council Resolution
22 No. 12-23.

23 On March 13, 2012 the Commission received
24 written correspondence from the County of Honolulu's
25 Attorney Donald Kitaoka regarding Intervenor Senator

1 Clayton Hee's correspondence regarding the City
2 Council Resolution No. 12-23.

3 Please let me briefly explain our hearing
4 procedures for today. Intervenor Senator Clayton Hee
5 will continue with the presentation of his case. Once
6 his case is finished the Friends of Makakilo -- pardon
7 me. Let me take that up right now. Dr. Dudley,
8 Mr. Coffman is not available today?

9 DR. DUDLEY: That's right. He returned from
10 Viet Nam the day before yesterday, and he's having
11 surgery on his nose for a skin cancer today. He
12 doesn't think he's going to be in shape to be here.

13 CHAIRMAN LEZY: He'll be available tomorrow?

14 DR. DUDLEY: He will be available tomorrow.

15 CHAIRMAN LEZY: Tomorrow Intervenor Friends
16 of Makakilo will conclude its case with the
17 appearances of its final witnesses. The Sierra Club
18 will then call its final witness. Then Petitioner
19 will present rebuttal witnesses, if any.

20 It is the Commission's intent to close the
21 evidence in that docket tomorrow. (Senator Hee is now
22 present)

23 As noted on the agenda, public testimony
24 will be taken after 2:00 p.m. tomorrow, March 16,
25 2012. Individuals desiring to provide public

1 testimony for this public hearing will be called to
2 our witness box in turn tomorrow where they will be
3 sworn in.

4 I'll note for the parties and the public
5 that we'll take breaks from time to time. Are there
6 any questions on this matter or our procedures for
7 today?

8 There is one issue I think we should clarify
9 at this point. I understand Mr. Davidson has advised
10 the parties regarding an additional witness for
11 Intervenor Senator Clayton Hee, a representative from
12 the city and county. Is that individual here?

13 MR. JAYARAM: She is, Chair.

14 CHAIRMAN LEZY: And prepared?

15 MR. JAYARAM: She is prepared at this time.

16 CHAIRMAN LEZY: It's the Chair's inclination
17 to find that that witness' testimony is compelled by
18 the exchange of correspondence between Intervenor and
19 the County. So, Mr. Seitz, I presume you will want to
20 put her on after you have put on the three witnesses
21 you already identified?

22 MR. SEITZ: That's what I'd prefer, yes.

23 CHAIRMAN LEZY: Okay. All right. So we'll
24 plan on that then. Other than that is there anything
25 else before we proceed? Mr. Seitz, then, please.

1 MR. SEITZ: Thank you. At this time as our
2 next witness we will call Governor John Waihe'e.

3 THE WITNESS: Good morning.

4 CHAIRMAN LEZY: Good afternoon, Governor.

5 GOVERNOR JOHN WAIHE'E
6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: Yes.

9 CHAIRMAN LEZY: Please state your name, and
10 your address.

11 THE WITNESS: John Waihe'e, 333 Queen
12 Street, suite 608, Honolulu, 96813.

13 CHAIRMAN LEZY: Thank you. Mr. Seitz.

14 DIRECT EXAMINATION

15 BY MR. SEITZ:

16 Q 'Morning. Would you please tell us how you
17 are presently employed?

18 A Well, I'm self-employed. I do consulting
19 work both here, the Mainland and Asia.

20 Q And would you briefly describe what
21 positions you have held, what elected positions you
22 have held.

23 A I was a member of the House of
24 Representatives, then Lt. Governor and then Governor
25 from 1986 to 1994. I also served as a member of the

1 1978 Constitutional Convention.

2 Q And you are trained as an attorney, is that
3 correct?

4 A Yes.

5 Q At some point in your political career did
6 you become conscious of concerns about preserving
7 agricultural lands in Hawai'i?

8 A I became conscious of that before my
9 political career.

10 Q And what were the nature of the concerns
11 that you became aware of at that particular junction?

12 A Well, I grew up on the Big Island in the
13 middle of the plantation, the Hamakua Plantation. So
14 agriculture was part of our -- my lifestyle and also
15 on the Parker Ranch area and so forth.

16 So by the time you get to the 1970s when I'm
17 getting active, I would say, the preservation of
18 agriculture lands was an issue that we felt strongly
19 about.

20 Q And did you address that issue or was that
21 issue addressed in the 1978 Constitutional Convention?

22 A Yes. As a matter of fact, in the 1978
23 Constitutional Convention we had all of the
24 stakeholders that, you know, come in and work with us,
25 those of us that wanted to preserve agricultural lands

1 and those of us that felt that in order to sustain
2 agriculture they needed the ability to maybe sell some
3 of it off, and those of us who just didn't see the
4 need for it as strongly as others.

5 We all came together and evolved in an
6 agreed-upon constitutional amendment which is now in
7 our Hawai'i State Constitution setting out the State's
8 mandate to preserve prime agricultural lands.

9 Q In the course of your administration as
10 governor, what, if any, steps were taken to try to
11 enforce that mandate to preserve agricultural lands?

12 A Well, it was part of our criteria, you know,
13 wherever we approached any zoning issues. The other
14 area that was part and parcel of the same effort was
15 the establishment of the Water Commission to make sure
16 that there was enough water both for urbanization and
17 for agriculture and, you know, a whole bunch of
18 various activities most of which you can read probably
19 in the checkered history of my career.

20 Q Can you summarize some of those activities
21 just so we have a little bit of background?

22 A Yeah. I think the one thing we wanted to do
23 more than anything else -- prior to my administration
24 we also had the functional plan, agricultural
25 functional plans that were put together by Governor

1 Ariyoshi. And we tried -- one of the things we wanted
2 to do was to implement those kinds of planning
3 activities. So we established the Office of State
4 Planning which was part of my office. And what their
5 job was to do was to look at the sustainability of
6 agriculture.

7 One area in which we really had a concern
8 and a priority was the development of farming as
9 opposed to plantation style agriculture, which any one
10 of us knew that had a limited, finite period of
11 productivity.

12 So the development of farmland activity in
13 places like Waimanalo and on the 'Ewa Plains was very
14 much a part of our priority.

15 Q Why are those concerns particularly relevant
16 today, those same concerns?

17 A Well, the same concerns are particularly
18 relevant -- well, they never stopped being relevant.
19 And one of the things we did was try to pass a law
20 that would implement the constitutional convention.
21 Sorry to say it took a long time afterwards for that
22 to happen, to actually pass an act that recognized
23 the priority of prime agricultural lands.

24 And part of that act also called for rules
25 and regulations. Now, why is this important? It's

1 important because today, this is 20 years later,
2 plantation agriculture is pretty much gone its path.
3 And we are looking at a situation that occurs after
4 thousands of homes have already been approved which
5 didn't exist 20 years ago. So if it was -- if it was
6 important then it's even more important now.

7 Q What are you recommending to the Land Use
8 Commission in this case involving prime agricultural
9 lands in the 'Ewa Plains?

10 A Well, I think it's very important that we
11 preserve as much as of it as possible. It's not just
12 a matter of soils and location. It's also water. And
13 the one thing about the agricultural plains is it has
14 affordable water as well as good soils and successful
15 farms.

16 I mean what we were trying to do 20 years
17 ago exists on the 'Ewa Plains. So it makes very
18 little sense in my mind to urbanize that area.

19 MR. SEITZ: Thank you. No further
20 questions.

21 CHAIRMAN LEZY: Petitioner?

22 CROSS-EXAMINATION

23 BY MR. KUDO:

24 Q Good morning, Governor.

25 A Good morning, Ben. I mean "Mr. Kudo".

1 (Laughter).

2 Q During your governorship between 1986 and
3 1994 would you consider as your administration to be
4 in strong support of the urbanization of 'Ewa and the
5 development of the Second City that now exists at
6 Kapolei?

7 A Yeah. We were very strong supporters on the
8 Second City development in 'Ewa.

9 Q Was your administration also a strong
10 advocate for affordable housing in the state?

11 A Yes. Because in those days our Land Use
12 Commission required 60 percent of any housing
13 development to be affordable.

