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LAND USE COMMISSION
STATE OF HAWAI'I

ACTION AND HEARING	PAGE
DR12-46 JAMES and PAMELA SPENCER)	1
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_____)	

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a public hearing at Conference Room 204, 2nd Floor Leiopapa A Kamehameha, 235 S. Beretania Street, Honolulu, Hawai'i, commencing at 9:00 a.m. on June 7, 2012, pursuant to Notice.

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

A P P E A R A N C E S

COMMISSIONERS:

KYLE CHOCK
THOMAS CONTRADES
LISA M. JUDGE
NORMAND LEZY (Chairman)
CHAD McDONALD
JAYE NAPUA MAKUA
NICHOLAS TEVES, JR.

CHIEF CLERK: RILEY HAKODA
STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON
DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.
AUDIO TECHNICIAN: WALTER MENCHING

Docket No. DR12-46 JAMES and PAMELA SPENCER

For the Petitioner: SEAN SMITH, ESQ.

For the State: BRYAN YEE, ESQ.

Docket No. A11-793 Castle & Cooke Homes, Hawai'i, Inc.

For the Petitioner: BENJAMIN MATSUBARA, ESQ.
CURTIS TABATA, ESQ.
WYETH MATSUBARA, ESQ.
LAURA KODAMA, Castle & Cooke

For the County: DON KITAOKA, ESQ.
Deputy Corporation Counsel
MIKE WATKINS DPP

For the State: BRYAN YEE, ESQ.
Deputy Attorney General

For Intervenor Board #25: RICHARD POIRIER
KAREN LOOMIS

For Intervenor Senator Clayton Hee, Sierra Club:
ERIC SEITZ, ESQ.
SARAH DEVINE, ESQ.

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Docket No. A11-793

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--00--

1 CHAIRMAN LEZY: This is a meeting of the
2 state of Hawai'i Land Use Commission. The first item
3 on the agenda is an action meeting on Docket No.
4 DR12-46 James Spencer and Pamela V. Spencer, Hawai'i,
5 to approve the form of the order in this matter.

6 On May 3, 2012 the Commission met in
7 Honolulu, Hawai'i and voted to grant DR12-46 James
8 Spencer and Pamela V. Spencer's Petition for a
9 Declaratory Order providing that the operation of a
10 pet boarding kennel is a permissible use on certain
11 land in the Agricultural District identified as Tax
12 Map Key 9-2-25:047 Kahuku, Ka'u, Hawai'i.

13 Is there anybody signed up for public
14 testimony? Is there anybody in the audience who
15 wishes to provide public testimony on this matter?
16 Hearing none, parties appearances, please.

17 MR. YEE: Deputy Attorney General Bryan Yee
18 on behalf of the Office of Planning.

19 MR. SMITH: Sean Smith for the Spencers.
20 Mr. Vitousek is on the Big Island sick this morning.

21 CHAIRMAN LEZY: Good morning. And I'll
22 note the absence of the county. Although not a party,
23 they appeared at the last hearing. Commissioners,
24 before you is a form of the order granting the
25 Petition in this docket. I'll entertain a motion to

1 approve the form.

2 COMMISSIONER McDONALD: Move to approve,
3 Chair.

4 COMMISSIONER CONTRADES: Second.

5 CHAIRMAN LEZY: We have a motion.

6 Mr. Saruwatari, would you poll the Commission.

7 MR. SARUWATARI: On the motion to adopt the
8 form of the order, Commissioner McDonald?

9 COMMISSIONER McDONALD: Yes.

10 MR. SARUWATARI: Commissioner Contrades?

11 COMMISSIONER CONTRADES: Yes.

12 MR. SARUWATARI: Commissioner Judge?

13 COMMISSIONER JUDGE: Yes.

14 MR. SARUWATARI: Commissioner Teves?

15 COMMISSIONER TEVES: Yes.

16 MR. SARUWATARI: Commissioner Makua?

17 COMMISSIONER MAKUA: Aye.

18 MR. SARUWATARI: Commissioner Chock?

19 COMMISSIONER CHOCK: Yes.

20 MR. SARUWATARI: And, Chair Lezy?

21 CHAIRMAN LEZY: Yes.

22 MR. SARUWATARI: Chair, we have seven votes
23 in support of the motion.

24 xx

25 xx

1 CHAIRMAN LEZY: Thank you. The next item
2 on the agenda is docket A11-793. This is Oral
3 Argument on Docket No. A11-793 to amend the
4 Agricultural Land Use District Boundary into the Urban
5 District for approximately 767.649 acres at Waipio and
6 Waiawa, Island of O'ahu, state of Hawai'i
7 TMK:(1)9-4-06: Por. 1, 2, 3, 5, 29, 31, 38, And Por.
8 39; 9-5-03: Por. 1 and 4; and 9-6-04:21. Parties,
9 appearances, please.

10 MR. MATSUBARA: Mr. Chairman, Members of
11 the Commission, Ben Matsubara, Curtis Tabata, Wyeth
12 Matsubara on behalf of Castle & Cooke Homes Hawai'i,
13 Inc. to my right Laura Kodama, director of planning
14 and development.

15 CHAIRMAN LEZY: Good morning.

16 MR. KITAOKA: Good morning. Don Kitaoka,
17 deputy corporation counsel on behalf of the department
18 of planning and permitting. And with me is Mike
19 Watkins of that department.

20 CHAIRMAN LEZY: Good morning.

21 MR. YEE: Good morning. Deputy Attorney
22 General Bryan Yee on behalf of the Office of Planning.

23 CHAIRMAN LEZY: Good morning.

24 MR. POIRIER: Good morning. Dick Porier
25 and Karen Loomis from Neighborhood Board No. 25. Good

1 morning.

2 CHAIRMAN LEZY: Good morning.

3 MR. SEITZ: Good afternoon, Eric Seitz and
4 Sara Devine representing Intervenors Senator Hee,
5 who's present, and the Sierra Club.

6 CHAIRMAN LEZY: Good morning. Allow me to
7 update the record on this matter. On April 5, 2012
8 the Commission concluded the evidentiary portion of
9 this docket. On the same day the Commission received
10 written correspondence or email from the following
11 individuals: Marina Miller, Glads Bautista, Robert
12 Sanders, Brian Emmons, Skye White, Carli Bober, and
13 DLNR Commission on Water Resource Management.

14 On April 9, 2012 the Commission received
15 correcting correspondence from the DLNR Commission on
16 Water Resource Management. The parties timely filed
17 their respective proposed findings of fact,
18 conclusions of law and decisions and orders on May 2,
19 2012, their respective comments, responses, joinders,
20 objections and replies on May 10, 14 and 21, 2012.

21 June 7, 2012 the Commission received email
22 correspondence from Pearl Johnson on behalf of the
23 League of Women Voters of Honolulu.

24 Allow me to explain our procedures for
25 today. First, I will call those individuals desiring

1 to provide public testimony for this docket to
2 identify themselves. All such individuals will be
3 called in turn to our witness box where they will be
4 sworn in prior to their testimony.

5 Each party will then be allowed 20 minutes
6 to present argument in support of their proposed
7 decision and order, or to their exceptions to those
8 proposed by the other parties. The Petitioner may
9 reserve a portion of time for rebuttal.

10 At the conclusion of oral argument and
11 after any questions from Commissioners, the Commission
12 will conduct formal deliberations in this matter. Any
13 questions on our procedures for today?

14 MR. MATSUBARA: No questions.

15 CHAIRMAN LEZY: Before I call public
16 witnesses, please let me remind you that all public
17 testimony from prior hearings has been transcribed and
18 is part of the record in this action. For those of
19 you that are testifying again, the Commission would
20 appreciate it if you would confine your testimony to
21 new information. Is there anybody signed up for
22 public testimony?

23 MR. SARUWATARI: There are six individuals
24 currently signed up. The first individual is Adam
25 Bensley followed by Kioni Dudley.

1 ADAM BENSLEY

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

4 THE WITNESS: Yes.

5 CHAIRMAN LEZY: Please state your name,
6 your address and proceed.

7 THE WITNESS: My name's Adam Bensley. My
8 address is 810 Kealaolu Avenue. Aloha, Commissioners.
9 I would urge you to please, please deny the Petition
10 to reclassify this land from agriculture to urban.
11 Prime farmland is meant to grow food. We should not
12 have houses on prime ag land.

13 We cannot allow big corporations and big
14 businesses to continue to exploit Hawai'i for their
15 own needs. The people of Hawai'i need to come first.
16 First and foremost we need to eat. Eating comes
17 before working. It's something we all need to do. So
18 please deny this Petition. Thank you.

19 CHAIRMAN LEZY: Parties, questions?

20 MR. SEITZ: No.

21 CHAIRMAN LEZY: Commissioners, questions?
22 thank you.

23 MR. SARUWATARI: Kioni Dudley.

24 CHAIRMAN LEZY: Good morning, Dr. Dudley.

25 KIONI DUDLEY

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

3 THE WITNESS: I do.

4 CHAIRMAN LEZY: Please state your name,
5 your address and proceed.

6 THE WITNESS: Good morning, Commissioners.
7 My name is Dr. Kioni Dudley. I'm currently living at
8 92-1365 Hauoni Street in Kapolei.

9 This morning I want to talk to you about
10 three short issues. The first is that the world has
11 really changed since this case first came before you.
12 You know, there's been a pro-farm consciousness that's
13 swept across America. And it has certainly swept
14 across Hawai'i too.

15 In the last couple of years we have seen a
16 mushrooming of public consciousness about fresh fruit
17 and vegetables, about nutrition, about organic
18 farming, about food security and the need to save our
19 farmlands. All of these concepts are new. They
20 weren't around a few years back, just three or four
21 years back.

22 Organizations such as Kanu Hawai'i, Food
23 Policy Council, Save O'ahu Farmlands and numerous
24 others have grown up. Farmers markets which used to
25 be almost unknown now abound. Foodland, Costco, Down

1 to Earth, other markets, even Zippy's now advertise
2 that their produce comes from local farms. There are
3 major articles in the newspapers, surveys saying
4 people are willing to pay more for locally-grown food.
5 None of this was a fact three or four years ago.

6 We live in a world that's really changed, a
7 world that's really become food conscious. This
8 property is very important for our future. It's very
9 important for our future. This is not something
10 that's just a flash in the pan. We need to save these
11 lands.

12 The next point I'd like to make is about
13 the city council. The city council is willing to
14 set -- willing to set Koa Ridge aside as Important
15 Agricultural Lands. Important Agricultural Lands,
16 Resolution 12-23. We made them perfectly clear, no
17 question about it. These lands are in the Urban
18 Growth Boundary. They are designated and according to
19 city plans for development. But the city council
20 voted to set that aside and wait for you folks to make
21 a decision. So that if you decide to keep it in
22 farmland they can make it Important Agricultural
23 Lands. They will designate it. I don't know they
24 will but I firmly believe they will.

25 The last point I want to make, why is this

1 Project not needed. And it's not needed because we
2 already have enough housing. When you go back over
3 Bob Stanfield's written documentation he says that we
4 need 1800 houses a year for 'Ewa and Central.

5 Now, we've already got those houses. We've
6 got the 34,805 houses in 'Ewa. And we've got another
7 12,000 houses in Waiawa. We've got another 3,500
8 houses in Launani Valley, and Waikele and Royal Kunia.
9 When you add them all together it's 50,305. We only
10 need 46,800 if we need 1800 a year.

11 So we've got an excess already on the
12 books, you know. We've already approved them.
13 They're zoned. They're ready to build. Okay. We do
14 not need one single house in order to fulfill the city
15 requirements, not one from Koa Ridge, not one from
16 Ho'opili.

17 As a matter of fact, if we build this we're
18 going to have an excess, a glut in the market of 8,500
19 houses. Just ask to keep all these things in mind.
20 And I thank you very much for your time.

21 CHAIRMAN LEZY: Parties, questions?
22 Commissioners, questions? Thank you for your
23 testimony.

24 MR. SARUWATARI: Cynthia Frith followed by
25 Michael Dau.

1 CHAIRMAN LEZY: 'Morning.

2 THE WITNESS: Good morning.

3 CYNTHIA FRITH

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

6 THE WITNESS: I do.

7 CHAIRMAN LEZY: Please state your name,
8 your address and proceed.

9 THE WITNESS: My name is Cynthia Frith and
10 I live at 42-128 Ka Uka Place in Kailua, 96734. I
11 just have two points that I want to make very briefly.
12 The first one is the terrible congestion that occurs
13 on H-1. And it also occurs very dramatically on the
14 merge at H-1/H-2.

