

LAND USE COMMISSION
STATE OF HAWAII

HEARING

A12-795 WEST MAUI LAND COMPANY, INC.-)
KAHOMA RESIDENTIAL, LLC (Maui)
_____)))))

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing Meeting at Courtyard Maui Kahului Airport, Haleakala Room, 532 Keolani Place, Kahului, Hawai'i commencing at 10:05 a.m. on July 19, 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:

SHELDON BIGA

KYLE CHOCK (Chairman)

THOMAS CONTRADES

RONALD HELLER

LANCE INOUE

CHAD McDONALD

ERNEST MATSUMURA

NICHOLAS TEVES, JR.

EXECUTIVE OFFICER: DAN ORDENKER

CHIEF CLERK: RILEY HAKODA

STAFF PLANNER: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A12-795 West Maui Land Company, Inc. Kahoma
Residential, LLC

For the Petitioner:

JAMES GEIGER, ESQ.

HEIDI BIGELOW West Maui Land

For the County:

JAMES GIROUX, ESQ.

Deputy Corporation Counsel

WILLIAM SPENCE, Planning

Dept.

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

RODNEY FUNAKOSHI

Office of Planning

Intervenor:

ROUTH BOLOMET

Intervenor:

MICHELLE LINCOLN

Also present: Mr. Michael Kumukauoha Lee

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1 CHAIRMAN CHOCK: Morning. I'd like to call
2 this meeting of the state Land Use Commission to
3 order. First item on our agenda is the adoption of
4 minutes for July 5th, 2012. Do we have a motion to
5 approve?

6 COMMISSIONER McDONALD: So moved, Chair.

7 COMMISSIONER INOUE: Second.

8 CHAIRMAN CHOCK: Moved and seconded. All
9 in favor say aye. (Voting: Aye) Any opposed? The
10 minutes are adopted. Tentative meeting schedule,
11 Executive Officer.

12 MR. ORODENKER: Thanks, Mr. Chair. Our
13 next meeting is on August 2nd and 3rd, again, back
14 here on Maui for ATC Makena Entities. We also have
15 site visits to the West Maui Land site and Kauonoulu
16 Ranch site.

17 On August 23rd and 24th we will again be
18 here on Maui to continue hearings on this matter, West
19 Maui Land, and to hear a Kauonoulu Ranch Motion for
20 Order to Show Cause.

21 September 6th and 7th we are again here on
22 Maui, a continuation of the Kauonoulu Ranch Motion for
23 Order to Show Cause and West Maui Land continued
24 hearing.

25 CHAIRMAN CHOCK: Okay. Thank you. Thank

1 you, Dan. Before we get started I'd like to welcome
2 our newest member to the State Land Use Commission.
3 He is Maui representative Sheldon Biga. Sheldon,
4 welcome. (Applause).

5 Okay. This is an action meeting on A12-795
6 West Maui Land Company, Inc.-Kahoma Residential, LLC
7 to consider: Intervenor Bolomet's Motion for an
8 Extension to Enter Exhibits, Petitioner's Motion to
9 Exclude Intervenor Bolomet's Witnesses on
10 International Law and Title, Petitioner's Motion to
11 Exclude Intervenor Bolomet's Exhibits 1 through 13,
12 and 15 through 17, Petitioner's Motion to Exclude
13 Expert Testimony from Witness for Which No Written
14 Direct Testimony was Provided.

15 And the reclassification of approximately
16 16.7 acres of land from the Agricultural District to
17 the Urban District at Lahaina, Maui, Hawai'i for a
18 residential subdivision to provide 68 single-family
19 affordable housing units to families earning less than
20 160 percent of the median family income of families in
21 Maui County.

22 Will the parties please identify themselves
23 for the record.

24 MR. GEIGER: Good morning, Chair,
25 Commissioners. James Geiger appearing on behalf of

1 Petitioner West Maui Land Company, Inc. To my left,
2 your right, is the company representative Heidi
3 Bigelow.

4 MR. GIROUX: Good morning, Commissioners.
5 James Giroux deputy corporation counsel, county of
6 Maui and representing Mr. Spence the planning director
7 county of Maui.