14 Q Is it true that your administration also
15 supported and facilitated the development of The
16 Villages at Kapolei which is a residential development
17 in 'Ewa?

18 A Yes.

19 Q And that the lands of The Villages of
20 Kapolei were prime agricultural lands.

21 A Yes.

22 Q Are you familiar with the Ho'opili Project?
23 Have you reviewed its Master Plan, the Urban/Ag Plan,
24 variety of the documents relating to this particular
25 Petition?

1 A I have some general idea, most which is
2 public information. I should distinguish that the
3 reason why I feel strongly about this particular case
4 is the fact that we had already urbanized thousands
5 and thousands of house lots.

6 And even during our plans the area that is
7 now under consideration was actually taken out of the
8 Second City as an agricultural base for that
9 community.

10 So, yes, we did, we did -- we did very
11 strongly support the Second City, but it was part of
12 an overall plan that included the continuation of
13 agriculture. Because part of that was the fact that
14 eventually we got the water from Waioli Ditch. The
15 state took that over.

16 Q Is it true that during your administration
17 you also, through the State Land Use Commission,
18 reclassified approximately 200 acres at 'Ewa from ag
19 to urban for the 1500 residential-unit project called
20 West Loch Estates?

21 A West Loch I think was Frank's project, was
22 it? No.

23 Q No.

24 A Mine? Well, we were in competition so I
25 wasn't sure. (Laughter). Yeah, I know we urbanized

1 at least that much land for the development of homes.

2 Q Now, you mentioned the Office of Planning
3 which was created under your administration.

4 A Right.

5 Q Are you aware that the Office of Planning
6 now is a required party to all proceedings before this
7 Commission?

8 A I think they were a required party or at
9 least they were a participant to all proceedings in my
10 administration as well.

11 Q In fact they're participating in this
12 particular proceeding as representing the position of
13 the state.

14 A Right.

15 Q Are you aware that the Office of Planning
16 under your administration supported much of the
17 development of the 'Ewa region before this Commission
18 in the reclassification of agricultural lands to the
19 Urban District?

20 A Right.

21 Q Are you aware that the Office of Planning
22 today is in support of the reclassification of
23 Ho'opili from Agriculture to the Urban District?

24 A Right. And as I said this is 20 years later
25 and thousands of homes later. If I was -- if they

1 were still part of my administration I can assure you
2 they wouldn't be supporting the reclassification now.

3 Q Are you aware that in 1977, before you
4 became Governor, that the City's plans, the City's
5 plans for this area designated Ho'opili for urban
6 expansion?

7 A The entire area was looked at for its
8 potential for the development of the Second City. But
9 as the urbanization occurred and the new farm
10 production began, then people had to make adjustments.

11 I mean the real problem is this is 20 years
12 later. Twenty years ago there was nothing there.
13 There was no houses, nothing approved, no places to
14 go.

15 Today you have all of that infrastructure in
16 place. And you are now looking at the urbanization of
17 the last section, really, of prime agricultural lands
18 that has a successful farming operation on it.

19 And at some point you've gotta do what every
20 planning department I think does, and that is balance
21 this all out.

22 One thing that the Land Use Commission did
23 when I was in office was we also reviewed existing
24 approvals. And if it didn't look like those people
25 were going to actually follow through with the

1 urbanization, we would have taken it away. So it's
2 not just a question of new urbanization. It's also
3 reviewing what else is on the books.

4 Q I already stated in 1977 when the City
5 adopted its General Plan, Ho'opili was already
6 designated for urban expansion. Are you aware that in
7 the 1980s, the early 1980s before you became governor,
8 the City's 'Ewa Master Plans, which evolved into what
9 is called the Kapolei Long-Range Master Plan, included
10 this particular Petition Area, Ho'opili, and
11 designated it for urban use in the long term?

12 A Yes. But again you're talking about a
13 situation that had at that time sugarcane, which was
14 then going out of production. So people were looking
15 at the, at these lands as possible sites for a Second
16 City. All of that area.

17 Today you're looking at a situation where
18 you have already thousands of homes approved, and the
19 only productive farm -- I mean the most productive,
20 not only, but the most productive agricultural lands
21 in the state being up for reclassification.

22 So I would think that in 20 years we may
23 need to adjust. So, you know, yeah, it may have been
24 then but it shouldn't be now.

25 Q Did the state at any time during your

1 administration oppose the city with regard to its
2 development plans or the General Plan amendments that
3 were going through that clearly showed Ho'opili for
4 urban use?

5 A You know, I really don't know how much
6 attention we paid to the city. 'Cause in that area we
7 were also looking at the idea of putting the entire
8 area into a Kaka'ako-like zone where the state would
9 have the -- no offense meant to the city people -- but
10 where the state would have the ultimate say on what
11 the urbanization of the Second City was gonna look
12 like. The Second City was very important to us.

13 Q Now, your administration supported
14 affordable housing, is that correct?

15 A Yes.

16 Q Can you tell us how your administration
17 supported the construction of affordable housing in
18 our state?

19 A Well, one thing we did was we had a
20 requirement that all new urbanization approvals
21 include 60 percent affordable housing.

22 And the second thing was that we, when we
23 looked at the market conditions on O'ahu it was
24 obvious to us that there were a very few landowners
25 involved that were droving our property. So the other

1 thing we did was essentially negotiate condemnations
2 and brought property into the market. That and a
3 bunch of other things.

4 Q Do you still today support affordable
5 housing?

6 A Yes.

7 Q Okay. Would your position on Ho'opili
8 change if you knew that Ho'opili was -- is being
9 proposed to develop a significant portion of its
10 residential units in the affordable and gap group
11 housing arena?

12 A I think I would be more comfortable with
13 everything if, number one, if we had agricultural
14 lands that were being substituted for the lands that
15 were taken out that had the same supplies of water
16 that Ho'opili enjoys, that whole area.

17 And, so, you know, it's not just a question
18 of soils. It's a question of infrastructure for the
19 production of agriculture. So I don't know where else
20 you can go on O'ahu that provides water. I think I'll
21 be more comfortable with the -- if the Land Use
22 Commission would review existing housing requirements
23 like we did with Waikele, and see whether or not any
24 of that should be de-urbanized. And then come up with
25 a plan that was much more cognizant of the realities

1 of today.

2 So it's not -- to me I don't think the
3 approval is just site specific. I mean there are
4 ramifications that go way beyond the particular site.

5 MR. KUDO: No further questions.

6 CHAIRMAN LEZY: County?

7 MR. JAYARAM: No questions for the Governor.

8 THE WITNESS: Not even about the city?

9 (laughter)

10 CROSS-EXAMINATION

11 BY MR. YEE:

12 Q I just have one area of clarification. I
13 heard you say that the Constitutional Convention
14 passed out a provision in the constitution to protect
15 agriculture, but that it, unfortunately it took a
16 fairly long time to actually pass a law to implement
17 that constitutional provision. Do you remember that
18 part of your testimony?

19 A Yes, I do.

20 Q And just for the record, was the law that
21 you're referring to that was designed to implement the
22 constitutional provision regarding agriculture, was
23 the process by which lands would be designated as
24 Important Agricultural Lands?

25 THE WITNESS: Right.

1 MR. YEE: That's all. Thank you.

2 CHAIRMAN LEZY: Dr. Dudley.

3 CROSS-EXAMINATION

4 BY DR. DUDLEY:

5 Q Governor, you mentioned the Villages of
6 Kapolei. You didn't mention them by name, but you
7 talked about the state taking certain -- can you tell
8 us a little bit more about what you were doing out
9 there and what your intentions were? And I note --
10 well let's start with that. I'll come to another
11 question.

12 A Yeah. Our intentions were to facilitate the
13 development of the Second City on the 'Ewa Plain.

14 Q And by the "Second City" did you mean the
15 city itself or did you mean an entire area with
16 associated things with a downtown section?