15 If this particular development is allowed
16 to go forth, you'll be producing approximately 5,000
17 homes, each one probably having at least one car.

18 So I'm just going to limit this to that
19 kind of ratio. Putting 5,000 more cars on the road at
20 that H-2/H-1 merge will produce an even worse choker
21 than you have today. It doesn't matter what you do to
22 try and ameliorate that problem at that merge by
23 adding more lanes or doing some other procedure. You
24 will have a terrible choking problem at the merge of
25 H-1/H-2.

1 Our traffic problems, as Panos Prevedouros
2 explained when he testified, go much farther than
3 that. They start all the way in the city and in the
4 county with traffic lights that are not properly
5 synchronized.

6 We need underpasses in certain areas of the
7 city to make traffic flow much more conveniently. We
8 also need much better right turn/left turns at certain
9 intersections, again, to make traffic flow.

10 And all of that is part and parcel of the
11 congestin that backs up on H-1. So adding more homes
12 and more traffic out in these areas is going to really
13 impact H-1. And like the train or not like the train,
14 the train will have nothing to do with decreasing
15 traffic congestion.

16 Parsons Brinkerhoff and the city have
17 already admitted that in the original EIS report. So
18 please keep that in mind. Their traffic is bad enough
19 now. I hate to see it get worse.

20 My other concern has to do with taking
21 productive prime farmland and turning it into yet
22 another housing development. People think that
23 farming is a relatively easy way of life. And let me
24 assure you even backyard farming is not easy to keep
25 things growing, keep things productive.

1 I've lived in Hawai'i for eight years now
2 and, boy, did I get a shock between the bugs and
3 having to produce proper amounts of water, sunlight,
4 et cetera, et cetera. It's not an easy thing to do.

5 I don't think a lot of people will pursue
6 farming if we do away with these nice green corridors
7 that can actually produce all the food that an area
8 like Mililani could possibly want to consume, if
9 allowed to produce the way they're producing now.

10 And I think that's a much more realistic
11 way of looking at farming on this island to even
12 begin to make it sustainable than to try and have this
13 sort of backyard kind of farming concept.

14 So I just ask you to keep that in mind too.
15 This is a productive piece of property right now. And
16 it is prime farm land so it should be preserved.
17 Thank you very much.

18 COMMISSIONER LEZY: Parties, questions?
19 Commissioners, any questions? Thank you, ma'am.

20 MR. SARUWATARI: Michael Dau, followed by
21 Susan Rich.

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

25 THE WITNESS: Yes.

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

3 THE WITNESS: My name is Michael Dau,
4 94-500G Kam Highway, Waipahu Hawai'i. Good Morning,
5 Land Use Commissioners. Koa Ridge, sugar coat it,
6 baby. About 1988 when Castle & Cooke were trying to
7 get approval for Mililani Mauka they promised to leave
8 Koa Ridge a 20-year green belt so that urban sprawl
9 would not connect from Waipio Gentry to Mililani. Why
10 20 years? I guess they knew Mililani Mauka would be
11 built out, everyone would forget about the 20-year
12 green belt. Koa Ridge. Sugar coat it, baby.

13 Then we have Tom, the Costco store manager,
14 testifying at the LUC hearings that his store's sales
15 were down 20 percent and that they needed Koa Ridge.
16 About three months later on my morning walks I saw Tom
17 on a break in the front of Costco Waipio.

18 And I said, "Hi. How's Koa Ridge doing?"
19 He said, "I don't know." I said, "Well, you testified
20 at the land use hearings about Koa Ridge." He said,
21 "I don't know anything about Koa Ridge. Castle &
22 Cooke asked me to testify." Koa Ridge. Sugar coat
23 it, baby.

24 Land Use and lure. Major developers have
25 some type of lures to start their project. Wahiawa

1 General needs Koa Ridge. Why? They're still in a
2 beautiful location in the middle of Wahiawa. They
3 could rebuild a world class medical center in their
4 present location.

5 Traffic, traffic. I travel Ka Uka
6 Boulevard daily. What a mess. The developer wants to
7 put two turning lanes from Ka Uka Boulevard northbound
8 onto Kam Highway where there's a four-lane highway
9 merging into two lanes. Now you're gonna have two
10 turning lanes coming out in the middle of that.

11 Then go a few hundred feet down and you
12 have a right turn intersection turning in. That might
13 help, but the right turn out isn't gonna help. A
14 bottleneck right there. And then it goes down an 8
15 degree slope into Kipapa Gulch.

16 Yep, sounds like a nice bottleneck just
17 before I get home. Also the state department of
18 transportation has put a 16-ton limit on the Kipapa
19 Gulch Bridge. The Honolulu Fire Department has
20 restricted all fire trucks from using the bridge.

21 I had to laugh when the Land Use
22 Commissioner asked, "Why would you close a right-turn
23 in and out intersection when the Pineapple Interchange
24 is completed? They're at different ends of the
25 Project." It makes no sense.

1 To sum it up, traffic around the whole
2 Project makes no sense. Koa Ridge. Sugar coat it,
3 baby.

4 Koa Ridge will be built over a polluted
5 water aquifer that *could* cause cancer in humans. The
6 water needs to be filtered which is going to cost
7 millions of dollars. Who's gonna pay for this?

8 Now, to Important Agricultural Lands.
9 Don't worry, there's 180,000 unused acres of land in
10 Hawai'i. Where? You know, it's all private property,
11 has to be leased or bought.

12 Agricultural land on O'ahu is for sale.
13 Drive through Central O'ahu down to Waialua. Flooded
14 with "Ag Lot For Sale" signs. But I see BMW's and
15 Mercedes Benz's going down the dirt road, not a farmer
16 in an old pickup truck. Gentleman ranchers? Maybe.
17 Not farming. Small farmers couldn't afford it.

18 You also need irrigation water, irrigation
19 supplies, pumps, reservoir, the likes. Costs a lot of
20 money. Koa Ridge already has an irrigation system
21 that is gravity fed off Waiahole Ditch. No pumps, no
22 reservoir. The present farmers use a former pineapple
23 irrigation system. Just doesn't get any better than
24 this.

25 In closing, I can safely say that

1 98 percent of the residents of Hawai'i do not know
2 where the Land Use Commission is or how it works. I
3 come to these meetings and I don't know how it works.
4 It appears that the Land Use Commission has never
5 disapproved a major urban development to save
6 Important Agricultural Lands on O'ahu. Thank you.

7 COMMISSIONER LEZY: Parties, questions?
8 Commissioners, any questions? Thank you for your
9 testimony, sir.

10 MR. SARUWATARI: Susan Rich followed by
11 Gary Ropert.

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

15 THE WITNESS: Yes.

16 CHAIRMAN LEZY: Please state your name,
17 your address and proceed.

18 THE WITNESS: My name is Susan Rich, 7438
19 Moku Hana Place. And I'm the assistant administer for
20 Wahiawa General Hospital. I've worked in hospitals
21 since the early 1970's and I've watched and
22 participated in the changing face of healthcare.

23 CHAIRMAN LEZY: Can you pull that
24 microphone closer.

25 THE WITNESS: Yes. I've worked in seven

1 hospitals in my career. Most of them were community
2 hospitals. They're specific challenges real hospitals
3 face in addition to the demands all hospitals are
4 facing now. One of the most common threatening
5 challenges for rural hospital experience is attracting
6 new physicians to the communities they serve. As the
7 older physicians begin to retire new ones are not
8 coming to take their place. Physicians with
9 specialties tend to serve metropolitan areas where
10 they are on staff at several hospitals or only work at
11 the office and use hospitals to treat their patients
12 when they're in the hospital.

13 The rural hospital must keep up with the
14 latest technologies and processes in order to compete.
15 Larger hospitals may have office buildings or clinics
16 close by to encourage referrals and offer conveniences
17 to physicians.

18 Many rural hospitals are landlocked due to
19 existing construction, are not able to accommodate the
20 additional buildings. For busy physicians efficiency,
21 convenience and the latest technology can certainly
22 determine where they choose to practice.

23 For rural hospitals that cannot offer these
24 amenities, services may start to dissolve and dry up.
25 The big loser in this scenario becomes the patient.

1 If the services they need are not close by they're the
2 ones inconvenienced as well as their families when
3 they have to go further to get it.

4 When you're ill, driving into town to see a
5 physician or go to the hospital becomes a huge burden.
6 I know this is true because I have lived with it while
7 caring for my 89-year-old father who's since passed
8 away. Because of him I have seen the other side of
9 healthcare as well.

10 I feel it's imperative to have a long-range
11 vision that provides quality services close to home to
12 maintain and improve quality of not only the
13 healthcare system but to the community.

14 At Wahiawa General Hospital we are already
15 experiencing some of the effects I have mentioned, not
16 because we're not able to provide quality care -- we
17 can and do -- we have excellent surgical suites with
18 up-to-date equipment and experienced nurses -- but
19 busy surgeons don't find the time to make the drive
20 and we have limited options to provide them with
21 office space.

22 The revenue derived from surgical services
23 is where many hospitals make enough money to invest in
24 future technologies. Even though Wahiawa General
25 Hospital can and does provide quality care and

1 services, the new hospital that is designed for
2 today's healthcare needs can draw physicians and
3 services back to the local community, thereby
4 improving the health of the community and also offers
5 employment opportunities to people in the community.
6 Thank you.

7 CHAIRMAN LEZY: Parties, questions?
8 Commissioners, any questions? Thank you for your
9 testimony.

10 MR. SARUWATARI: Gary Ropert followed by
11 Pearl Johnson.

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

15 THE WITNESS: I do.

16 CHAIRMAN LEZY: Please state your name,
17 your address and proceed.

18 THE WITNESS: My name's Gary Ropert. I
19 live in 66-332 Pikai Street in Haleiwa. I've lived
20 there in the North Shore for the last 25 years, plus
21 years. I'm currently the radiology director of
22 Wahiawa General Hospital and been with 'em for over 20
23 years.

24 I daily manage and work in the diagnostic
25 imaging department and perform -- we really perform

1 high quality state-of-the-art imaging there to the
2 emergency room patients, outpatients, inpatients. And
3 we serve the Central and North Shore communities
4 there.

5 We've always had the state-of-the-art
6 imaging equipment like a 64-slice CT scanner 3-D and
7 4-D ultra sound, digital breast mammography and
8 nuclear medicine as well as all forms of x-ray
9 imaging.

10 But in order to support something like a
11 robust high quality diagnostic imaging department in a
12 hospital, there has to be a minimum level of use by
13 the community, the patients in a community of doctors.

14 As far back as 1994 when I was even at the
15 hospital, I remember the hospital recognizing even
16 then that in order to serve a changing community and
17 physician demographics a closer location to changing,
18 to those changing demographics was needed for the
19 hospital to thrive.

20 As Central O'ahu community grew towards
21 Mililani and Waipio, patients and physicians began
22 using Wahiawa General Hospital less and less. And as
23 a result it's been very difficult to recruit
24 physicians to the Mililani area. As physicians retire
25 there, very few are willing to now come out, and take

1 over the practices. So the practices just dry up and
2 die.

3 All the specialist physicians that I know
4 of, none will drive out much further past Koa Ridge
5 corridor? It's just -- many of 'em work at Pali Momi
6 or some will come from Queen's. They're going, "Just
7 that extra little bit to drive into Wahiawa, it's not
8 worth it." And the impact is that we no longer have
9 physician -- specialty physician services there.

10 For me, I believe, the Castle & Cooke Koa
11 Ridge Project is critically needed to Wahiawa General
12 Hospital and the communities out there to develop a
13 medical complex that's gonna serve the future
14 communities of Mililani, Waipio, Wahiawa and other
15 Central O'ahu areas.

16 And I believe, from what I understand of
17 the development, it could be developed without the
18 impacts that we've heard against this Project. And I,
19 therefore, would ask the Land Use Commission to
20 approve the Koa Ridge Development Project.

21 CHAIRMAN LEZY: Parties, questions?
22 Commissioners, questions? Thank you for your
23 testimony.

24 MR. SARUWATARI: Pearl Johnson.

25 PEARL JOHNSON

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

3 THE WITNESS: Yes.

4 CHAIRMAN LEZY: Please state your name,
5 your address and proceed.

6 THE WITNESS: Peal Johnson, 2404 Kaneali'i
7 Avenue, Honolulu, 96813. I'm Pearl Johnson,
8 testifying for the League of Women Voters of Honolulu.
9 As you make your decision about Koa Ridge, please keep
10 'Aina Le'a in mind. If you do give Castle & Cooke
11 the urban designation it seeks, you cannot take it
12 back no matter what Castle & Cooke does or does not
13 do.