8 MR. YEE: Good morning. Deputy Attorney
9 General Bryan Yee on behalf of the Office of Planning.
10 With me is Rodney Funakoshi from the Office of
11 Planning.

12 MS. LINCOLN: My name is Michele Lincoln.
13 I'm an intervenor.

14 MS. BOLOMET: Routh Bolomet. I'm an
15 intervenor. And this is Michael Lee. He's going to
16 be speaking on my behalf.

17 CHAIRMAN CHOCK: Good morning. Let me
18 update the record on this matter. On June 6, 2012
19 the Commission received Petitioner's full-sized map of
20 the Petition Area and Petitioner's Exhibit 15A
21 Intervenor Michele Lincoln's resumé.

22 On June 19, 2012 the Commission received
23 copies of Intervenor Michele Lincoln's List of
24 Witnesses, Statement of Position, List of Exhibits,
25 and Exhibits 1 through 7.

1 Intervenor Bolomet Witness and Exhibit
2 Lists, position statement, Exhibits 1 through 17.

3 OP List of Exhibits, Witnesses and Exhibits
4 marked 3 through 5.

5 Petitioner's Witness List, Exhibit List,
6 printed copies of Exhibits 15A through 25 and one CD
7 with Petitioner's Exhibits 1 through 25.

8 On June 22nd, 2012 the Commission mailed
9 orders granting Petitions to Intervene to Michele
10 Lincoln and Routh Bolomet. On the same day the
11 Commission received written correspondence from
12 Intervenor Bolomet regarding filings to the LUC.

13 On June 25, 2012 the Commission received
14 copies of Intervenor Michele Lincoln's video media
15 exhibits; Intervenor Bolomet Motion for Extension,
16 rebuttal Witness and Exhibit Lists, Exhibits 1 through
17 5, 5A, 5B, 6 through 8, 8A, 9, response to James
18 Geiger letter dated 6-2-12, Witness List substitution,
19 Exhibit List, Exhibits 1 through 5, 5A, 5B, 6 through
20 8, 8a, 9 through 17.

21 On June 26, 2012 the Commission received a
22 copy of followup correspondence from Petitioner to
23 Intervenor Bolomet regarding filings to the LUC, and
24 e-mail correspondence from Intervenor Bolomet
25 regarding difficulty in filing and receiving documents

1 and Certificate of Service problems.

2 On June 27th the Commission received
3 Petitioner's Affidavit of Publication of Notice of
4 Hearing.

5 June 29, the Commission received copy of
6 Petitioner's correspondence to Intervenor Bolomet
7 dated June 25th regarding a Request to Extend Time to
8 Submit Exhibits and/or Written Testimony.

9 I'm going to pass out reading all of these
10 now. (Audience laughter).

11 Copy of Petitioner correspondence to
12 Intervenor Bolomet dated June 28, 2012 regarding
13 Denial of Request to Extend Time to Submit Exhibits
14 and/or Written Testimony.

15 Intervenor Lincoln's Rebuttal Statement and
16 Rebuttal Exhibit, Intervenor's witness testimonies
17 and profiles, Petitioner's rebuttal Witness List,
18 Petitioner's Memorandum in Opposition to Routh
19 Bolomet's Motion for an Extension to Enter Exhibits.

20 Petitioner's Rebuttal Exhibit List, 26
21 through 36; Petitioner's direct testimony of Charles
22 Biegle, Robert Hodby, David Perzinski, Michael Dega,
23 Kirk Tanaka, Anthony Gonzalez, Paul Singleton, Sherri
24 Dodson, Josh Guth, Dylan Payne, Leonard Nakoa, Kimokea
25 Kapahulehua, Keith Niiya, Heidi Bigelow, Rory

1 Frampton.

2 Intervenor Routh Bolomet Amendments to
3 Witness and Exhibit List, Rebuttal Witness List,
4 Rebuttal Exhibit List and unidentified exhibits.