17 A Yeah. We meant an integrated community that
18 that -- that not only provided residents but also
19 created employment opportunities. Yeah. So it would
20 be -- they would have an urban core. They would have
21 residents. And hopefully they would have some
22 businesses out there.

23 Q Okay. And was the harbor a part of that?

24 A Yes.

25 Q And the industrial park was part of that?

1 A Yes.

2 Q And over in the 'Ewa side the marina was all
3 part of that?

4 A Right.

5 Q And, Governor, aren't all of these things
6 relatively close to the seashore rather than up into
7 the higher ground?

8 A I guess so. If you're going to have a
9 harbor you gotta put it by the ocean. (Laughter).

10 Q Governor, is it true in your knowledge there
11 are -- as you get farther a way from the mountains you
12 come into more scrub lands where there's less dirt and
13 more coral?

14 A I believe so. I haven't, you know, actually
15 gone up there for a long time.

16 Q Okay. The other question I have, then, you
17 had all of these things and then you formed the
18 Villages of Kapolei too, which the state did, yet this
19 area as far as the state was concerned always remained
20 still in agriculture, is that right?

21 A Yes. It was an agricultural community.

22 Q Good. And, Governor, there's just one more
23 thing on another topic which you also brought up,
24 which was about equal land. You would feel more
25 comfortable if there was equal land. Would you

1 include equal sunshine in that?

2 A Yeah. I don't think it's just about the
3 prime soil, you know. It's also about water,
4 location, sunshine. It's all, whatever, there are
5 other factors that need to be considered. So it's not
6 simply that there's land over there that you can grow
7 something.

8 Q Okay. Then, Governor, one last question
9 then. Are you aware that in the present plan that
10 30 percent of the houses are affordable, but
11 70 percent are unaffordable?

12 A The last person I talked to thought they
13 were all unaffordable. Yes, I know they changed the
14 requirements, but I don't know what the requirement is
15 now. You know, in all fairness, the 60 percent
16 affordable housing requirement was necessary for a
17 particular period in time.

18 And I don't know whether you would have that
19 kind of requirement today where you have a much -- you
20 don't have the housing market. The 60 percent
21 affordable housing requirement happened during the --
22 as a response to the Japanese bubble. 'Cause I think
23 it was a good policy for that time. I think, like
24 everything else, we need to evolve.

25 So 30 percent may be appropriate. I wish

1 they were all affordable, but there are economic
2 realities.

3 DR. DUDLEY: Thank you. No more questions,
4 Sir.

5 CHAIRMAN LEZY: Sierra Club?

6 MS. DUNNE: No questions.

7 CHAIRMAN LEZY: Mr. Seitz, redirect?

8 MR. SEITZ: No further questions.

9 CHAIRMAN LEZY: Commissioners, questions?
10 Governor, just so you know, the Land Use Commission
11 recently de-urbanized a property on the Big Island...

12 THE WITNESS: Congratulations.

13 CHAIRMAN LEZY: ... and we're being sued.

14 (Laughter)

15 THE WITNESS: That's when you know you're
16 doing your job!

17 (Laughter)

18 CHAIRMAN LEZY: So maybe you'd leave your
19 card. We might need it. Thank you for your
20 testimony. (Laughter)

21 THE WITNESS: Thank you very much.

22 CHAIRMAN LEZY: Mr. Seitz.

23 MR. SEITZ: Yes. At this time we'll call
24 Governor Ben Cayetano.

25 CHAIRMAN LEZY: 'Morning, Governor.

1 THE WITNESS: Good morning, Mr. Chairman.

2 GOVERNOR BENJAMIN CAYETANO,
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 your name, your
7 address.

8 THE WITNESS: My name is Benjamin J.
9 Cayetano. I live at 1926 Honokoa Place, Honolulu
10 96821.

11 CHAIRMAN LEZY: Mr. Seitz.

12 DIRECT EXAMINATION

13 BY MR. SEITZ:

14 Q And are you presently employed?

15 A I'm retired.

16 (Laughter)

17 Q I understand you wanted to make an
18 introductory comment.

19 A Yes. Back in the '50s there was a very,
20 very big developer named Joe Pao. Some of you may
21 remember him. Looking at the Commission, some of you
22 are too young to remember him. But I remember after
23 one controversy Joe Pao said, "There will be no
24 agriculture here on this island in 20 years," or a
25 statement similar to that.

1 When I left for college in 1963 I found
2 that -- I'd read and heard news about Hawai'i, that
3 plantations were beginning to struggle. And when I
4 got home in 1971, I passed the Bar, started practicing
5 law and became a lawyer, then was elected to the State
6 House in 1974. You already had, began to have this
7 domino effect as the plantations went down mostly
8 because of market conditions.

9 Those of us who were in the Legislature, we
10 did our best to try and save agricultural land, fought
11 some battles that in the end we lost because the
12 market took over. And Big Ag could not survive.
13 Today there's no Big Ag on this island.

14 I had a talk with Bobby Pfeiffer, Robert
15 Pfeiffer, who's kind of an icon in this town and also
16 probably best known as the Chairman and President of
17 Alexander & Baldwin at the time.

18 And I was a young member of the House. And
19 I said, I asked him, I said, "Mr. Pfeiffer, with all
20 these plantations going down can't we grow our own
21 food?" He said, "You know, Ben," he said, "we could
22 on maybe 40, 50,000 acres of land grow everything we
23 needed. But we couldn't sustain it because they grow
24 things on a much larger scale in California. And so
25 economically A&B could not compete."

1 That was the mindset of Big Agriculture,
2 corporate mindset. And for a long time I think in the
3 Legislature and on the Land Use Commissions, people
4 felt that this was inevitable. And decisions that
5 were made, some bad, some good, led to reclassifying
6 agricultural lands for urban purposes.

7 Well, about, I think it was in the early
8 1980s, I think I was a member of the Senate, State
9 Senate at that time, and someone told me, "Hey,
10 there's a guy named Larry Jefts. He's growing
11 watermelons on Molokai and he's selling them to Canada
12 or someplace." I thought, "Wow, this is incredible. I
13 have to meet this guy."

14 And so at some point I met with Larry Jefts.
15 And I found out he was from Minnesota or someplace. I
16 don't know if Larry's here but, Larry, if I'm mistaken
17 let me know. And he was an accountant, an accountant
18 that had become a successful small farmer.

19 And when he moved his operation to Leeward
20 O'ahu at that time, I think I may have been Lieutenant
21 Governor and John Waihe'e was the Governor, I kept one
22 eye on what Larry was doing. And once I visited his
23 farm and I found that he had about a hundred
24 employees, maybe a little bit more, paid them good
25 wages and he was successful.

1 Now, in my mind that was an example of
2 something that Mr. Pfeiffer could not see because he
3 was looking at it from the corporate level. But here
4 was a small farmer who was beginning to succeed.

5 At a later time, 1998 campaign, I was
6 running for reelection, and I was in Kona in a
7 restaurant. And I saw this guy outside through the
8 window. He had stacks of tomatoes in his pickup
9 truck. So I went outside and I talked to him. Forget
10 his name but he was a Korean-American. Apparently he
11 had been big in tomatoes for a long time. Then he
12 closed down. But now he found a new niche.

13 And I said, "Wow, what are you going to do
14 with all those tomatoes?" He said, "I sell them to
15 the hotels. I sell everything I can grow," he said.

16 And I thought to myself, "Why's that?"
17 Because people's tastes have changed. People want
18 produce that's grown here, not shipped in from the
19 mainland.

20 Later on I met Alec Sou, Aloun Farms.
21 There's another guy, an accountant, you know. And he
22 managed to build his farm. And, you know, the last
23 time I saw Alec he had spent about a million dollars
24 for that chilling operation over there.

25 These anecdotes tell me or told me when I

1 was governor that there was a future for small farmers
2 here in the state. And, consequently, and I gotta
3 confess to I'm not a farmer. I know very little about
4 agriculture, farming. But I can learn from what I
5 experience.