14 Castle & Cooke's track record for keeping
15 its promises is not sterling. An impressive,
16 attractive 28-acre medical campus promised for Koa
17 Ridge has given this development considerable
18 community support as we have seen by the two preceding
19 witnesses. But, has Castle & Cooke always kept its
20 promises?

21 The 150-acre retirement community Castle &
22 Cooke planned for Mililani Mauka has been greatly
23 downsized into Alaloa, 300-unit townhouse condos for
24 seniors plus Plaza at Mililani, a 72-unit assisted
25 living complex.

1 The already intolerable H-1/H-2 merge would
2 be greatly exacerbated by the thousands of cars Koa
3 Ridge would pour into that if you let them.

4 Mitigation measures proposed by Castle &
5 Cooke are costly and unlikely to be implemented. Koa
6 Ridge land is mostly prime agricultural land outside
7 the dedicated growth area of 'Ewa and the Second City
8 of Kapolei.

9 Seventy-six percent of the land is
10 classified a "prime agricultural" land. And
11 20 percent is "unique agricultural" land. Further
12 destruction of healthy farmland jeopardizes
13 opportunity for diversified agriculture, economic
14 expansion in agriculture and self-sufficiency.

15 Koa Ridge agricultural lands are especially
16 valuable because of their proximity to markets, the
17 harbor and the airport. Furthermore, developing on
18 agricultural land increases the speculative value of
19 other agriculture lands around the state, making
20 farming less economically feasible.

21 Water is another concern. The aquifer that
22 this Project will draw from: Waipahu, Waiawa, part of
23 the Pearl Harbor system, is nearing its sustainable
24 yield. The Board of Water Supply has raised serious
25 concerns not only about the current water

1 availability, but also about the impacts of paving
2 over an important aquifer recharge area.

3 The Koa Ridge Development, especially the
4 mauka portions, will pave agricultural areas thus
5 increasing runoff and decreasing groundwater recharge.

6 Please, protect the future of our beautiful
7 state and reject this Petition. Thank you.

8 COMMISSIONER LEZY: Parties, questions?
9 Commissioners, questions? Thank you for your
10 testimony, ma'am. Is there anybody in the audience
11 who would like to provide public testimony on this
12 matter? Hearing none, Mr. Matsubara are you prepared
13 to proceed?

14 MR. MATSUBARA: Yes, I am, Mr. Chair.
15 Members of the Commission, good morning. Koa Ridge
16 Makai and Castle & Cooke Waiawa represents Castle &
17 Cooke's goal to create a planned residential community
18 in Central O'ahu that would provide needed homes for
19 Hawai'i residents and access to a medical facility
20 that would address needed community medical concerns.

21 In terms of the residential uses Koa Ridge
22 Makai is planned to have 3500 units, Castle & Cooke
23 Waiawa 1500 units. The planned residential units are
24 targeted in helping address the projected 30,000
25 residential shortfall projected by 2030 for O'ahu and

1 the 6500 shortfall projected for Central O'ahu alone.

2 The passage of some time has established
3 that Central O'ahu continues to be a pleasant
4 residential location attractive to local residents.
5 The upland climate and the relative proximities to the
6 island's main employment centers make it attractive.

7 Castle & Cooke's record in developing
8 Mililani and Mililani Mauka communities confirms the
9 continuing demand in this area by residents and
10 provides this Commission with a history of commitment
11 and the fulfillment of that commitment.

12 In this particular case Castle & Cooke's
13 record has been as soon as entitlement has been
14 received has proceeded with the actual construction of
15 the homes. And although there may be other entitled
16 properties, the question is whether or not and when
17 they will be built.

18 Castle & Cooke is committed to proceeding
19 as soon as the entitlements are secured. The medical
20 complex that is being proposed by Wahiawa Hospital
21 Association on 28 acres of land will provide
22 comprehensive primary and secondary care medical
23 services for Central O'ahu and North Shore residents.

24 There will be a hundred-bed acute case
25 hospital with room to expand to 120 beds. There will

1 be in and out patient ambulatory care service, other
2 diagnostic treatment services required for full
3 service hospitalized, and, most important, a
4 physician's building which will house 40 to 60
5 physicians and help provide a core of qualified
6 medical professionals to service the hospital and the
7 area. A skilled nursing facility with a hundred to
8 150 beds is also planned.

9 These needed services would be available in
10 a strategic location accessible by major
11 transportation corridors. There are other economic
12 benefits attendant to this Project. The total
13 development cost for the Project is anticipated to be
14 \$2.24 billion. This reflects a firm and positive
15 commitment in this economy, and is anticipated to
16 provide major benefits to our larger community.

17 For example, in employment: During
18 infrastructure development and construction there
19 should be close to 1900 jobs with a payroll between a
20 hundred million to a hundred nineteen million.

21 After buildout there should be
22 approximately 1,490 net new jobs which are jobs that
23 would not have existed without this particular
24 Project. Anticipated payroll of that would be
25 \$90 million per year.

1 Revenue. City and county can anticipate
2 approximately 10 million per year in property taxes
3 and the state an additional 13 to 14 million during
4 construction, 5 million after the Project is
5 completed.

6 Now, it goes without saying that a Project
7 of this magnitude has impacts. Castle & Cooke has
8 made every effort to mitigate and in certain cases
9 eliminate these impacts.

10 To begin with, the site concept for this
11 particular Project. The first planning step was to
12 insure that this Project location was in conformance
13 with controlling municipal plans governing long-range
14 growth come use. This Project is located within the
15 Urban Growth Boundaries of the Central O'ahu
16 Sustainable Communities Plan adopted by the city and
17 county of Honolulu.

18 The Urban Growth Boundary was established
19 to provide a balance between urbanization required by
20 normal growth and the protection of land necessary for
21 agriculture. The Urban Growth Boundary was intended
22 to give long-range protection from urbanization with
23 10,350 acres of prime and unique ag land and
24 preservation of open space, while providing adequate
25 land for residential, commercial and industrial uses

1 needed in Central O'ahu.

2 Beginning in 2003 the Petitioner worked
3 with the community to get their input through
4 visionary groups. And the concept plan you see here
5 relating to single family, multi-family units, retail
6 uses, restaurants, healthcare facilities, churches,
7 commercial and light industrial uses, community parks,
8 and elementary schools emerged. This shaped by
9 community input.

10 Agriculture has always been a sensitive
11 issue for this particular area considering the quality
12 of the land we are dealing with. We have worked with
13 our existing farm tenant, who grew diversified crops,
14 to relocate his operations to property of comparable
15 acreage which has access to water from Tanada
16 Reservoir and which is distributed through an existing
17 irrigation system.

18 He also has an option for an additional
19 332 acres, if he so chooses, adjoining the current
20 property he has which will more than double the
21 existing farming he has. We waived the rent for
22 tenants in January 1st, 2010 to help him defray costs
23 that may be incurred in any of the relocation.

24 And that amounts to \$129,000 per year which
25 we've waived since January of 2010, although he

1 continues to farm the property at Koa Ridge.

2 Flying R Livestock Company will relocate
3 their cattle grazing to Koa Ridge Mauka and to the
4 North Shore areas they have available to them. Castle
5 & Cooke has also, pursuant to a commitment made to the
6 Land Use Commission in 2010, designated through the
7 IAL process 679.4 acres of land as IAL land.

8 Commitment was made to this Commission to
9 designate as much or more lands that was requested in
10 our Petition for the Project. And we have fulfilled
11 that commitment.

12 Based primarily on these actions I believe
13 Castle & Cooke has fully mitigated their agricultural
14 impacts on this site, considering the location and the
15 assistance we've provided to our farm tenants and the
16 fact that we have proceeded and we have designated
17 more land than we are asking to reclassify to urban as
18 IAL lands.

19 In terms of traffic, Castle & Cooke is
20 committed to continue working with the department of
21 transportation to enter in an agreement that would
22 reflect appropriate traffic mitigation based on
23 evolving traffic conditions. Castle & Cooke's
24 commitment to undertake the same.

25 Nothing traffic and highway-wise can happen

1 until DOT issues an approved TIAR. There's a long
2 road ahead in the entitlement process, assuming we are
3 successful at the Land Use Commission, proceeding to
4 the county level and much more design and
5 consideration will be provided to the traffic
6 situation.

7 The condition we're concerned with with the
8 Office of Planning in regard to the timing of the TIAR
9 has been resolved to the extent that the Office of
10 Planning is now willing to accept the condition that
11 was adopted in the Wai'ale proceeding regarding the
12 timing of an approved and accepted TIAR by the
13 department of transportation.

14 Let me focus a little bit on some of the
15 arguments relating to IAL land and the constitution.
16 Intervenor Hee has argued that Article XI, Section 3
17 of the Hawai'i State Constitution prohibits the Land
18 Use Commission from reclassifying the subject
19 property. A closer look at this article provides a
20 different picture.

21 The sentence the Intervenor is relying on
22 says, "The State shall conserve and protect
23 agricultural land, promote diversified agriculture,
24 increase agricultural self-sufficiency and assure the
25 availability of agricultural suitable lands."

1 The next sentences says, "The Legislature
2 shall provide standards and criteria to accomplish the
3 foregoing."

4 It is clear that the constitutional mandate
5 is directed to the Legislature to come up with the
6 standards and criteria, not the Land Use Commission.
7 This constitutional amendment was enacted in 1978.
8 Thirty years later the Legislature enacted the IAL
9 law.

10 It became effective in 2008 when benefits
11 and credits were attached to the criteria of what
12 becomes IAL land that was promulgated in 2005.

13 So in 2008, 30 years after the
14 constitutional provision was enacted, the law came
15 into effect. The length of time it took to promulgate
16 that statute I think indicates the difficulty in
17 coming up with a statute that would accommodate the
18 interests and concerns of the various stakeholders
19 that would be seriously affected by this law. And
20 during that 30-year period this was what was hammered
21 out.

22 Now, under the IAL law the Land Use
23 Commission is designated as the agency to consider the
24 petitions to designate IAL land. You have no
25 authority to go out and initiate any petitions for IAL

1 lands.

2 Your responsibility is to consider
3 petitions filed either by private landowners or by the
4 county. Those are the two procedures the law provides
5 for you to consider IAL petitions.

6 The county does it through a process
7 whereby they will do maps of lands within their
8 county. They'll present it to the Commission for the
9 Commission's consideration.

10 But what is of importance to the statute
11 passed by the Legislature that we call the IAL
12 statute, clearly provides that "the county maps will
13 not include lands that have been designated through
14 the state land use zoning or county planning process
15 or for urban use by the state or county."

16 This is Hawaii Revised Statutes, 205-47(a)
17 which is part of the IAL law enacted by the
18 Legislature. So it is clear that land within the
19 Urban Growth Boundary that's part of the city's
20 long-range planning will not be utilized or should not
21 be utilized by the county in determining IAL lands in
22 their mapping.

23 The other process of designating IAL lands,
24 like I indicated, would be through petitions filed by
25 individual landowners. I mean you should note that

1 since the law was passed in 2008 five petitions have
2 been filed with you.

3 And during that time period you have
4 processed all five petitions expeditiously pursuant to
5 that declaratory ruling procedure that's included
6 within the law, so that all these actions take place
7 in 90 days.

8 And in effect on all the petitions filed
9 with you, you have designated 89,859 acres as IAL land
10 on Kaua'i, Maui, Big Island and our IAL designation on
11 O'ahu. On those four islands you have designated
12 close to 90,000 IAL lands.

13 So if anything else, you've done a
14 tremend-- you've made a tremendous step forward
15 fulfilling the statutory intent and purpose of the
16 constitutional amendment and the law that enacted that
17 gives you the authority to proceed. You've proceeded
18 expeditiously in all these areas. No questions.

19 You have also been mindful that as a
20 Commission member you serve on a Commission that was
21 created by statute. And your duties and
22 responsibilities are clearly spelled out by statute.
23 There's an IAL statute which requires you to focus on
24 the qualities of land that are suitable for IAL
25 designation, which you've done in the IAL petitions.