5 On July 2nd the Commission received
6 Intervenor Bolomet's Amendments to her filing on June
7 29 Response to Geiger 6-28 letter, Routh Bolomet
8 Testimony, Testimony of Aran Ardaiz, Wilmont
9 Kahaiali'i, Robin Knox, and Robin Knox's Formal
10 Resumé.

11 Intervenor Michele Lincoln's Amended
12 Exhibit List, Intervenor's Written Testimony.

13 Maui County Planning's Rebuttal Testimony
14 for a State Land Use District Boundary Amendment;
15 Exhibit List Amendment No. 1, Exhibits 6, 7, and 8.

16 Maui County Planning's Amendment No. 1,
17 Exhibit List. Amendment No. 2, Testimony of Rowena
18 Andaya, deputy director of Public Works, county of
19 Maui, Supplemental Traffic Report by Austin Tsutsumi &
20 Associates, Testimony of Jo Ann Ridao, director of
21 Housing and Human Concerns county of Maui, resumé for
22 David Taylor, director of Water Supply, county of
23 Maui, testimony of David Taylor.

24 OP's Testimony in Support of Petition with
25 Conditions.

1 On July 3rd, 2012 the Commission received
2 Intervenor Bolomet's Amendment to Robin Knox's
3 testimony and June 29, 2012 index.

4 On July 10 the Commission received
5 Petitioner's Request for Hearing, Petitioner's Motion
6 to Exclude Intervenor Bolomet's Witnesses on
7 International Law and Title; Motion to Exclude
8 Intervenor Bolomet's Exhibits 1 through 13, and 15
9 through 17 and Petitioner's Exhibits A through D.

10 Motion to Exclude Expert Testimony from
11 Witness for Which no Written Direct Testimony was
12 Provided.

13 On July 16, the Commission received a copy
14 of written correspondence from Intervenor Bolomet to
15 the parties regarding rebuttal witness testimonies.

16 On July 17 the Commission received a copy
17 of written correspondence via e-mail to parties from
18 Intervenor Bolomet regarding exhibit filings.

19 Intervenor Bolomet's Motion to Deny
20 Petitioner's Request to Exclude Witnesses and Exhibits
21 and to not Grant Leniency due to ADA and Pro Se status
22 as protected under federal law.

23 OP's Joinder to Petitioner's Motion to
24 Exclude Intervenor Bolomet's Witnesses on
25 International Law and Title.

1 OP's Joinder to Petitioner's Motion to
2 Exclude Intervenor Routh Bolomet's Exhibits 1 through
3 13 and 15 through 17.

4 And OP's Statement of No Opposition to
5 Petitioner's Motion to Exclude Expert Testimony for
6 Which No Written Direct Testimony was Provided.

7 On July 18 the Commission received Maui
8 County's Joinder to Petitioner's Motion to Exclude
9 Intervenor Bolomet's Witnesses on International Law
10 and Title; Joinder to Petitioner's Motion to Exclude
11 Intervenor Routh Bolomet Exhibits 1 through 13 and 15
12 through 17.

13 And No Opposition to Petitioner's Motion to
14 Exclude Expert Testimony from Witness for Which No
15 Written Direct Testimony was Provided. I think that's
16 our summary. Can we go home now? (Audience
17 laughter).

18 Let me briefly describe our procedure for
19 today on this docket. First, the Commission will
20 address and decide on Intervenor Bolomet's Motion for
21 an Extension to Enter Exhibits, and secondly,
22 Petitioner's Motions to Exclude Intervenor Bolomet's
23 Witnesses on International Law and Title, Exhibits 1
24 through 13, and 15 through 17 and Expert Testimony
25 from Witness for which no Written Direct Testimony was

1 provided.