6 So what we did in terms of showing that
7 agriculture was a high priority for my administration,
8 we bought the Waiahole Ditch. Wanted to make sure
9 that you have water coming over to the Leeward side
10 because in the whole scheme of things that area
11 produces far more than any other area on this island
12 by multiple times.

13 So here I was. I was the governor. And my
14 attention on farming had kinda changed. I became, I
15 think, more sensitive to the needs of small farmers.
16 And I wanted to see that industry grow.

17 Now, my understanding is that the Horton
18 Corporation has made some accommodation with Aloun
19 Farms and with Larry Jefts. I think that's great.
20 But this is not only about those two guys. It's about
21 the future of small farming and the ability to expand
22 small farming so that other people who may look at
23 Larry and Alec, say to themselves, "Listen, maybe we
24 can do this, get into the business and give them some
25 competition and grow produce."

1 That I think is consistent with the policy
2 set by this administration, my good friend Governor
3 Abercrombie, that we should do everything we can to
4 have food security and sustainability.

5 I was told that there are about 4500 acres
6 of prime agriculture land left on this island. And by
7 "prime" I was told they meant land that was fertile
8 and that had water. There are about 20,000 I think
9 lands that are designated Agriculture, but they don't
10 have water.

11 So when I found out that this Project would
12 take about 30 percent of that 4500 acres, it didn't
13 seem right to me for the purpose of, you know,
14 agriculture, small farm agriculture. And that's why I
15 oppose it.

16 Once you pave these things, you know, that's
17 it. It disappears from the agricultural category. I
18 know that Horton has come up with some very, I think,
19 creative ways to try and maintain agriculture. But,
20 you know, that's a battle that we in the state fought
21 for a very, very long time.

22 Ag parks, for example, countless failures
23 because people want to rent or lease an acre and
24 pretend to be farmers, but build some nice house on
25 the land. These things just don't hold up.

1 So that's where I'm coming from and this is
2 the reason why I oppose the reclassification. Thank
3 you.

4 MR. SEITZ: I have no further questions.
5 Thank you.

6 CHAIRMAN LEZY: Petitioner?

7 MR. KUDO: No questions.

8 CHAIRMAN LEZY: County?

9 MR. JAYARAM: No questions for the Governor.

10 MR. YEE: No questions.

11 CHAIRMAN LEZY: Dr. Dudley?

12 DR. DUDLEY: No questions.

13 THE WITNESS: I'm disappointed. (Laughter)

14 CHAIRMAN LEZY: Governor, just a moment.

15 THE WITNESS: Sorry.

16 CHAIRMAN LEZY: We may surprise you with
17 questions from the Commissioners. Commissioners,
18 questions? No. Sorry, Governor. Thank you.

19 MR. SEITZ: Our next witness is Senator
20 Clayton Hee.

21 SENATOR CLAYTON HEE,
22 being first duly sworn to tell the truth, was examined
23 and testified as follows:

24 THE WITNESS: Yes, I do.

25 CHAIRMAN LEZY: Please state your name and

1 address.

2 THE WITNESS: I'm Clayton Hee. And my work
3 address is the state capitol down the road.

4 CHAIRMAN LEZY: Mr. Seitz.

5 DIRECT EXAMINATION

6 BY MR. SEITZ:

7 Q What is the present position you hold?

8 A I'm a member of the State Senate.

9 Q How long have you been a member of the State
10 Senate?

11 A In the '80s I was a member for four years,
12 and when I got back here I've been a member since the
13 '04 election.

14 Q Are there other positions, elected positions
15 or appointed positions?

16 A I served in the House for two years in the
17 '80s, and 12 years as a member of the Office of
18 Hawaiian Affairs.

19 Q What is your educational background?

20 A I have two post-bachelor degrees from the
21 University, as well as a bachelor degree from the
22 University.

23 Q And could you talk a little about what your
24 interest is and your history of being interested in
25 agriculture and related food security issues?

1 A Well, I guess taking a page from the
2 previous speaker, although he's a few years older than
3 I am, we both grew up during the time of the demise of
4 agriculture. Of course, he grew up in Kalihi, I grew
5 up on the Windward side.

6 But I can vividly tell you that in my time
7 growing up the Campos Dairy in Coconut Grove
8 disappeared, the Costa Dairy in Kaneohe disappeared.
9 The Teixeira Dairy in Kaneohe disappeared. Hygienic
10 Dairy in Kahalu'u disappeared. So I saw at least that
11 aspect of ag disappear on the Windward side.

12 Where Windward Mall is today was once
13 productive taro lands that then became pastures for
14 cattle, and then became what it is today.

15 I think most people my age certainly can
16 rattle off any number or litany of the disappearance
17 of productive ag and food security in Hawai'i. I
18 think most people, at least my age, may know why that
19 Lani Moo, her brand was WR because the first Meadow
20 Gold Dairy was called Waialae Ranch. Waialae Ranch is
21 located where Waialae Golf Course is today. So that
22 was the country in those days.

23 Buffalo Keaulana grew up in, I believe it's
24 Niu Valley. He'll tell you the story of how he walked
25 to where Waialae, Old Waialae Drive-In is, and then

1 from there caught the bus to Kaimuki High School where
2 he attended school.

3 From Waialae Drive-Inn out to Hawai'i Kai,
4 what we know as Hawai'i Kai today, was a dirt road.
5 Our farmers, by Kaimuki where my dad grew up, was
6 pikaki farms and beehives because of the kiawe trees,
7 and pig farms and dairies.

8 And slowly but surely they moved east until
9 George Santos was the last pig farmer being evicted by
10 Kamehameha Schools for the development of Kalama
11 Valley.

12 Even in this lifetime we hear of the fear of
13 small farmers being imposed upon by large landowners
14 such as at the end of Hawai'i Kai Drive or Lunalilo
15 Drive Home Road, where they still manage to make a
16 living despite the efforts of the landlord, Kamehameha
17 Schools, to boot them out.

18 The difference has become that as Hawai'i
19 has become a bastion of suburban sprawl, farmers have
20 found an ally in suburbia. So the very ones who now
21 occupy what were once farmlands on Lunalilo Home Drive
22 are the ones who protect the farmers at the end of
23 Lunalilo Home Drive.

24 So it's taken, as the previous speaker said,
25 a lifetime to understand what's happened to food

1 security in Hawai'i and why we find ourselves, and we
2 will find ourselves -- the day is coming, when a
3 natural disaster will occur in Hawai'i probably on
4 this island and people gonna panic. And they gonna
5 panic because they already panic.

6 When the hurricanes come everybody runs to
7 Costco. For what? For water. They already panic.
8 The highways are gridlocked. And that's a result of
9 suburban sprawl and poor planning and the inability of
10 leaders, political leaders and members of commissions
11 to stand up and say that that is enough.

12 Q Why did you choose to intervene in this
13 particular matter pending before the Land Use
14 Commission?

15 A Well, there's several reasons. Much of it
16 is from the statement I just made. But as far as I'm
17 concerned for the Island of O'ahu and the state in
18 general we are beyond the tipping point of food
19 security.

20 And Ho'opili represents prime ag land that
21 has water, is flat, has infrastructure, roads and is
22 close to an urban core that makes it easy. And Aloun
23 Farms has proved it. They have made it easy to turn
24 productive prime ag land into a profitable endeavor.
25 That's the first reason.

1 The second reason, quite simply, is the
2 failure of the Legislature to actively set aside and
3 proactively set policies to allow for prime ag lands
4 on other areas of O'ahu.

5 When Dean Okimoto and D.R. Horton and
6 anybody else who's pro this development says in radio
7 commercials and other media outlets that "there's lots
8 of ag lands" nobody would dispute that. All one needs
9 to do is look at a map and look at the zoning.

10 What Dean Okimoto and others fail to say is
11 that those ag lands are not prime ag lands. And that
12 those ag lands are not prime ag lands primarily
13 because there's no water development to make them a
14 viable piece of a site that ag can be grown
15 productively and profitably. That was the other
16 reason.

17 Thirdly, like the previous two speakers and
18 perhaps some of you, if you've lived as long as I have
19 and you've had the privileges that I have had, there
20 comes a time that you take a look at what we leave
21 behind for our grandchildren.