1 There's also proceedings relating to
2 district boundary amendments of which this is one.
3 When you're dealing with district boundary amendments
4 your focus is broader, your responsibility under the
5 statute that you were -- for the Commission you were
6 appointed to sit on is much broader and therefore a
7 balancing is required.

8 You're not just looking at ag qualities of
9 IAL land. You're doing a district boundary amendment.
10 Under the statute there's numerous things you need to
11 consider. Under 205-17, for example, you need to
12 consider the preservation and maintenance of important
13 natural systems or habitats.

14 You also need to consider the maintenance
15 of valued cultural, historic and natural resources.
16 You need to consider the maintenance of other natural
17 resources relevant to Hawai'i's economy including
18 agricultural resources.

19 You also need to consider the commitment of
20 state funds and resources. You need to consider the
21 provision of employment opportunities and economic
22 development, and also the provision of housing
23 opportunities for all income groups, particularly low,
24 moderate and gap groups.

25 So all of these elements are things that

1 are before you in a district boundary amendment that
2 you need to consider. Ag is one of the issues along
3 with other issues you need to look at and balance and
4 come to a decision on.

5 Your decisions have always strived to
6 achieve a balance by the required numerous criteria
7 you're required to consider. I think it's the
8 responsibility of the petitioners to present you a
9 case that addresses these criteria that you are
10 required to look at and examine before you make a
11 decision.

12 I believe we've done in all areas that are
13 relevant to the criteria you need to consider. I
14 think we've taken the necessary steps to mitigate what
15 was required to mitigate.

16 We believe the Project we're presenting to
17 you meets these objectives, goals and criteria and we
18 ask for your support in approving this Petition.
19 Thank you.

20 CHAIRMAN LEZY: Thank you. Mr. Kitaoka.

21 MR. KITAOKA: Thank you. Good morning,
22 Mr. Chair, members of the Commission. The city has
23 supported this Project because it is consistent with
24 the city's plans and policies. It's consistent with
25 the General Plan. It's consistent with the Central

1 O'ahu Sustainable Communities Plan. And it's
2 consistent with the Urban Community Boundary that's
3 drawn within that plan.

4 And this is significant because as you know
5 the city has a comprehensive process for land use
6 planning and approvals. It's an arduous process.
7 It's a public process. And if, in fact, redistricting
8 is granted in this case, as Mr. Matsubara points out,
9 there's a gamut of city approvals that the Petitioner
10 must go through including zoning, subdivision,
11 building permits, grading permits and so forth, that
12 would assure the protection of public health and
13 safety in addition to considerations of housing and
14 traffic.

15 The adoption of the Sustainable Communities
16 Plan and the revisions of this plan is, in fact,
17 subjected to extensive public outreach and public
18 input. It would have to go through the planning
19 commission of the city. It would have to go through
20 the city council. And the Sustainable Communities
21 Plan is the result of intense, arduous work by
22 planning professionals and consultants both within the
23 department and in the private sector.

24 With this expertise the Sustainable
25 Communities Plan is produced. Now, I understand that

1 the opponents of this Project are arguing to limit the
2 conversion of prime ag lands and preserve open space.
3 But to paraphrase the description of the Urban Growth
4 Boundary in the Central O'ahu Sustainable Communities
5 Plan, it says that "The Urban Growth Boundary for
6 Central O'ahu was drawn to give long-range protection
7 from urbanization of prime and unique agricultural
8 lands, and for preservation of open space while
9 providing adequate lands for residential, commercial
10 and industrial uses needed in Central O'ahu for the
11 foreseeable future."

12 So that's why I say it's significant to say
13 that the Project is consistent with the city plans and
14 policies. And I would ask this Commission to give
15 that consistency the significance it deserves. Thank
16 you.

17 CHAIRMAN LEZY: Thank you. Mr. Yee.

18 MR. YEE: Good morning. The Office of
19 Planning supports the Petition for reclassification
20 because it meets the standards set forth in our
21 statutes and rules. In particular it meets the
22 standards for urban district boundaries as set forth
23 in 15-15-18.

24 We know it's proximately located to centers
25 of trading and employment, has infrastructure and

1 basic public services available. It has satisfactory
2 topography and drainage. It is reasonably free from
3 natural hazards. It is contiguous from existing urban
4 areas and it is within the Urban Community Boundary
5 established by the city and county of Honolulu.

6 As boring as this list may be it *is* the
7 list by which we review and determine petitions for
8 reclassification. And this Petition does meet all of
9 those standards.

10 I want to separate my discussion today
11 between the Office of Planning's concerns regarding
12 the Petitioner's proposed decision and order from the
13 Office of Planning's concerns regarding the
14 Intervenor's proposed decision and order.

15 With respect to the Petitioner's proposed
16 D&O the briefing has all been narrowing the issues.
17 The Petitioner submitted 122 pages. We submitted
18 comments and objections of 107 pages. They gave back
19 six pages of a reply. So hopefully I can reduce those
20 issues even further.

21 I know you were going to talk about larger
22 themes and issues today, and my discussion on the
23 Petitioner's would tend to be a bit mundane about the
24 findings of fact. But at some point a decision and
25 order has to be drafted. And we wanted an opportunity

1 to give our comments on the particulars of what we
2 think you may be accepting.

3 There are four particular issues. One, the
4 first is regarding finding of fact 87 regarding the
5 number of acres needed for self-sufficiency, fresh
6 fruits and vegetables. The Petitioner gave you a
7 finding of fact saying 25,000 acres is what's needed
8 for self-sufficiency in fresh fruits and vegetables.
9 We added a clause in there that says: Bruce Plasch
10 testified that 25,000 acres was necessary. Petitioner
11 disagreed saying there's no evidence to the contrary.

12 From the Office of Planning's perspective
13 we don't think this finding is necessary for the
14 reclassification. This involves a very complex area
15 of analysis that was not fully vetted in the Land Use
16 Commission.

17 The number of acres doesn't fully address
18 issues of other necessary requirements for production.
19 It doesn't address the economics of how expensive the
20 land would be, how expensive the production would be
21 in the lands.

22 In short, there's a much larger, complex
23 analysis to determine how many acres of land is needed
24 for fresh fruits and vegetables.

25 And we didn't want a finding in which the

1 LUC says or could be implied to say that you only have
2 to protect 25,000 acres for self-sufficiency in fresh
3 fruits and vegetables. So we want to recognize the
4 conclusions of Bruce Plasch without actually including
5 a particular finding on this very complex issue about
6 the number of acres that's needed for preservation.

7 The second issue involves findings of fact
8 95 through 98 and 100 through 103. This describes the
9 process by which the Land Use Commission went through
10 in designating Important Agricultural Land in one of
11 the prior dockets. Findings of Fact 95 through 98
12 describes the procedural process. Findings of fact
13 100 through 103 describes the lands.

14 We do not disagree with the accuracy of the
15 facts. We simply believe that the only important
16 finding was the fact that the Castle & Cooke did
17 designate certain lands as IAL for this Commission.
18 But after reviewing their arguments, OP has no
19 objection to including Findings of fact 100 through
20 103.

21 Although we still think the completely
22 procedural discussion in findings of fact 95 through
23 98 are unnecessary, we're happy to defer to the LUC's
24 judgment on this.

25 Finding of fact 106A relates to the basis

1 of the Department of Agriculture's lack of objection
2 to the Petition for reclassification. OP proposed a
3 new paragraph setting forth the necessary
4 representations and commitments which the Department
5 of Agriculture found necessary in order for them to
6 conclude that they had no objection to this Petition.

7 Petitioner reads this paragraph as saying
8 that Petitioner's not yet performed these
9 representations and commitments. We think this is a
10 misreading of the paragraph. The whole purpose of the
11 paragraph is simply to set forth that there were
12 necessary conditions, necessary elements that had to
13 be met before the Department of Agriculture could
14 conclude that it had no objections to the Petition.

15 Because it's based upon an assumption of
16 compliance with representations and commitments, it's
17 stated in the future tense. It's not to be read, we
18 think, as a finding that hasn't been done. It's
19 simply -- it's simply a statement of these things have
20 to be done in order for DOA to conclude that it had no
21 objections.

22 Finding of fact 180A and Condition 11
23 involves the timing of the TIAR. As stated by
24 Mr. Matsubara, the Office of Planning accepts the
25 conditions set forth in the Wai'ale case involving the

1 timing of the TIAR.

2 I'll be honest, we would prefer to have the
3 TIAR accepted at subdivision approval -- I'm sorry --
4 at zoning approval, but we understand the LUC's
5 analysis and reasoning in the Wai'ale case. And the
6 condition in the Wai'ale case would be acceptable to
7 us in this case as well.

8 There are no other disagreements regarding
9 the findings of fact, conclusions of law and decision
10 and order as between OP and Petitioner. So with the
11 exception of these relatively small issues we have no
12 objection to their proposed D&O subject to the
13 amendments proposed by OP and agreed to by Petitioner
14 in their briefs.

15 Now, with respect to the disagreements
16 between OP and Intervenor, these disagreements are a
17 little more fundamental so I'll be speaking in larger,
18 more general terms.

19 OP set forth its comments and objections to
20 Intervenor Senator Hee and Sierra Club's Proposed
21 Decision and Order. Intervenor, however, elected
22 not to submit a response to OP's comments and
23 rejections. So we will only highlight a few of the
24 issues which we have raised.

25 This does not mean that the other issues

1 are not important, but these issues have, we think,
2 been adequately addressed in our pleadings. We're
3 happy to answer any questions.

4 We've highlighted four issues: First,
5 agriculture; second traffic, third water, and fourth a
6 particular finding of fact in the citation to the
7 director's testimony regarding the medical center.

8 First, of course, is agriculture. OP's
9 analysis on agriculture begins with the Urban Growth
10 Boundary established by the city and county of
11 Honolulu and the urban designations in the Central
12 O'ahu Sustainable Communities Plan.

13 As has been explained to you in this and in
14 other cases, the purpose of the Urban Growth Boundary
15 is to direct urban use to certain areas with the
16 related purpose of preserving agriculture in other
17 areas, allowing some agricultural lands to be
18 urbanized to accommodate population, economic growth
19 as part of the larger picture in which *other*
20 agricultural lands are preserved.

21 From an islandwide perspective agricultural
22 lands are protected by careful observance with the
23 Urban Growth Boundaries. Intervenors have essentially
24 argued that the city's Urban Community Boundaries are
25 wrong and the Petition Area should be excluded from

1 the Urban Growth Boundary. But that's a discussion
2 that should be argued at the city level.

3 In this level the Petition Area meets all
4 of the standards for HAR Section 15-15-18 regarding
5 the standards for an urban community district as I
6 discussed at the beginning of this argument.

7 Intervenor's also argue that the city's
8 Urban Growth Boundary is not binding on the LUC.
9 Although they argue this, the Petition Area, as
10 discussed previously, meets all the standards for
11 reclassification in 205-17 and 205-16 and in your
12 rules.

13 And the city's Urban Community Boundary
14 under those rules is an important factor for your
15 consideration.

16 Intervenor's also argue that the Petition
17 Area should be designated as Important Agricultural
18 Land or at least could be. But in order to do so the
19 city would have to revise the Central O'ahu
20 Sustainable Community's Plan to remove the Urban
21 designation of the Petition Area and to redraw the
22 Urban Community Boundary to exclude the Petition Area.

23 And there's absolutely no evidence in this
24 case to believe the city is going to do so. In fact,
25 given the city's statements in support of this

1 reclassification, the only conclusion we can draw is
2 that the city's highly unlikely to do so and is highly
3 unlikely to designate this Petition Area as IAL. And,
4 of course, we also note the Petitioner has designated
5 other lands as IAL.

6 So we don't think that the IAL
7 considerations are a factor against reclassification.

8 Now, this does not mean that agricultural
9 lands are unimportant. But in this case Petitioner
10 found suitable replacement lands for its existing
11 agricultural tenants.

12 This is not something that would have
13 happened in the absence of this case. It was clearly
14 done because of the efforts of the Petitioner. It was
15 provided by lands available through the Castle & Cooke
16 family of companies. And these agricultural tenants
17 continue to farm in the Petition Area without rent.

18 And the Petitioner is committed to ensuring
19 that the Project development operation will not impair
20 the operations of the Waiahole Ditch or the delivery
21 of irrigation water to other agricultural lands.

22 And as I said, importantly, Petitioner has
23 voluntarily designated other lands on O'ahu as IAL.
24 So agriculture is not a basis for denial in this case.