2 After the aforementioned motions are
3 deliberated and decided on I'll then call for those
4 individuals desiring to provide public testimony on
5 the reclassification of land from the Agricultural
6 District to the Urban District and to identify
7 themselves.

8 All such individuals will be called in turn
9 to our witness box where they will be sworn in prior
10 to their testimony. After completion of the public
11 testimony portion of the proceedings staff will
12 provide its map orientation.

13 After staff has provided its map
14 orientation I will give opportunity for the parties to
15 admit their exhibits to the record. After the
16 admission of exhibits to the record the Petitioner
17 will present its case.

18 Once Petitioner is completed with its
19 presentation it will be followed in turn by the county
20 of Maui Planning Department, state Office of Planning,
21 Intervenor Michele Lincoln and Intervenor Routh
22 Bolomet.

23 Because the parties' presentation of their
24 cases will likely not be finished by the end of
25 business today, presentations will be continued

1 tomorrow. However, public testimony on this agenda
2 will only be taken today.

3 Are there any questions on our procedure?
4 Petitioner?

5 MR. GEIGER: No questions.

6 CHAIRMAN CHOCK: County?

7 MR. GIROUX: No questions.

8 CHAIRMAN CHOCK: State?

9 MR. YEE: No questions.

10 CHAIRMAN CHOCK: Intervenor, any questions?

11 MS. LINCOLN: One question. So there's no
12 public testimony tomorrow? Is that what you're
13 saying?

14 CHAIRMAN CHOCK: Normally we do take pub --

15 MS. LINCOLN: I thought someone told me at
16 every meeting you guys had public testimony.

17 CHAIRMAN CHOCK: Yes. Normally we do take
18 testimony on every agendaed meeting.

19 MR. ORODENKER: Generally we will take
20 public testimony if someone is here. However, the
21 majority of the public testimony will be taken today
22 because this is when we were originally scheduled. We
23 usually like to have the public testify first because
24 (inaudible).

25 MS. LINCOLN: The only reason I'm asking is

1 I wrote a letter to the editor of Lahaina News and
2 Maui News. And I wrote that if they wanted to testify
3 and I wrote the times and dates and place for today
4 and tomorrow. But I encouraged them to email or write
5 in instead.

6 CHAIRMAN CHOCK: If we have people signed
7 up to testify tomorrow we'll take testimony.

8 MS. LINCOLN: I don't. I just wrote
9 letters so the public is aware.

10 CHAIRMAN CHOCK: Ms. Bolomet, any
11 questions?

12 MS. BOLOMET: Yes. How do you -- do people
13 have to sign up to be a test --

14 CHAIRMAN CHOCK: Yes.

15 MS. BOLOMET: When they get here in the
16 morning or prior to?

17 CHAIRMAN CHOCK: Prior to or during the
18 morning of the hearing. Riley can take the -- he has
19 the signup sheet. Riley, can you raise your hand.

20 MS. BOLOMET: Okay. 'Cause I think we'll
21 have more people tomorrow than today. I wasn't quite
22 sure how this was gonna go.

23 COMMISSIONER HELLER: Mr. Chair.

24 CHAIRMAN CHOCK: Yes.

25 COMMISSIONER HELLER: Before we proceed any

1 further on this docket, I'd like to just put a quick
2 disclosure on the record. I noticed that on the
3 Petitioner's Certificate of Service both Maui Electric
4 Company and Hawaiian Telcom, Inc. are being served.
5 My understanding is they're not actually parties to
6 this case but they're apparently being served because
7 they have some connection.

8 I want to disclose that my law firm does
9 work for Hawaiian Telcom. I'm not sure if we actually
10 do any work for Maui Electric Company, but I know we
11 do work for Hawaiian Electric Company, which is its
12 parent. So I want to make that disclosure. And if
13 anybody has any issue with my participation in the
14 case, this would be the time to raise it.