22 And I gotta, you know, I mean if a picture's
23 worth a thousand words all you need to do is drive to
24 Wai'anae and take any picture you want makai of the
25 freeway. And that's worth a million words. And

1 that's not the Hawai'i I grew up in. That's not the
2 Hawai'i I want to leave for my grandchildren.

3 Q When you chose to intervene in this
4 particular proceeding, were you aware of some of the
5 interest on the other side that are pushing for jobs
6 and housing which support development?

7 A Yes. This is not an easy -- this has not
8 been an easy effort. Many of my friends are
9 construction workers. I myself was a member of Local
10 368. Local 368 allowed me to go to college. Because
11 I was a member of Local 368 I went to college. I knew
12 what I didn't want to do for the rest of my life, put
13 a shovel in my hand.

14 My mother was a member of Local 5. She
15 didn't scrub toilets, but she did take your name, and
16 she did wear a flower in her hair, and she did wear a
17 smile when she came to work.

18 My father was a member of UPW. He started a
19 at Water Supply as a pipe fitter/helper because that's
20 all they had -- was offered to him. When he retired
21 he retired as the longest-serving member of Board of
22 Water Supply because he was committed to his job.

23 Many of my friends are wearing brown
24 t-shirts. And I understand. But I also, I understand
25 that there's over 20,000 homes that can be built

1 yesterday. And they should be built before this
2 Project is approved, if it is approved.

3 Banking, banking projects like this only
4 extends poor policy decisions of policy-makers which
5 includes the Land Use Commission.

6 Q What are you asking of and recommending to
7 the Commissioners with respect to disposition of this
8 Petition?

9 A Well, I hope you forgive me, I need to use
10 my glasses for this. I didn't bring my reading
11 glasses but these dark glasses are bifocals.

12 Subchapter 8 of your own rules, Hawaii
13 Administrative Rules, Titled 15 I'm sure you all know
14 it, Section 6 says, "Lands in intensive ag use for two
15 years prior to the date of filing of a Petition or
16 lands with a high-capacity for intensive ag use shall
17 not be taken out of the Agriculture District unless
18 the Commission finds that either that the action will
19 not substantially impair actual or potential ag
20 production in the vicinity of the subject property or
21 in the county or state, or is reasonably necessary for
22 urban growth."

23 This Project will substantially impair the
24 actual or potential agricultural production in the
25 vicinity of subject property in the county and in the

1 state.

2 It is not reasonably necessary for urban
3 growth, given the fact that there are over 20,000
4 homes that are permitted to be built given the fact
5 that this administration is proposing to turn Kaka'ako
6 into the new urban core.

7 And given the fact that until -- that there
8 is no compelling need to rezone this land of which the
9 landowner has no vested rights other than ag. And
10 there's every reason to promote food security knowing
11 that this land is productive. It's not a guess. It's
12 not a wish. It's a fact.

13 Q Is there anything else you wish to add
14 before I close?

15 A You know, some of you here, Nick, Kyle, Ron
16 Heller -- Tommy Contrades is not here, Mr. Chairman,
17 Lisa Judge is not here, you know the ones I named,
18 you folks were first appointed in large part because
19 you were confirmed by the committee which I chaired at
20 that time. I think all of you know that. And all of
21 you knew at the time that I was Chairman, that I asked
22 very specific questions.

23 The question came from this book, this
24 pamphlet "Hawai'i the Past 50 Years, the Next 50"
25 Years" by George R. Ariyoshi.

1 Q You're referring to your Exhibit 61B, which
2 has already been admitted into evidence.

3 A Thank you. I can't say that I was always a
4 big fan of Governor Ariyoshi, especially when I
5 started as a young 20-something year old in 1982 when
6 I was first elected. But maybe through my life
7 through getting older, and as Governor Ariyoshi got
8 older he started to put some of his thoughts into
9 writing.

10 And there were some things during the
11 confirmation that I quoted verbatim. And I would like
12 to enter them into the record. He said, "At the
13 beginning of statehood our system of land management
14 was the envy of other governmental jurisdictions.

15 Originally the job of the Land Use
16 Commissioners was to serve the broad public interest
17 over the long term.

18 He said, "When I came into office I
19 appointed a representative of the League of Women
20 Voters to the Commission because the League had worked
21 hard on understanding land use decisions.

22 "I also appointed a young Hawaiian
23 activist," he's referring to Colette Machado, "who
24 spoke eloquently from the Hawaiian cultural viewpoint
25 about the land. I felt her views needed to be

1 represented."

2 He continued, "Today the intent and function
3 of the land use law has been extensively subverted.
4 The Commission membership prominently includes a
5 realtor, a development lawyer and a corporate lawyer,
6 members with large constituencies that are similarly
7 tied to development such as electrical contractors and
8 Carpenters' Union.

9 "The Commission's Executive Director
10 previously headed the Land Use Research Foundation, a
11 lobbying group for developers and large landowners.

12 "The decisions of the Land Use Commission to
13 urbanize go a long way toward explaining why the
14 number of construction workers in Hawai'i has doubled
15 in the past decade, and why the general public is
16 increasingly disturbed by the congestion that results
17 from overly rapid development.

18 "Contrary to the original idea of the land
19 use law the public is substantially shut out of the
20 process. The Commission's quasi-judicial proceedings,
21 intended to elicit thoughtful and well informed
22 testimony, have limited participation to only those
23 with direct interest in the outcome.

24 "Attorneys examine, cross-examine and
25 redirect the examination of witnesses as if in a court

1 of law. Developers seeking rezoning arrive with
2 attorneys, consultants and expert witnesses to pursue
3 their agenda. But the public interest is not
4 represented.

5 "The most widely embraced goal of the land
6 use law was the preservation of prime ag land. The
7 collapse of plantation agriculture is at the heart of
8 our confusion on how to manage land today.

9 "In 1978 the Constitutional Convention
10 mandated protection of agricultural important lands.
11 But that mandate has not been satisfactorily
12 implemented."

13 I'll end with two last statements that he
14 made. "We should be doing all we can to diversify
15 agriculture, but we are not. When farmland is
16 rezoned, urbanization is nearly irreversible. The
17 land is no longer available for farmers. The best
18 protection of ag land is productivity and
19 profitability.

20 "Farms that make money are much less in
21 danger of being rezoned. Agriculture, in turn,
22 virtually guarantees the preservation of open space."

23 I asked in some small measure these parts of
24 what I just read to you. All of you, all of you --
25 and I have your testimony to the committee --

1 testified to support in some way or another prime ag
2 lands. Some of you, like Nick Teves here, did so. "As
3 a member" -- I'm almost gonna quote him verbatim --
4 "As a member, a long-time member of a kama'aina
5 family, I understand the passion of land and the
6 preservation of land."

7 Others like Mr. Heller went through great --
8 I don't want to say pains because that may not be
9 proper, but you took a lot of time to express to me as
10 Chairman your views on the protection of prime ag land
11 and following the law. I guess that's because you're
12 a lawyer.

13 So I would ask you folks to recall what you
14 said to the Senate when you were confirmed because I
15 think all of you also know that as Chairman Duane
16 Kanuha did not succeed.

17 And I can't remember the other guy's name.
18 I know he ran for office before from Maui. Real nice
19 guy. He also did not receive my approval, but he
20 succeeded by a vote of 14-11 or something like that.
21 And my strong feeling was because whenever the vote
22 came up to take prime ag land out they voted yes.

23 You don't have -- I would say to you folks
24 maybe your job is hard. But, quite frankly, your job
25 is not hard. I don't say it to be unkind to you,

1 folks. It may be complicated but the job is not hard.

2 The last thing I would say is about the
3 developers. I think they're well meaning people.
4 I've gotten to know Mike Jones who I found out is a
5 constituent of mine. And his wife, Pam Jones, like me
6 has a passion for horses.