25 The second issue, of course, involves

1 traffic. Petitioner will mitigate the traffic impacts
2 of the Project to the satisfaction of the department
3 of transportation as substantiated by an updated and
4 accepted Traffic Impact Analysis Report and Memorandum
5 of Agreement.

6 Petitioner cannot be expected to mitigate
7 traffic impacts from other projects. And although the
8 Final TIAR has not yet been accepted, the department
9 of transportation's testimony indicates there should
10 be no basis of worry that a TIAR will not be done.

11 And as you know in all other cases before
12 you you've never required a TIAR to be completed prior
13 to conclusion of the LUC case.

14 So although Intervenors do raise concerns
15 about traffic, there's a sufficient basis by which the
16 LUC can be assured that these impacts to state
17 facilities will be addressed.

18 Third is water. Potable water is always an
19 important issue in land use cases. The Office of
20 Planning's analysis has asked whether there's
21 sufficient resource, whether the amount of water used
22 can be reasonably minimized. The Commission on Water
23 Resource Management has ultimate authority over water
24 permits. They do a detailed, in depth, numerical
25 analysis for each water permit. The LUC is not

1 expected to duplicate the work of the Commission on
2 Water Resource Management.

3 The LUC looks more generally at the needs
4 of the project and the availability of the resource in
5 general. And in this case, based upon the record of
6 the case, there appears to be enough water for the
7 Project. For the analysis at the LUC level there is a
8 sufficient resource.

9 Intervenors do cite to a variety of
10 generalized concerns about the availability of water
11 on O'ahu and the state. But the LUC cannot deal with
12 speculative concerns. It must base its decision upon
13 the evidence before it.

14 Intervenors' concerns, perhaps, raise
15 legitimate arguments for minimizing the amount of
16 potable water use as a logical and precautionary step.
17 But they do not rise to the level of demonstrating
18 that there's an insufficient resource.

19 The LUC should look at whether the
20 development can reasonably minimize the amount of
21 potable water used. And this is not necessarily part
22 of this Commission on Water Resource Management
23 review. So it does reasonably and appropriately fall
24 to planning agencies to review proposed water
25 reduction measures.

1 In this case, as in all others, Office of
2 Planning has asked for a sustainability plan, and an
3 explanation of what mitigation measures will be used
4 to reduce the need for potable water.

5 In this case Petitioner's sustainability
6 plan has a strategy for reduction of potable water use
7 by 20 percent for parks, landscaped areas, commercial
8 buildings; and to reduce potable water use in
9 residential buildings by 20 percent over new homes and
10 40 percent over older homes.

11 Petitioner's also committed to incorporate
12 green infrastructure or use of R-1 recycled water
13 where feasible to reduce potable water demand and has
14 committed to LEED core and shell for the commercial
15 buildings.

16 Petitioner has identified, made commitments
17 for minimizing natural resource use in this case.

18 Finally, the medical center. Although this
19 is a fairly small issue, because of the possibility
20 that you might incorporate portions of anyone's
21 findings of fact and because in particular it cites to
22 the Office of Planning's testimony, we want to just
23 spend a minute on this as well.

24 Findings of fact 55 and 56 of Intervenors'
25 proposed decision and order cites to the testimony of

1 the director of Office of Planning to state that it
2 has not been determined whether Wahiawa Hospital could
3 obtain a Certificate of Need and that the recent
4 closure of the hospital in 'Ewa has not been taken
5 into account in considering whether Wahiawa Hospital
6 will be built.

7 We think this misstates the director's
8 testimony. This is simply an analysis the Office of
9 Planning has not done. So when asked, the director of
10 the Office of Planning simply had no information to
11 provide. It is not an analysis that's required to be
12 done by OP or should be reasonably expected by OP.

13 Consequently, the director's testimony
14 should not be used either for or against, whether or
15 not Wahiawa Hospital is likely or not likely to be
16 relocated to the Petition Area. We object to the
17 citation of the director's testimony.

18 More importantly, the Office of Planning,
19 as I said, believes that this meets all of the
20 standards and criteria. We don't believe there's any
21 basis for denial raised by Intervenors.

22 For these reasons we respectfully request
23 that the Petition for Reclassification be granted.
24 Thank you.

25 CHAIRMAN LEZY: Thank you. Before we move

1 on to the Intervenors let's take a 10-minute break.

2 (Recess was held. 10:20-10:40)

3 CHAIRMAN LEZY: Mr. Poirier, are you ready
4 to proceed?

5 MR. POIRIER: Thank you, Mr. Chair.
6 Neighborhood Board 25 was the first board and largest
7 board on O'ahu. We've taken positions, presented
8 testimony on just about every major land use decision
9 in Central O'ahu. Most of our positions on land use
10 are unanimous as reflected in our exhibits. Most of
11 our recommendations, advice and suggestions are
12 ignored by governmental agencies.

13 What we face with respect to future
14 development in Central O'ahu is as follows: More
15 development and loss of prime agricultural land, and
16 open space, more traffic and ever-increasing commuter
17 times, inadequate resources to address or mitigate
18 development impacts, little or no response on the part
19 of the institutional safety net.

20 By "institutional safety net" we mean state
21 planners, county planners, and state and federal
22 transportation planners. Of this list traffic
23 congestion's the greatest impacted experienced by all
24 people in Central O'ahu.

25 Our community beliefs in this regard are:

1 The proposed unconditional addition of some 20,000
2 housing units in Central O'ahu is not only
3 unreasonable but also a threat to the lifestyle and
4 quality of life of all area residents.

5 Additional developments in Central O'ahu
6 can and should be allowed, providing that appropriate
7 regional transportation and educational infrastructure
8 are available.

9 And, finally, the apparent lack of orderly
10 or common sense growth in Leeward Central O'ahu
11 reflects the failure of governmental planning
12 processes, what we call our "institutional safety net"
13 that are either dysfunctional or non-existent.

14 Why is the institutional safety net broken?
15 In our opinion decision-makers cannot say no to any
16 major development. decision-makers cannot or won't
17 address or mitigate adverse impacts. And
18 decision-makers cannot or won't address community
19 concerns.

20 Looking at state comprehensive planning,
21 the problem there is that the state regulates land use
22 but does not plan regularly to assure Smart Growth
23 either regionally or on a statewide basis. The state
24 does not assess cumulative impacts of proposed
25 developments and share the results with

1 decision-makers.

2 The state in implementing the land use law
3 consistently fails to attach appropriate, meaningful
4 conditions when permitting development to occur.

5 And, lastly, the Department of Education,
6 department of transportation perpetually lack
7 financial and/or staff resources to provide necessary
8 educational and transportation infrastructure in a
9 timely planner to support new development.

10 With respect to county planning, the county
11 planning doesn't seem to be a high priority of county
12 government. For example, the Sustainable Communities
13 Plan for Central O'ahu was done nine years ago.

14 The 'Ewa Development Plan was done 15 years
15 ago. Supposed to be revised every five years. None
16 has. No reason has ever been given as to why city and
17 county development Sustainable Communities Plans have
18 not been reviewed or revised in a timely manner.

19 Why is the county planning system broken?
20 County's initial Urban Growth Boundary was to direct
21 future growth to Kapolei and the secondary urban
22 center. This is the town of Kapolei and the area
23 behind it going to the ocean with future development
24 allowed in Central O'ahu, only to the extent of
25 relieving pressure on the second city. At that time

1 we were considered an urban fringe area.

2 In point in fact county planning growth
3 policy is omnidirectional,¹ what we call legal sprawl,
4 and virtually allows development anywhere in Central,
5 Leeward O'ahu to the extent that the county
6 development's plans now allow for more growth in
7 Central O'ahu than ever.

8 How did this happen? The first thing the
9 county did, they amended the General Plan policy in
10 1989 to, quote, "Encourage growth in the secondary
11 urban center in Kapolei and in the urban fringe areas
12 of 'Ewa and Central O'ahu to meet housing needs not
13 available in the Primary Urban Center."

14 As a result Central O'ahu became a *de facto*
15 *de jure* secondary urban center, although it continues
16 to be erroneously referenced as an urban fringe as
17 opposed to a secondary development area, and continues
18 to be mislabeled as Sustainable Communities Plan as
19 opposed to a development plan.

20 The second thing that happened is they
21 amended or disregarded the General Plan population
22 policy guidelines for Central O'ahu by incrementally
23 raising Central O'ahu's share in the total population
24 from 13 to 17 percent.

25 As you know, the population's projection

1 for the island of O'ahu are done by the state
2 department of business, economic development and
3 tourism. However, they are distributed islandwide by
4 the city and county of Honolulu department of planning
5 and permitting.

6 In order to accommodate proposed
7 developments in Central O'ahu DPP has to decrease
8 General Plan population projections in the Primary
9 Urban Center and increase General Plan projections in
10 urban Central O'ahu. As a result the Central O'ahu
11 urban fringe area ends up with more population than
12 the 'Ewa Development Plan area.

13 Our conclusion regarding the county General
14 Plan is that it accommodates growth rather than
15 controls or manages such growth. Well, what about the
16 several development plans? Don't they control or
17 manage growth? The answer is yes, they do in theory.
18 In theory development in the Sustainable Communities
19 Plans for urban Central O'ahu do have a number of
20 provisions which seek to control the managed
21 development.

22 CHAIRMAN LEZY: Ms. Poirier, can you slow
23 down just a little bit for the court reporter. You'll
24 have plenty of time.

25 MR. POIRIER: Okay. In implementing the

1 'Ewa Development Plan, for example, the plan mandates
2 the phasing of development, the development of level
3 of service and facilities design standards, also known
4 as concurrency guidelines for determining
5 infrastructure adequacy requirements, and the
6 establishment of these concurrency guidelines during
7 the capital improvements program and the incorporation
8 of guidelines in the city's transportation functional
9 plan.

10 The Sustainable Communities Plan for
11 Central O'ahu also has phasing and also has a mandate
12 to develop level of service regarding concurrency
13 guidelines. None of these mandates was ever done or
14 implemented. And it's highly unlikely that they ever
15 will be.

16 Our conclusions regarding the county
17 planning zoning system is that:

18 1. The county land use planning is not a
19 high priority of county government.

20 2. The general plan allows for more
21 development of Central O'ahu than the secondary urban
22 center.

23 3. The Urban Growth Boundary for Central
24 O'ahu and 'Ewa are based primarily on developer
25 proposals rather than the ability of the region to

1 sustain such development.

2 4. Five-year review deadlines, facility
3 design standards and Levels of Service requirements in
4 development sustainable community plans are ignored.

5 Lastly, zoning conditions and unilateral
6 agreements regarding existing developments fail to
7 include concurrency requirements regarding
8 developments themselves in relation to available
9 infrastructure.

10 What about the state department of
11 transportation? Two things regarding this one.

12 1. We had a great opportunity in the mid-
13 2000s to basically come up with an analysis of what we
14 really need in Central O'ahu regarding beneficial
15 expenditures.

16 Basically we had asked DOT to conduct this
17 study. And there was a \$1 million appropriation which
18 was given to them by the Hawai'i State Legislature for
19 that purpose.

20 The study was supposed to look at the
21 nature and extent of the transportation planning
22 problems, issues ad opportunities in Central O'ahu.
23 This was supposed to identify and prioritize regional
24 transportation projects that best address the needs
25 and efficiencies in current plans.

1 It was supposed to identify what
2 multi-modal solutions are best for Central O'ahu and
3 how they connect with other plans and projects. The
4 study would cover the impact of future developments on
5 the carrying capacity of current regional
6 transportation systems. And it would ascertain the
7 full impact that a fixed guideway system would have on
8 Central O'ahu travel times.

9 We even recommended that consultants be
10 retained by state DOT and the creation of an advisory
11 group composed of area residents, area developers and
12 state and county land use transportation officials to
13 help guide the study.

14 Why did we want to do this? We wanted to
15 avoid the nightmare scenarios occurring throughout the
16 state such as Fort Weaver Road. We wanted to show
17 residents that DOT is proactively addressing critical
18 issues.

19 We wanted to coordinate with major
20 developers while they are still at the table willing
21 to negotiate. And the \$1 million appropriation was
22 set to lapse. State department of transportation did,
23 indeed, let lapse the \$1 million appropriation for
24 planning the future of the Central O'ahu
25 transportation needs.

1 Lastly, if the state transportation
2 planning system is flawed and not working, what about
3 the availability and use of federal transportation
4 monies to address Central O'ahu's regional
5 transportation structure needs?

6 This is very important to us because we're
7 gonna have more residents in 2030 than they do in
8 'Ewa, additional 20,000 housing units projected over
9 the next several years in Central O'ahu. We have no
10 rail spur. There's none included in the city and
11 county mass transit plan. Our existing travel times
12 exceed one hour from Mililani to downtown during peak
13 morning hours.

14 So we are here talking about OMPO, the
15 O'ahu Metropolitan Planning Organization, while when
16 we talk about the O'ahu Regional Transportation Plan
17 that refers to the plan prepared by the OMPO plan is
18 been adopted by the policy committee.

19 OMPO was established by federal and state
20 law. It's a very important agency. It's responsible
21 for coordinating the transportation planning on O'ahu.
22 Participating agencies are DTS, DPP, state DOT, state
23 DBEDT, OMPO development plans and programs to produce
24 an integrated, intermodal surface transportation
25 system.

1 Federal funding for transportation projects
2 and programs are channeled through this process. The
3 O'ahu Transportation Plan -- Regional Transportation
4 Plan, which is updated every five years, outlines
5 transportation goals, objectives and policies for
6 O'ahu as well as identify specific highway and transit
7 projects designed to improve safety, reduce congestion
8 and increase mobility for O'ahu residents and
9 visitors.

10 We were kind of excited when the O'ahu
11 Transportation Plan came out for the year 2030. In
12 addition to the usual interchange projects they called
13 for a project involving the extension of Paiwa Street
14 which would have gone through the Central O'ahu
15 Regional Park, would add connectivity to the region by
16 allowing people living in Koa Ridge or Central O'ahu
17 to go through the park and access H-1 going out to
18 Kapolei.

19 It also included the Kam Highway widening
20 project. It's an important project, but it's really a
21 safety project. Does not add capacity or connectivity
22 to the region, but it's an important project.

23 And they had two other projects. One was a
24 Central, what they call a Central Mauka Road and the
25 Wahiawa Secondary Access Road. Both of these were

1 considered illustrative projects.

2 Illustrative projects are those projects
3 where there's no funding source or it cost too much
4 money and they can't find money for it, so they put it
5 on the plan to make people feel happy about having
6 something to dream about.

7 Although, I have to admit the Central Mauka
8 Road project was part of the 2025 plan but not as an
9 illustrative project. In 2025 we had Central Mauka
10 Road which their planners thought was necessary to
11 accommodate our future growth.

12 Then 2030 they had that one, now an
13 illustrative project and the Wahiawa Secondary Access
14 Road which is a road going from Mililani Mauka to
15 Wahiawa as the second access to that particular area.

16 And the last thing the 2030 plan did was
17 talked about increased travel times from Mililani to
18 Ala Moana to exceed two hours each way. This by 2030.
19 What happened? Between 2030 and 2035 -- when the 2035
20 plan came out they said traffic on H-2 and Kam Highway
21 would be significantly worse without alternative
22 roadways to provide access to and from the Waiawa Koa
23 Ridge area.

24 Then we looked at what projects they had
25 in addition to usual interchanges. The only one left

1 was the Kam Highway widening project, central mauka
2 road, second access road, Paiwa Road left.

3 So now, based on the last plan that was in
4 2035 we have no projects other than Kam Highway
5 widening. And we have no rail transit line. The
6 worst part of that plan was that they talked about
7 travel times. And they have, as part of that plan,
8 that in 2007 travel times from Mililani to downtown
9 was 45 minutes. Then they, correctly, 2011 travel
10 times from Mililani-downtown were 60 to 75 minutes.

11 But then they said the 2035 what they call
12 baseline travel times, Mililani-downtown were some 45
13 to 60 minutes. Here we went from 60-75 to 45-60.

14 Then they said the 2035 projected travel
15 times, that's the difference in savings from Mililani
16 to downtown, and they, quote, "would be up to 15
17 minutes. Whereas travel times improved by up to 15
18 minutes for trips traveling downtown from Central
19 O'ahu."

20 This was not only outrageous but it was not
21 understandable. Our conclusion regarding the 2035
22 plan is neither logical or internally consistent and
23 fails to explain why the Paiwa Road/Central Mauka Road
24 Wahiawa second access projects recommended in the 2030
25 plan, all of which add connectivity, increase roadway

1 capacity in the region were dropped in the 2035 plan.

2 The 2035 plan fails to explain and
3 substantiate how the baseline travel time from
4 Mililani to downtown in 2035 is or can be less than
5 travel time experienced from Central O'ahu to downtown
6 in 2011.

7 And, finally, the 2035 plan fails to
8 explain or substantiate how a projected travel time
9 from Mililani to downtown is 15 minute less than the
10 2035 baseline travel time, especially in view of the
11 lack of a fixed rail line from Mililani to downtown,
12 the addition of some 20,000 additional housing units
13 in Central O'ahu by 2035, the lack of any
14 capacity-adding road project in Central O'ahu, the
15 plan's own analysis which says that traffic will get
16 significantly worse in Central O'ahu without
17 alternative roadways.

18 Our community conclusions regarding
19 Hawai'i's comprehensive planning safety net are as
20 follows: The state needs to plan more and do better
21 planning. The city and county does not do planning as
22 much as the county accommodates growth but does not
23 control or manage it. The state/federal
24 transportation plan either don't know what planning is
25 or want to engage in it.

1 Finally, your role today is you can vote
2 "yes". You can vote "no". You can vote "yes, but".
3 There's many reasons to vote "yes". Castle & Cooke's
4 development meets market and affordable housing needs.
5 It's a well thought out and designed development, has
6 a proven history of development successes, provides
7 jobs and economic development opportunities, sensitive
8 to agricultural needs, and concerns, et cetera. The
9 list goes on.

10 There are many reasons to vote "no".
11 Wrong development in the wrong place in the wrong
12 time. Cumulative impacts cannot possibly be
13 mitigated. Contributes to the continuing loss --
14 development contributes to continuing loss of
15 Important Ag Lands, urban sprawl, inevitable gridlock.

16 There are many reasons to vote, "yes, but".
17 Example: "Yes" meaning "yes with conditions."
18 Concurrency is the only way to balance more pro-public
19 planning and the lack of regional school and
20 transportation infrastructure and cumulative impacts.

21 THE REPORTER: Mr. Poirier, could you slow
22 down right now please on this last part.

23 MR. POIRIER: Okay: (repeating) There are
24 many reasons to vote, "Yes, but." For example "yes,
25 with conditions." Concurrency is the only way to

1 balance poor planing -- poor public planning and the
2 lack of adequate regional school and transportation
3 infrastructure with cumulative impacts.

4 Voting "yes" will be of little or no
5 benefit to the quality of life of existing residents
6 in Central O'ahu.

7 While you are not obliged or obligated as
8 Commissioners to solve the obvious defects of state
9 and county planning processes and the lack of regional
10 infrastructure resources, you are obligated at least
11 morally not to make things worse.

12 If you vote "yes, but" we would like to see
13 the following: A realistic concurrency condition
14 relating to the mitigation of impacts in relation to
15 commuter travel time.

16 Community review prior to finalization of
17 the Memorandum of Agreement between state DOT and
18 Castle & Cooke Homes Hawai'i.

19 A realistic deadline for the construction
20 of the Pineapple Road Interchange. And a
21 developer/school fund to be used to mitigate regional
22 impacts. Thank you.

23 CHAIRMAN LEZY: Thank you. Mr. Seitz.

24 MR. SEITZ: Quite frankly, I don't think
25 there's anything I can add to this discussion that you

1 haven't already heard by way of the testimony, by way
2 of the briefs that we have submitted, by way of the
3 arguments you've heard today. But I do want to add at
4 least some thoughts.

5 In the first place, as you now know, as we
6 all know, Hawai'i has the worst traffic problems in
7 the country.

8 In addition to that we are approaching a
9 serious dilemma with respect to water use which we
10 refuse to deal with and which now, hopefully, somebody
11 will grapple with when the county's or the district
12 plans are sent up to the Water Board and the Water
13 Board has the opportunity to do some long-term
14 planning. But we know we have a finite supply of
15 water.

16 And with respect to agriculture, we all
17 know that we now only produce a very small percentage
18 of what we need to feed people in Hawai'i. That's a
19 fact. So how are we going to deal with these crises
20 both on the short run and in the long run?

21 I listened to the presentation by Castle &
22 Cooke here. And over the years I've been involved in
23 litigation and had my differences with Castle & Cooke.
24 But I have to say that they have acquitted themselves
25 in these proceedings admirably. I don't think that

1 they're hiding the ball anywhere. I don't think
2 they're dishonest.

3 I will say different things tomorrow when I
4 appear before you in another matter.

5 (audience laughter)

6 But I've got to say with respect to Castle
7 & Cooke and its representation here, they have set out
8 for you in adequate detail what it is they want, what
9 it is they propose to do, and what the problems are.
10 So I don't fault them in any manner.

11 If this proposal had come before this board
12 25 years ago or maybe even 15 years ago, it would have
13 sailed through. But that was then. And here we are
14 now facing some rather monumental problems which this
15 proposal doesn't really deal with.

16 And it is, in my opinion, your
17 responsibility, just as Mr. Poirier has said. It is
18 your responsibility in some measure to jump into the
19 breach that the state and the county have created, to
20 deal with some fairly larger issues which are
21 entrusted to you.

22 We are here at a different time because now
23 there is, with respect to agriculture and water use,
24 in particular, a much greater public consciousness
25 about those issues and about concerns. We know there

1 are lots of housing units that have already been
2 permitted that haven't been built. There are various
3 reasons why they haven't been built.

4 And one particular interesting aspect of
5 this particular proposal is you remember it was
6 supposed to proceed in tandem with a development by
7 Kamehameha Schools, which Kamehameha Schools has now
8 abandoned. That raises some interesting questions for
9 this proposal.

10 But more importantly the question is:
11 Where are these homes going to be built? When are
12 they going to be built? And will they ever actually
13 be sold and occupied? We don't know the answer to
14 that.

15 Yes, abstractly we need more homes to be
16 developed. But we also need water. We need
17 agricultural land. And we need, as you've just heard,
18 to address the traffic problems.

19 Now, in a somewhat very glib manner the
20 counsel for the city and county, and the state,
21 basically highlighted to you their failures. If they
22 have confidence that the departments of transportation
23 will address the issues and present an adequate TIAR
24 at some point down the road, then I don't share their
25 confidence. And I can't imagine that any single

1 resident living in Mililani would share that
2 confidence as well.

3 They have created those problems because
4 over the years we have had people running those
5 departments who just simply don't have the imagination
6 or the dedication to serve the people of O'ahu.

7 O'ahu is a mess when it comes to traffic.
8 And that is because of the failures of the city and
9 county and the state, and in particular the people who
10 have been operating those departments. And it's not
11 going to be fixed today, tomorrow.

12 And it's certainly not going to be fixed in
13 any TIAR that they're going to come up with with
14 respect to this Project. Those problems, right now at
15 least, appear to be insoluble.

16 And so the answer that they're saying,
17 giving you, is, "Well, let's just build anyway and
18 let's make 'em worse." And that is absolute and
19 utter hypocrisy. There's no justification for that
20 level of irresponsibility.

21 We have problems with schools which have
22 been highlighted with lots of problems with public
23 education in Hawai'i. But what we are faced with in
24 the Project is a situation where they're going to
25 provide elementary schools and they're saying: Well,

1 leave it to the DOE, our wonderful DOE, with whom I do
2 litigate often, they're going to solve these problems
3 by deciding where the middle schools are, the high
4 schools are. And they're gonna send kids to Mililani
5 High School on the one hand perhaps, or Waipahu High
6 School, or maybe Pearl city which are three of the
7 most overpopulated high schools currently.

8 Those problems have not been analyzed. So
9 they want to build more homes where more children are
10 going to grow up where they're ultimately going to be
11 bussed to schools in other areas. And that is a
12 problem that has not been addressed here.

13 These are all problems that have arisen in
14 the course of these proceedings. We're talking about
15 a proposal that I concur on paper in the testimony
16 that's been presented sounds like a very good
17 proposal. But it's at the wrong time in the wrong
18 place.

19 Now, our primary concern here is
20 agriculture. If they were going to build this Project
21 on lands that were not currently producing crops that
22 are consumed in Hawai'i, we probably would not be
23 here.