7 But with all due respect, putting farms in
8 gulches, giving the whole family a 5-year lease, and
9 maybe Alec Sou will find this objectionable, but
10 giving him what he always wanted, an indefinite lease
11 for his processing plant to flip him over is not
12 right.

13 And I'm not saying this because I believe it
14 to be true. I'm saying it because I know it to be
15 true. I've talked to Alec Sou. And I will say this
16 uncategorically. But for this intervention Alec Sou
17 would not likely have gotten that indefinite lease.

18 The Ho Farms would not likely have gotten a
19 5-year lease. Ask them if they can go to the bank on
20 a 5-year lease. They would laugh at you. Thank you.

21 MR. SEITZ: No further questions.

22 CHAIRMAN LEZY: Petitioner?

23 MR. KUDO: No questions.

24 (Applause).

25 MR. YEE: No questions.

1 CHAIRMAN LEZY: Dr. Dudley?

2 DR. DUDLEY: No questions.

3 CHAIRMAN LEZY: Sierra Club?

4 MS. DUNNE: No questions?

5 CHAIRMAN LEZY: Commissioners, questions?

6 Thank you for your testimony, Senator.

7 THE WITNESS: Thank you, Mr. Chair.

8 MR. SEITZ: My understanding the next

9 witness is going to be the representative of the city.

10 Did you want to take a recess before we do that?

11 CHAIRMAN LEZY: Let's take a 10-minute

12 recess.

13 (Recess was held. 10:30)

14 CHAIRMAN LEZY: (Gavel) Just for

15 clarification purpose, for the record this witness

16 will be considered the Commission's witness. Again,

17 by virtue of the fact that the Chair believes her

18 testimony was compelled by the exchange of

19 correspondence between Intervenor and Senator Clayton

20 Hee and the County.

21 KATHY SOKUGAWA,

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

23 and testified as follows:

24 THE WITNESS: I do.

25 CHAIRMAN LEZY: Please state your name, your

1 address.

2 THE WITNESS: Kathy Sokugawa, Department of
3 Planning and Permitting, 650 South King Street,
4 Honolulu, 96813.

5 CHAIRMAN LEZY: Mr. Seitz.

6 MR. SEITZ: Thank you.

7 DIRECT EXAMINATION

8 BY MR. SEITZ:

9 Q Are you familiar with Honolulu City Council
10 Resolution No. 1223, both the resolution that was
11 initially offered and in the form in which it was
12 agreed to by the council?

13 A Yes.

14 Q You received copies of both of those
15 documents, is that correct?

16 A Yes.

17 Q And is it your understanding that with that
18 resolution the council is at least going on record as
19 saying that they want the process of identifying
20 Important Agricultural Lands in the city and county of
21 Honolulu to be expedited? Is that your understanding?

22 A Yes.

23 Q And in addition to that, that the city
24 council mandated that in the process of identifying
25 Important Agricultural Lands that lands that are

1 identified as being within the urban growth area
2 should also be considered if they are prime
3 agricultural lands. Is that your understanding?

4 A There's some reference to that in the
5 resolution.

6 Q Okay. What, if any, effect does that
7 resolution have on the positions that have been taken
8 by your office, the people who've testified here
9 previously, as to your recommendations that this
10 Petition be granted?

11 A Can you restate that?

12 Q Yes. I want to know what, if any, impact
13 that resolution of the city council, especially in the
14 manner in which it was ultimately passed, would impact
15 or affect prior testimony or positions taken by your
16 office in support of the pending Petition?

17 A The resolution does not change the
18 department's position.

19 Q What if hypothetically the city personnel
20 who were responsible for designating agricultural
21 lands were to declare that the particular parcel of
22 land at issue here is, or qualifies for designation as
23 Important Agricultural Land? First of all, do you
24 acknowledge that could happen?

25 A I think -- well, there is a process that's

1 defined by state law. We will follow that process.
2 We will also, as best we can, create a process that's
3 community based or at least has the opportunity for
4 community input. And so on that basis anyone could
5 offer any kinds of lands for consideration as IAL.

6 Q Okay. But do you concur that consistent
7 with the resolution to which I've been referring, that
8 it is now possible, at least, that the parcel of land
9 we're referring to in here in this proceeding could be
10 classified as an Important Agricultural Land?

11 A I think it would be -- there would be
12 certain steps that would have to be required but
13 essentially the short answer is no, for two reasons.

14 Again, the development plans designate this
15 for urban development, not agriculture. And the last
16 section of the committee report that explains their
17 position on the resolution -- and I think it's in the
18 letter to the Commission -- states, if I may quote
19 from that report, "...is not intended to influence the
20 State Land Use Commission decision-making process on
21 any case pending before the Commission."

22 Q Well, let me ask you this: Have you
23 received a legal opinion from anyone indicating that
24 simply because the particular parcel of land here is
25 within the Urban Growth Boundary, that for that reason

1 alone it cannot be classified as an Important
2 Agricultural Land?

3 A I don't have -- we do not have a formal
4 legal opinion. The matter has been discussed. But I
5 think it would be simplistic to say that just because
6 it's in the Urban Growth Boundary is a singular
7 criteria.

8 Q That's just one of several criteria,
9 correct?

10 A Correct.

11 Q And my last question, then, is if, in fact,
12 through this process the county were to determine that
13 this parcel of land should be designated as an
14 Important Agricultural Land, shouldn't the Land Use
15 Commission, in fact, wait to take any action until
16 that process is completed?

17 A I don't know that there's any provision in
18 the state law that makes that kind of recommendation.
19 Certainly, and I would like to say the County's
20 position or the County's role is a recommendation to
21 the State Land Use Commission on the IAL. The final
22 decision is made by the State Land Use Commission.

23 Q I understand it's their decision. But what
24 I'm suggesting to you is if the County's own
25 decision-makers could determine that this particular

1 parcel of land ought to be classified as an Important
2 Agricultural Land under existing state law, in that
3 situation do you think that the Land Use Commission
4 should stay its hand and allow the process to be
5 completed before it acts?

6 A No.

7 Q Why do you take that position?

8 A I don't think they're necessarily dependent
9 on one over the other. We clearly have an adopted
10 land use policy for the region. It is going through
11 an updated process.

12 So it may be premature to talk about what
13 the updated process will ultimately be decided in
14 terms of the Urban Growth Boundary or the particular
15 subject property. But, again, there is an adopted
16 land use policy. We will act on that basis.

17 Q You've also, undoubtedly, heard us argue
18 during the course of the proceeding that the County's
19 land use process offends the provision of the state
20 constitution which requires the protection of
21 agricultural lands.

22 Have you received any legal opinion as far
23 as you're aware that, in fact, the city is allowed to
24 go ahead and allow development on what are otherwise
25 determined as prime agricultural lands that are

1 subject to constitutional protection?

2 A We don't have a formal opinion on that.
3 However, as the Land Use Commission and County Council
4 has been doing so ever since that constitutional
5 amendment was adopted, we have been taking action on
6 lands that were ag -- that are agricultural.

7 Q So if I understand your testimony, just
8 because that's been the process up to now you believe,
9 then, it's permissible to continue to operate on the
10 same basis, is that correct?

11 A My understanding is the State Constitution
12 requires the identification of Important Agricultural
13 Lands. And to the extent it hasn't been done it's
14 premature to say whether we have to stop the
15 processing of entitlements.

16 MR. SEITZ: Thank you. I have no further
17 questions.

18 CHAIRMAN LEZY: Petitioner?

19 MR. KUDO: No questions.

20 CHAIRMAN LEZY: County?

21 MR. JAYARAM: No questions.

22 CHAIRMAN LEZY: Office of Planning?

23 MR. YEE: I just have a few questions so we
24 understand.

25 xx

1 CROSS-EXAMINATION

2 BY MR. YEE:

3 Q With respect to the official decision-making
4 process, what's the order of decision-making that
5 occurs at the city level? And by "official" you don't
6 have to tell me about the internal discussions. Does
7 it start with the Planning Commission? Does it start
8 with the agricultural liaison? How do you start this
9 process of recommending an IAL designation?