24 The traffic problems, the other problems,
25 those are not the primary concern. Although in the

1 analysis when you approach this case, when you are
2 going to take prime agricultural land out of
3 production and use it for some other purpose, you have
4 to be clearly convinced that there are needs that
5 justify that. And so that's the reason primarily that
6 we bring up these issues.

7 But when it comes to agriculture, as you
8 heard earlier, first of all, the constitutional
9 presumption is not merely that you preserve lands but
10 that you increase lands. You enable those lands to
11 increase production of food in Hawai'i. There is no
12 conceivable argument in this case that supports that
13 constitutional mandate.

14 You have here now lands that are productive
15 that are growing crops that are sold and consumed in
16 Hawai'i. The mere fact that the current farmers on
17 that land may have a place to move to at some other
18 location does not in any way directly address the
19 issue that the land, if taken out of production, is
20 going to further limit the resource of agricultural
21 land in Hawai'i, and further make it more difficult to
22 move toward food sustainability because the *other*
23 agricultural lands that have been identified in
24 Hawai'i still don't have the infrastructure to enable
25 people to farm on those lands productively and

1 economically.

2 So our position is when you have land that
3 is already productive in this day and age, given the
4 facts which are indisputable, to take that land out of
5 production and put houses there or even to put a new
6 hospital, which we may or may not need depending on
7 what happens with St. Francis West and other issues
8 that are going to affect medical care in our
9 community, to put homes on this valuable agriculture
10 land is simply suicidal for the long-term interests of
11 the people of Hawai'i.

12 And, again, unlike 20 years ago when,
13 perhaps, people were less conscious, when perhaps
14 people were less concerned about the issues that have
15 surfaced here, at that point in time there would have
16 not been much disagreement or concern if you were
17 simply to grant this proposal, which is largely well
18 thought out, which is sensitive to some of the needs
19 that we've talked about and which was presented to you
20 intelligently.

21 But it does, in fact, create a very sharp
22 dispute with what the constitutional mandate is. And
23 it is not an answer to that mandate to simply say,
24 "You should leave it up to the Legislature."

25 In fact, when they argue, and various

1 people argue at different times that the
2 constitutional provision is not self-executing, in
3 fact that doesn't end the discussion there.

4 It may not be self-executing in particular
5 applications, but it is still a provision of the
6 constitution which all of you, when you took your oath
7 to be members of this board, agreed to support and
8 enforce. So that article, Article XI, is an
9 obligation whether it's self-executing or not, which
10 has to guide all of your decisions.

11 The county can come in here and say, as
12 they do: Well, these are not Important Agricultural
13 Lands. We're entitled to proceed as we wish to
14 despite our sloppy procedures which have gotten us to
15 the place where we are right now.

16 And they cite to you that this is part of
17 an urban planning, an urban zone which therefore
18 precludes any discussion about preserving it in
19 agriculture. Well, that is legally wrong. As you
20 know, the state law regarding determination of
21 Important Agricultural Lands has eight criteria.
22 Inclusion in a county zone or plan is only one of
23 those eight criteria.

24 It is unclear if a particular land meets
25 the other seven criteria whether it is appropriate to

1 go ahead and utilize those lands for other purposes
2 when they might, in fact, presumptively be Important
3 Agricultural Lands.

4 That was an exercise by the Legislature of
5 its authority to implement Article XI of the
6 constitution. And everyone here is bound by that.
7 Maybe there's some ambiguity about some of these legal
8 issues that needs to be clarified, just as there has
9 been, up until recently, ambiguity about whether the
10 Land Use Commission can attach conditions to its
11 actions and then later enforce them.

12 It now appears that you cannot.

13 So when Mr. Poirier says you can vote as an
14 alternative: "Yes, but" I don't believe that that's a
15 safe action for you to take at this point in time
16 until the Legislature clarifies that you have
17 authority to enforce what you do, or that somebody
18 else would have that authority down the road.

19 Right now in the real world in which we
20 occupy today these positions of decision-making, you
21 have before you a piece of very important, very
22 valuable, very productive agricultural land. Because
23 it is producing, because it does meet the needs of the
24 people of Hawai'i by producing crops which are in
25 demand here and in an increasing demand, there is

1 simply no justification on the evidence that you've
2 heard to take it out of production and grant this
3 Petition.

4 We, therefore, urge that you deny the
5 Petition altogether and that be the action to conclude
6 this matter. Thank you.

7 CHAIRMAN LEZY: Thank you. Mr. Matsubara,
8 rebuttal?

9 MR. MATSUBARA: I believe that everything
10 that needs to be said has been said and is before this
11 Commission through the testimony during the course of
12 the hearing and arguments presented by Counsel, in the
13 proposed findings of fact and the objections thereto.
14 I thank the Commission for its patience listening to
15 this proceeding as it's progressed. I'd be glad to
16 answer any questions if there are any. Thank you.

17 CHAIRMAN LEZY: Commissioners, any
18 questions of the parties? The Commission will now
19 conduct formal deliberations concerning whether to
20 grant this Petition, whether in whole or in part, or
21 to deny it. If the Commission grants the Petition in
22 whole or in part, it will determine what conditions of
23 approval to impose.

24 I note for the parties and the public that
25 during the Commission's deliberations there will be no

1 additional input from the parties or the public unless
2 the Commission makes a specific request.

3 The Commission held hearings on the merits
4 of this Petition on February 2 and 3, 2012 and
5 April 5, 2012. Oral argument was concluded today.
6 Commissioners, allow me to confirm that each of you
7 have reviewed the record, and read the transcripts for
8 any meeting that you may have missed and are prepared
9 to deliberate on the subject docket. After I call
10 your name please signify whether you're prepared to
11 deliberate on this matter.

12 Commissioner Chock?

13 COMMISSIONER CHOCK: Yes.

14 CHAIRMAN LEZY: Commissioner Contrades?

15 COMMISSIONER CONTRADES: Yes.

16 CHAIRMAN LEZY: Commissioner Makua?

17 COMMISSIONER MAKUA: Aye.

18 CHAIRMAN LEZY: Commissioner Judge?

19 COMMISSIONER JUDGE: Yes.

20 CHAIRMAN LEZY: Commissioner McDonald?

21 COMMISSIONER McDONALD: Yes.

22 CHAIRMAN LEZY: Commissioner Teves?

23 COMMISSIONER TEVES: Yes.

24 CHAIRMAN LEZY: I am likewise prepared to
25 deliberate on this matter. The Commission will render

1 a decision by way of motion on whether to grant in
2 whole or in part or deny Petitioner's request to
3 reclassify the subject Petition Area.

4 If a decision is rendered staff, with the
5 Commission's guidance, will be directed to draft
6 appropriate findings of fact, conclusions of law and
7 decision and order reflecting the Commission's
8 decision. With that in mind, Commissioners, what is
9 your pleasure on this matter?

10 COMMISSIONER McDONALD: Chair Lezy.

11 CHAIRMAN LEZY: Commissioner McDonald.

12 COMMISSIONER McDONALD: In regards to
13 Docket A11-793 to consider reclassification of
14 approximately 767.649 acres of land at Waipio
15 currently in the Agricultural District to Urban
16 District, I would first like to thank all the parties
17 as well as public testifiers for the time and
18 commitment afforded this Commission.

19 I would also like to acknowledge Castle &
20 Cooke for their pro-active effort in working with
21 Aloun Farms on the relocation of their farming
22 operations to 335 acres in Wahiawa.

23 Furthermore, I understand an additional
24 332 acres would also be available for their operations
25 on abutting lands, all of which have sufficient access

1 to water.

2 In addition, Castle & Cooke's action in
3 designating 679 acres of their land on O'ahu into IAL
4 in 2011 should also be recognized. The Petitioner is
5 the only landowner to obtain voluntary IAL designation
6 on the Island of O'ahu.

7 Based on the evidence presented in these
8 hearings I believe the Project does meet the Land Use
9 Commission's decision-making criteria under HRS 205-17
10 and HAR 15-15 and, therefore, move to approve the
11 reclassification of Koa Ridge Makai comprised of
12 approximately 576 acres to Urban District and an
13 incremental redistricting of Castle & Cooke Waiawa
14 comprised of approximately 191 acres.

15 I find that the incremental redistricting
16 of Waiawa is reasonable and warranted due to the
17 uncertainty of a Waiawa Ridge Development and the
18 infrastructure improvements associated with it.

19 The reclassification is subject to LUC's
20 standard conditions as well as those conditions filed
21 with the Commission and agreed to between OP and the
22 Petitioner.

23 Regarding Condition 11 with regards to the
24 TIAR. The Memorandum of Agreement between the
25 Petitioner and DOT is kinda left open ended. I would

1 like to see a deadline as far as -- a deadline imposed
2 as part of the conditions in which the MOA is agreed
3 to by both the state and the Petitioner.

4 So I'm not -- I guess for OP, you know,
5 regarding schedule review time, is a year from now
6 sufficient? Is six months from now? Based on the
7 testimony the highways administrator had stated that
8 they're in the process of reviewing and should be
9 completed with their review and forward those comments
10 and concerns to the Petitioner.

11 So I'm trying to get a feel as to what is a
12 reasonable date to establish as far as execution of
13 the MOA.

14 MR. MATSUBARA: Bryan can correct me if I'm
15 wrong. But my understanding is DOT is willing to wait
16 until they've acted upon and approved the final TIAR
17 so the MOA can incorporate the changes and the
18 requirements that are included in the final TIAR, so
19 that they're ensured at the very least, that the
20 latest figures, calculations, volumes, et cetera, so
21 on, are going to be addressed and included as part of
22 the MOA.

23 That was my understanding, Bryan, that that
24 would be sufficient.

25 MR. YEE: As we had stated we were, OP was

1 willing to accept the conditions set out in the
2 Wai'ale case which links the MOA acceptance to the
3 subdivision approval, which is different than what
4 you're asking for. So the link was not to a
5 particular date but to a process of the land use case
6 at the county level.

7 If you're asking for a date I can probably
8 get you one, but I do not have one now. And I could
9 probably -- so I'm sorry. That's the only answer I
10 can give you.

11 COMMISSIONER McDONALD: Is the actual
12 acceptance of the TIAR required as part of the MOA?

13 MR. YEE: Essentially the answer is gonna
14 be yes, because they're sort of done concurrently
15 together. So the TIAR sets out the basis by which all
16 of the provisions in the MOA are done. The MOA in
17 some sense is really sort of the summary conclusion of
18 what has to be done based upon the analysis done in
19 the TIAR.

20 So the analysis has to be approved or
21 accepted before you can figure out what the actual
22 improvements are to be made. And I will say that
23 there's often a certain additional analysis that might
24 be done on some of the specifics in the MOA.

25 Just as an example, the TIAR might say,

1 "You need a right-turn lane." The MOA might say, "You
2 shall have a right-turn lane of this length." So
3 there's a sequence to it in which the TIAR accepts the
4 numbers, not the MOA.

5 COMMISSIONER McDONALD: Would the state and
6 the Petitioner be willing to agree to a deadline for
7 the MOA?

8 MR. MATSUBARA: I have no problem with a
9 deadline. The only real life issue is the fact that
10 under the TIAR condition in the Wai'ale case we're
11 going to submit a revised TIAR with the zoning
12 application. So the county and DOT will have their
13 revised TIAR based on changes that may have occurred
14 during the county entitlement process. So DOT will
15 have a revised TIAR at that time to review.

16 And under the concept we have in Wai'ale,
17 acceptance would be prior to subdivision. So they
18 have that time when the zoning Ap is submitted, they
19 get the revised TIAR.

20 And during that process I imagine an MOA
21 can be executed and a final TIAR can be done at the
22 same time before subdivision approval.

23 I mean it's a moving date depending on when
24 the county finishes.

25 COMMISSIONER McDONALD: Right. Right. I

1 understand the challenges with the acceptance of the
2 TIAR. My concern is more with, you know, DOT has
3 reviewed the TIAR, made their comments, formulated an
4 MOA between the state and the Petitioner and the
5 Project moves forward based on that agreement.

6 It's not -- for me I'm not necessarily
7 looking for an approval or an acceptance of the TIAR,
8 but an understanding between the Petitioner and the
9 state that these things will need to happen as the
10 Project moves forward.

11 MR. YEE: If I could insert just -- maybe
12 it's a terminology issue. There was in the record
13 discussions about an Agreement in Principal. That's
14 not the MOA that we were talking about. So I think
15 when you were asking about the MOA, in my mind I had
16 made a clear distinction about the particular
17 documents that you were referring to.

18 There certainly is a document of an
19 Agreement in Principal which, quite frankly, I think
20 we might have just dropped in anticipation that we're
21 no longer looking at that as a necessary element to
22 the case.

23 So I just add that information so in case
24 you were looking at testimony or documents in the
25 record that refer to an Agreement in Principal

1 particularly in the last case, that's a different
2 document than the MOA.

3 The MOA, quite frankly, is intended to be
4 more technical, much more engineering wise. The
5 Agreement in Principal tends to be a little broader in
6 terms of what would be done.

7 MR. MATSUBARA: Mr. Yee's correct. In the
8 prior hearing we had a document that was referred to
9 as an LOI, letter of intent, which was broader and
10 more general which was submitted as part of the
11 evidentiary exhibits.

12 That would then lead to the second step
13 once you have the final revised TIAR, to come up with
14 an MOA which would have the specifics and the detail
15 that you're required to have in when you finally do
16 your construction.

17 So Bryan's right. We thought that we would
18 proceed right to the MOA as opposed to have that
19 general Letter of Intent. That's the difference
20 between what happened previously when that letter was
21 submitted by DOT as part of the record before you, as
22 opposed to in this instance when I think DOT's
23 preference is just to go to the MOA straight. Don't
24 have the Letter of Intent. That's why a bit of
25 confusion in what the process and procedure should be.

1 COMMISSIONER McDONALD: When I read
2 Condition 11, "Petitioner shall obtain acceptance of
3 the Revised TIAR prior to city approval of a zone
4 change for the Petition Area..."

5 MR. YEE: Well, that was originally OP's
6 condition, I think, not Petitioner's. As I indicated
7 OP's willing to accept the Wai'ale condition.

8 COMMISSIONER McDONALD: I don't have --
9 (pause) Bert, do you have Condition 11?

10 MR. SARUWATARI: For Wai'ale?

11 COMMISSIONER McDONALD: No, for this
12 Project.

13 MR. MATSUBARA: The condition we submitted
14 in our originally proposed D&O?

15 COMMISSIONER McDONALD: I guess what you
16 folks, the Petitioner and the state had agreed to
17 regarding the TIAR.

18 MR. MATSUBARA: We agreed to what you
19 adopted yesterday in the Wai'ale Decision and Order.

20 MR. YEE: And my understanding is the
21 revised TIAR will be submitted prior to or on the date
22 of the zoning application. But the MOA has to be
23 executed prior to the subdivision approval. Those
24 were the links in the land use process we created.

25 We didn't set forth dates, you know, in

1 part because the dates weren't as important in terms
2 of concurrency as the land use process approvals. So
3 as long as you get certain things done by a certain
4 time in the land use process, that's what we're
5 looking at.

6 (Pause)

7 COMMISSIONER McDONALD: Chair, I'd like to
8 move for executive session.

9 COMMISSIONER CHOCK: Second.

10 COMMISSIONER LEZY: There's a motion. All
11 in favor? (aye) All opposed? You folks can stay
12 here. We'll exit. Ten minutes.

13 (Executive session was held 11:25-11:45)

14 CHAIRMAN LEZY: Back on the record. I
15 thank you for your patience, everybody. When we broke
16 for executive session there was a start of a motion I
17 believe by Commissioner McDonald.

18 COMMISSIONER McDONALD: Thank you, Chair.
19 The motion before us is to approve the
20 reclassification of Koa Ridge Makai comprised of
21 approximately 576 acres to Urban District and the
22 incrementally redistricting of Castle & Cooke Waiawa
23 comprised of approximately 191 acres.

24 Again, I find that the incremental
25 redistricting of Waiawa is reasonably warranted due to

1 the uncertainty of the Waiawa Ridge Development and
2 the infrastructure and improvements associated with
3 it.

4 The reclassification is subject to LUC's
5 standard conditions as well as those conditions filed
6 with the Commission and agreed to between OP and the
7 Petitioner. I would like to restate the condition for
8 the Commission as well as the parties regarding the
9 highway improvements.

10 "The Petitioner shall fund, construct and
11 implement all construction improvements and measures
12 required to mitigate impacts to state roadway
13 facilities caused by the Project and as set forth in
14 an MOA agreed to and executed between the DOT and the
15 Petitioner.

16 "The Petitioner shall submit to DOT prior
17 to application for zone change an updated TIAR. The
18 Petitioner shall obtain acceptance of the Project's
19 TIAR from DOT and shall execute the MOA prior to final
20 subdivision approval of the initial phase of onsite
21 development by the Petitioner."

22 CHAIRMAN LEZY: For the record,
23 Commissioner McDonald, that is Condition No.?

24 COMMISSIONER McDONALD: This would be
25 Condition 11.

1 CHAIRMAN LEZY: Thank you. Is there a
2 second?

3 COMMISSIONER JUDGE: I'd like to second
4 that with a friendly amendment. It would build on the
5 Condition No. 11. I think the discussion that
6 Commissioner McDonald was raising before I think goes
7 to the issue of concurrency. Because as we've heard
8 testimony, and it's common knowledge that the problems
9 of transportation and traffic are a real problem in
10 this area. And I think it's only fair that there is
11 an assurance to the public that there will be
12 concurrency of the necessary improvements along with
13 the development of the commercial and the housing.

14 So I'd like to add a sentence to that last
15 paragraph that Commissioner McDonald just read to
16 state that, "The executed MOA shall contain language
17 that ensures that identified transportation
18 improvements will be built concurrently with the
19 commercial and residential improvements," so that we
20 know that they're not going to build a bunch of houses
21 and commercial, then the roadways and improvements
22 will come 10 years later.

23 It needs to be concurrently so that the
24 traffic issues will be mitigated as they occur rather
25 than be dealt with later, so we don't make the

1 situation worse than it already is.

2 And the second friendly amendment would
3 also be to include, change the finding of fact 87 to
4 the proposed finding of fact 87A that the Office of
5 Planning incorporated regarding the statement of the
6 acreage needed for agricultural production.

7 Because I do feel that that is not
8 something that the -- personally I don't feel that's
9 something that the Commission should be saying that we
10 only need X amount, but that's something simply that
11 was testimony from Mr. Plasch.

12 CHAIRMAN LEZY: Commissioner McDonald, do
13 you accept the amendments?

14 COMMISSIONER McDONALD: Yes.

15 CHAIRMAN LEZY: Commissioner Teves.

16 COMMISSIONER TEVES: Mr. Chairman, I'd also
17 like to add a friendly amendment and clarification of
18 Petitioner's finding of fact 82. "The Petitioner
19 agrees to complete the design and construction of the
20 Pineapple Interchange including all associated on and
21 offramps and necessary freeway improvements."

22 And under finding of fact 187 it goes on to
23 say that the, "DOT is particularly concerned about the
24 development thresholds for the construction and
25 completion of the Pineapple Road Interchange."

1 I want to add, contain language to specify
2 that "After the 1800th residential unit is completed
3 and/or after the 320,000 square feet of commercial
4 floor area is completed, the Pineapple Interchange and
5 all on and off-ramps and the highway improvements be
6 completed and operational before any further units are
7 occupied or commercial space occupied."

8 CHAIRMAN LEZY: Commissioner McDonald?

9 COMMISSIONER McDONALD: Accepted.

10 CHAIRMAN LEZY: Any other amendments?
11 Discussion? I have a few things I'd like to say.
12 First, I echo Commissioner McDonald's thank you's to
13 the parties for their presentations, in particular the
14 Intervenors for your very well-articulated positions.
15 We don't often get, as a Commission, get what I would
16 characterize as a true adversarial process. And
17 we've had the luxury of that in the two pending --
18 O'ahu pending petitions that are before us.

19 I'd also like to thank the public for their
20 attention to this case and for their contributions,
21 and, of course, also to the staff for their hard work
22 on this Petition.

23 I think, as most of you know, this Petition
24 in a previous life was approved but set aside because
25 of a defect in the approval of the form of the

1 decision and order. In that prior Petition I voted in
2 favor of this Petition. And for the same reasons that
3 I supported the prior Petition I support this
4 Petition.

5 I think that this Petition Area is
6 appropriate for redistricting under the Commission's
7 criteria as has already been discussed at some length
8 today. And I think, maybe more importantly, that in
9 this Petition the Petitioner, the actions that the
10 Petitioner has taken to mitigate the impacts that this
11 development will have, and in particular the agreement
12 to designate IAL voluntarily, I think speaks to the
13 commitment that the Petitioner has to the community.

14 That said, I think Commissioner Heller, who
15 is conflicted on this case, said something in the
16 Petition that we heard just recently that is a very
17 simple point but it's something that the Commission
18 faces on every Petition that we have. "We never have
19 a Petition that is perfect. There are always going to
20 be concerns."

21 And it's about, as Mr. Seitz pointed out,
22 trying to balance the positive and the negative
23 aspects of any Petition and ensuing development.

24 I believe in this instance the positives
25 far outweigh the negatives. And for that reason I

1 will again vote in favor of this Petition.

2 Commissioner Judge.

3 COMMISSIONER JUDGE: Thank you, Chair. I
4 was also lucky enough to hear this case for a second
5 time. And I think it was interesting because when it
6 came back it came back in an improved form. I think a
7 lot of the questions and issues that we had raised the
8 first time there were answers and there was some
9 resolutions because there had been time to talk with
10 the different agencies.

11 Castle & Cooke had also made good on their
12 commitment to designate the, I think it was over -- I
13 think it was, like, 900 acres of land into the
14 Important Agricultural Lands. And also I think it's
15 important that this land is designated within the
16 Urban Community Boundaries. It is consistent with the
17 General Plan, as the state said.

18 And I recognize that it's a planning
19 process that may not be perfect, but having been in
20 the County Planning Department on Maui it is an
21 lengthy process. It is a thorough process and it's a
22 process that does invite a lot of public
23 participation.

24 And so I would invite all these people who
25 have given testimony to us that they please

1 participate in those community planning events when
2 the community plans are up for approvals or updates,
3 that that is also a great time for your voice to be
4 heard.

5 But I think once these plans are adopted
6 they are a blueprint for the future. And I think even
7 though perhaps they're not set in absolute concrete
8 stone, they are a guide for the community and for
9 anybody seeking to, you know, to go forward with any
10 development whether it be non-profit or profit. I
11 mean that is the -- that's the blueprint.

12 So I do think that's an important process
13 and an important aspect that it is consistent with the
14 city's plan and the state's plan. So I also, I
15 supported it the first time and I will be supporting
16 it the second time.

17 COMMISSIONER LEZY: Further discussion?
18 Mr. Saruwatari.

19 MR. SARUWATARI: On the motion to approve
20 the reclassification of Koa Ridge Makai and the
21 incremental districting of Castle & Cooke Waiawa
22 subject to the LUC standard conditions and the
23 conditions agreed to by Petitioner and OP with
24 amendments to Condition No. 11, as stated by
25 Commissioner McDonald, with further amendments to the

1 condition and findings of fact proposed by
2 Commissioners Judge and Teves.

3 On that motion, Commissioner McDonald?

4 COMMISSIONER McDONALD: Yes.

5 MR. SARUWATARI: Commissioner Judge?

6 COMMISSIONER JUDGE: Yes.

7 MR. SARUWATARI: Commissioner Teves?

8 COMMISSIONER TEVES: Yes.

9 MR. SARUWATARI: Commissioner Contrades?

10 COMMISSIONER CONTRADES: Yes.

11 MR. SARUWATARI: Commissioner Makua?

12 COMMISSIONER MAKUA: Aye.

13 MR. SARUWATARI: Commissioner Chock?

14 COMMISSIONER CHOCK: Yes.

15 MR. SARUWATARI: And, Chair Lezy?

16 CHAIRMAN LEZY: Yes.

17 MR. SARUWATARI: Chair Lezy, we have seven
18 votes in support of the motion. The motion passes.

19 CHAIRMAN LEZY: Thank you. Thank you,
20 everybody unless there's something you'd like to add.

21 MR. MATSUBARA: On behalf of my clients I'd
22 like to thank the Commission especially for sitting
23 through this a second time, accommodating this hearing
24 through your busy schedule and reaching a decision
25 before June 30th. Thank you very much.

1 CHAIRMAN LEZY: Thank you. With that we
2 stand adjourned.

3 (The proceedings were adjourned at 12:00 p.m.)

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

2

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

5 That I was acting as court reporter in the
6 foregoing LUC matters on the 7th day of June 2012;

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

15 DATED: This_____ day of_____2012

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

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24

25