10 A Okay. In respect to the process of
11 identifying Important Agricultural Lands, as this
12 county is doing it, we are hiring a consultant to help
13 us with the process. We will have -- and the
14 department will make its recommendation ultimately.

15 At the end of that process it will go to the
16 County Council. Then the product of that process will
17 come to the Land Use Commission. We are working with
18 the city agricultural liaison in the process. But
19 ultimately it is a Department of Planning and
20 Permitting initiative.

21 Q And it doesn't require Planning Commission
22 approval.

23 A Not to my knowledge.

24 Q And there's a request, I think, in the
25 resolution about a date by which the survey could be

1 completed. Do you have an opinion as to whether
2 that's likely to be met?

3 A My understanding of the resolution says it
4 wants a status report.

5 Q Okay.

6 A By April 1st. There's no way we're going to
7 have preliminary maps done in the next few weeks.

8 Q I'm sorry. Thank you. Then with respect to
9 the -- well, let's backtrack. So I take it, then,
10 pursuant to the resolution are you going to be
11 reviewing lands that are within the Urban Growth
12 Boundary for potential designation as IAL?

13 A That's not a critical component of what
14 we're doing. We are going to comply with the state
15 law as outlined in the criterion process under
16 Chapter 205.

17 Now, I need to amend previous testimony that
18 says that there may be lands within the Urban Growth
19 Boundary -- within Urban Growth Boundary that are
20 designated for agricultural purposes.

21 I believe in the 'Ewa Development Plan
22 there's about 3,000 acres in the development plan area
23 that is set for agriculture. Not all of it is outside
24 the boundaries.

25 So there may be, I would say, a small

1 version, potential lands that might be considered
2 because they are still in the state Agricultural
3 District, they are within the Urban Growth Boundary.
4 But for our purposes the policy is to remain in
5 agriculture. So those might be considered.

6 Q So if I understand you correctly, land
7 within the Urban Growth Boundary are not a priority
8 excluded from the survey, although it would be a
9 factor in ultimately deciding not to do them as IAL.

10 A It's key issue is whether the plans
11 designated them for urban use or residential versus
12 agriculture. We would not be looking at anything
13 that's designated for urban use.

14 But, again, within the urban boundary that's
15 planned for agriculture might be looked as that's
16 already in, still in the State Agricultural District.

17 Q And I just want to make sure I understand.
18 Let's backtrack. It would be possible if you had
19 identified land to remove it from the Urban Growth
20 Boundary and then have it declared IAL theoretically?

21 A It's theoretically possible in the sense
22 that you'd have to go through the development plan
23 amendment process. So that would be a whole
24 different, separate process in and of itself to change
25 the city policy.

1 Q Do you think that's necessary before you go
2 to an IAL designation?

3 A If you are going to -- if you want to
4 consider lands to be -- that are already in the Urban
5 Growth Boundary as urbanizing, and you want to
6 designate them as IAL, you'd have to -- the position
7 would be you'd have to change the 'Ewa Development
8 Plan first. You could not do it through the IAL
9 process.

10 Q So in this case if you were going to
11 urbanize -- I'm sorry. If you wanted, if someone
12 wanted to identify the Petition Area as IAL, you would
13 first have to change the Community Plan to take the
14 Petition Area out of the Urban Growth Boundary first.
15 And then you could proceed with an IAL designation.

16 A Again, if the amendment were to leave it as
17 agriculture, yes.

18 Q What amendment was to leave as agriculture?

19 A The Community Plan Amendment would have
20 designated from residential, mixed-use community,
21 urbanized area into an agricultural area.

22 Q Okay. So you would change the community
23 plan to do that first and then go to the IAL process,
24 correct?

25 A Correct.

1 Q That's what I wanted to find out. Thank
2 you. Nothing further.

3 CHAIRMAN LEZY: Dr. Dudley.

4 CROSS-EXAMINATION

5 BY DR. DUDLEY:

6 Q You're saying you have to go through an
7 amendment process to the 'Ewa Development Plan. Is
8 that what you said?

9 A Yes.

10 Q And isn't that amendment process going on at
11 the present time?

12 A Yes.

13 Q And so if the Land Use Commission were to
14 decide something in the next few months, it would
15 probably be in plenty of time to amend that EDP,
16 right?

17 A The two processes are separate --

18 Q Of course they are. I asked you: If the
19 Land Use Commission were to decide in the next few
20 months to keep that property in agriculture, there
21 would still be plenty of time to amend the EDP, is
22 that not correct?

23 A I'm not totally familiar with the exact
24 schedule of the Land Use Commission. And the schedule
25 of adoption of the amendments to the 'Ewa DP are,

1 again, dependent on the Planning Commission timetable
2 and the City Council timetable. So I don't know the
3 juxtaposition of either processes.

4 Q Thank you very much. Okay. Let's go back
5 and ask what is the resolution all about. Could you
6 tell us what is the resolution all about?

7 A The resolution is seeking an expedited
8 process or schedule for the identification of IAL
9 lands.

10 Q And does that mention anything about Laura
11 Thielen?

12 A Yes. It's addressed to the agriculture
13 liaison.

14 Q And what is she supposed to do?

15 A I'm not really clear. Because as we
16 testified at the City Council the Project is within
17 the Department of Planning and Permitting, but we are
18 working collaborative with her.

19 Q Can you read the resolution? Can you
20 read -- What is the resolution all about? Can you
21 read it to us?

22 A The entire resolution?

23 Q Well, how about the part that talks about
24 Laura Thielen and what she's supposed to do.

25 CHAIRMAN LEZY: Dr. Dudley, if you want to

1 ask the witness a question about what her
2 understanding is, that's fine. But I'm not going to
3 have her read a portion of the resolution into the
4 record.

5 DR. DUDLEY: Okay. Thank you, Mr. Chairman.

6 Q Is it your understanding that the resolution
7 directs Laura Thielen to bring a listing of land
8 within the county to the City Council for
9 consideration of designation as IAL by the City
10 Council?

11 A I know what the resolution says. And it
12 says that they want a report on April 1st.

13 Q About what?

14 A About the progress being made.

15 Q About what?

16 A The identification of mapping IAL.

17 Q Very good. Now, when the committee had
18 their meeting was there not brought up at that meeting
19 a problem about the lands which she would bring, would
20 probably not include Koa Ridge and Ho'opili lands?

21 A I recall some mention of that.

22 Q Okay. And wasn't the resolution changed to
23 the CD-1 and voted on by the entire committee so that
24 specifically those lands, Ho'opili and Koa Ridge,
25 would be included in the listing by Laura Thielen

1 given to the County Council for consideration for IAL
2 lands?

3 A I wouldn't say it was -- my understanding of
4 that conversation wasn't that it was going to result
5 in a listing by the agricultural liaison. It was just
6 a comment that that be considered as part of the
7 process.

8 Q Do you remember my testimony at the meeting?

9 A Not exactly.

10 Q Do you remember Councilman Tom Berg
11 insisting on the names 'Ho'opili' and "Koa Ridge" be
12 included?

13 A But they are not in the adopted resolution.

14 Q That's true. But do you remember Councilman
15 Tom Berg insisting on "Koa Ridge" and "Ho'opili" being
16 included?

17 A There was mention of those two projects.

18 Q Thank you. Now, let's go to the committee
19 report for a minute. Who was the committee report
20 written by? Do you know?

21 A We don't know who exactly wrote it, but it
22 is signed by the Zoning and Planning Committee Chair.

23 Q Okay. Did your office have any input into
24 in committee report?

25 A No, not to my knowledge.

1 Q Is it possible that without your knowledge
2 your office had -- I'm talking about the entire
3 Department of Planning and Permitting -- is it
4 possible.

5 MR. JAYARAM: Chair, she's already stated
6 not to her knowledge.

7 CHAIRMAN LEZY: Dr. Dudley.

8 DR. DUDLEY: Excuse me. I'm sorry. Not a
9 lawyer. I don't know how far I can go.

10 Q Okay. Do you remember at that meeting any
11 mention -- I'm talking about the committee meeting
12 itself when the committee was in session -- do you
13 remember any mention of the Land Use Commission during
14 that meeting?

15 A I don't recall.

16 Q Okay. If I were to suggest that at that
17 committee meeting that the whole mention of the Land
18 Use Commission was really brought up because as the
19 resolution was written at the time without any
20 mention --

21 MR. JAYARAM: Chair, I object. It's a
22 supposition. He's testifying. There's no question
23 there so far.

24 CHAIRMAN LEZY: Let him finish his question.

25 Q (Dr. Dudley): -- the mention of the Land

1 Use Commission, that there was mention at the meeting
2 of the Land Use Commission. But in relationship to
3 the fact that the resolution as written would hurt our
4 side -- my side -- on the -- at the meeting of the
5 Land Use Commission, it had potentiality to hurt my
6 side at the Land Use Commission?

7 A You know, I can't -- I don't have a
8 recollection.

9 Q I'm sorry. I thought maybe that might shake
10 some thoughts. What do you think the City Council is
11 going to do with the map?

12 A I never second guess the City Council.
13 (laughter)

14 Q What is your understanding of why the map is
15 being brought to the City Council?

16 A Because the state law requires an IAL map
17 recommendation from the City Council before it goes to
18 the Land Use Commission.

19 Q Okay. Thank you. Now, if the City Council
20 would make a decision and that would go contrary to
21 the past history of the Department of Planning and
22 Permitting, would the City Council's decision override
23 the Planning and Permitting Committee?

24 A Most certainly. They're making a
25 recommendation to the City Council. The City Council

1 will act on the IAL map by ordinance, as I recall the
2 state law. And that will be the record that's
3 submitted to the State Land Use Commission.

4 Q Very good. And the city has now
5 specifically said that they encourage Laura Thielen to
6 include in her list lands which are prime agricultural
7 lands, even though they are within the Urban Growth
8 Boundary, is that correct?

9 A I don't recall a reference to a list in the
10 resolution. That implies a precision that we really
11 don't have -- we're not prepared to handle right now.

12 Q What are you going to bring to the Land Use
13 Commission on April 1st? What is she going to bring?

14 A I don't know that she's bringing anything to
15 the Land Use Commission.

16 Q Isn't she ordered to bring something to the
17 Land Use Commission on April 1st?

18 MR. JAYARAM: Chair, objection.
19 Ms. Sokugawa can't answer on the part of Ms. Thielen.

20 DR. DUDLEY: What's his objection?

21 CHAIRMAN LEZY: She cannot --what was your
22 question, Dr. Dudley?

23 DR. DUDLEY: My question is: What is Laura
24 Thielen, according to your understanding and according
25 to the resolution a CD1, what is she supposed to bring

1 to the City Council?

2 A She's supposed to provide a progress report
3 or what I'm calling a status report on April 1st.

4 Q Okay. And that status report, will that
5 kind of give names of properties?

6 A Not to my expectation, knowledge, or plans,
7 proposals.

8 Q Then why did the resolution specifically say
9 that among those named would be any lands that were
10 prime agricultural lands that had sufficient water?

11 A I think we're interpreting the resolution
12 differently. I think there's an expectation beyond
13 what I see in the clear wording of the language.

14 Q I think that's pretty much -- you were at
15 the same meeting I was at, is that correct?

16 A Yes.

17 DR. DUDLEY: Thank you very much.

18 CHAIRMAN LEZY: Sierra Club.

19 MS. DUNNE: I just had a couple quick
20 questions.

21 CROSS-EXAMINATION

22 BY MS. DUNNE:

23 Q Is it your understanding that the county
24 could recommend that the Honouliuli lands be
25 designated as Important Ag Lands, that could be a

1 recommendation after this process is complete?

2 A I'm not aware, or to your -- what the
3 reference to Honouliuli would be.

4 Q I'm sorry. That's actually -- so Ho'opili
5 is the name of the proposed development. But the
6 lands geographically are actually Honouliuli lands.
7 So let me rephrase the question to make sure you
8 understand.

9 So my question is whether it's your
10 understanding that after the conclusion of this
11 process we've been discussing, it's possible that the
12 lands which D.R. Horton seek to develop could be
13 recommended or could be a recommendation by the county
14 that these be designated as Important Ag Lands. Is
15 that possible?

16 A From a planner's perspective unless the 'Ewa
17 Development Plan were changed during that process it
18 would not be possible.

19 Q Okay. And you said that the -- the 'Ewa
20 Development Plan, I believe, was last approved in
21 1997, is that correct, somewhere around there?

22 A There was an amendment which had nothing to
23 do with mapping or land use designations a few years
24 after that. But essentially the land use pattern
25 hasn't changed since it was first adopted in 1997.

1 Q Okay. And that plan was due for an update,
2 I think, 10 years after that, right? Around 2007?

3 A More like five years.

4 Q Okay. And it still hasn't -- the process
5 hasn't been completed. It's still in the process of
6 being updated.

7 A Correct.

8 Q So because it's still in the process of
9 being updated, it could be changed. The land use
10 designations could be changed, is that correct?

11 A As part of the updated process any amendment
12 would be entertained by the city up 'til final
13 adoption.

14 MS. DUNNE: Okay. No further questions.

15 CHAIRMAN LEZY: Mr. Seitz, redirect?

16 MR. SEITZ: Nothing further, thank you.

17 CHAIRMAN LEZY: Commissioners, questions?
18 Commissioner Heller.

19 COMMISSIONER HELLER: Yes. The resolution
20 refers to expediting the process of identification and
21 mapping of Important Agricultural Lands. I was just
22 wondering if you could give us any estimate of the
23 realistic timeframe to complete that process, assuming
24 that an effort is made to expedite it.

25 THE WITNESS: The good news is we are in the

1 process, actually, of hiring a consultant. We have
2 money budgeted. So we will start the process later
3 this year.

4 The bad news is I'm a very poor guesser on
5 schedules. It will depend on the process itself, the
6 level of community participation, whether we are
7 required to get additional funding. Ideally, and I
8 know I'm on record, but a good optimistic guess would
9 be that there'd be something before the City Council
10 in a year.

11 COMMISSIONER HELLER: Thank you.

12 CHAIRMAN LEZY: Commissioners, any other
13 questions? I just have one follow-up question,
14 Ms. Sokugawa, to the question Commissioner Heller
15 asked you. You had testified earlier in this
16 proceeding regarding the process and procedure
17 involved with the County's IAL identification program.

18 Does this resolution have any practical
19 effect as far as changing the timing or pace that you
20 had testified to earlier?

21 THE WITNESS: I think we will definitely
22 take the spirit of the resolution to heart. We are
23 trying -- we are on a fairly expedited process
24 relatively speaking. And we will comply with the
25 spirit of the resolution.

1 CHAIRMAN LEZY: So then you would say that
2 your prior testimony as far as timing and pace would
3 change as a result of the resolution.

4 THE WITNESS: Again, we'll try to put -- we
5 will be much more cognizant of the schedule than prior
6 to the resolution. We now understand the council has
7 a consistent desire to complete this process.

8 CHAIRMAN LEZY: All right. Thank you very
9 much. That concludes the witnesses scheduled for
10 today's hearing. So we will break until tomorrow and
11 pick up with the witnesses that were identified
12 earlier. We'll start at 9:00 a.m. tomorrow. Thank
13 you very much.

14 MR. SEITZ: Thank you.

15 CHAIRMAN LEZY: Motion to enter into
16 executive session.

17 COMMISSIONER CHOCK: So moved.

18 COMMISSIONER HELLER: Second.

19 CHAIRMAN LEZY: All in favor? (raising
20 hands) Opposed? (none)

21

22 (The proceedings were adjourned at 11:15 a.m.)

23 --oo00oo--

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C E R T I F I C A T E

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

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7

That I was acting as court reporter in the
foregoing LUC matter on the 15th day of March 2012;

8

9

That the proceedings were taken down in
computerized machine shorthand by me and were

10

thereafter reduced to print by me;

11

12

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

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DATED: This _____ day of _____ 2012

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