15 MR. GEIGER: We have no objection.

16 CHAIRMAN CHOCK: County?

17 MR. GIROUX: County has no objections.

18 CHAIRMAN CHOCK: State?

19 MR. YEE: No objection. We would only note
20 that oftentimes the utility companies are listed
21 simply because they have an easement on the property
22 as they typically do on most properties.

23 CHAIRMAN CHOCK: Intervenor?

24 MS. LINCOLN: I don't have a problem.

25 MS. BOLOMET: I'm okay with that.

1 CHAIRMAN CHOCK: Commissioners, any
2 concerns, comments, questions? Thank you for the
3 disclosure. We will now begin proceedings on the
4 motions.

5 MS. BOLOMET: May I ask a question? I got
6 an email yesterday because I was in travel so I didn't
7 get mail on one of the responses from Bryan Yee, which
8 basically explained that the ownership was decided
9 upon by the executive director of the LUC.

10 So I put in a motion this morning. Sorry
11 for the late motion, but I just learned about this,
12 which basically in the rules it allows me to put in a
13 motion to ask for basically special circumstances.

14 And what I was asking for is if the
15 executive director has the power to state who is the
16 owner, he should only be able to do that if he sees
17 both sides of the picture. I have court documents
18 with me that shows that I have been -- my ancestor was
19 recognized by the courts. And there's also court
20 documents with the docket numbers that I provided
21 where you can go and look on the -- for the final
22 judgment on the Ho'ohiki website.

23 I know you're supposed to put in stamped
24 and certified copies. And at this late time that's
25 the best that I could do was give you the docket

1 number so you can look it up yourself.

2 So if we're talking about ownership and the
3 executive director has the power to decide ownership
4 on this so that this Petition can be heard, I'm asking
5 that I be allowed to have, go through due process and
6 be able to show my papers as well. And I did not
7 because I feel my genealogy is private, I did not
8 print that up.

9 I asked that I be able to show whoever I
10 need to show it to in private and they look at all my
11 paperwork. Because at this point if, in fact, you can
12 rule that I'm the owner, which according to the law I
13 am, then I would -- I don't want this property
14 rezoned. I plan on using it as agriculture.

15 So I would think that moving forward with
16 these proceedings would not be necessary if we can
17 make that decision. Because at that point the
18 Petitioner did not meet the Rule 15-15-50 to prove
19 that they had controlling interest or were the owners
20 of this property.

21 CHAIRMAN CHOCK: I'll entertain a motion to
22 go into executive session.

23 COMMISSIONER HELLER: So moved.

24 COMMISSIONER McDONALD: Second.

25 CHAIRMAN CHOCK: All in favor? So we're

1 going to go into executive session. And I'd like to
2 ask the parties and the public to leave the room.
3 When we're done we'll invite everybody back in.

4 (10:30 executive session)

5 CHAIRMAN CHOCK: (gavel) Back on the
6 record. Ms. Bolomet, with respect to the oral motion
7 that you're bringing today, based on our
8 interpretation of the rules and on the prima facie
9 evidence that's been presented by the Petitioner
10 regarding title and adequacy of title, the Chair's
11 going to deny your motion at this time.

12 And also let you know that we are not the
13 proper jurisdictional body to make determinations as
14 to adequacy of title. And the more appropriate venue
15 to address those types of concerns would be in the
16 court system. So we're going to move on at this point
17 in time and continue on with the other motions in
18 front of us this morning.

19 MS. BOLOMET: May I ask something, though?

20 CHAIRMAN CHOCK: Yes.

21 MS. BOLOMET: So the Land Court deciding
22 that I am the heir of Kaaua, which is one of these
23 properties, is not going to court and getting the --
24 'cause that's what I was told I needed to do was have
25 a court ruling. And Kahoma Land was denied. When

1 they tried to kick me out they were denied by the
2 courts and my genealogy stood up.

3 I don't know how you guys can deny that I'm
4 the heir when the courts -- you're saying I need to go
5 to the courts. I went to the courts.

6 CHAIRMAN CHOCK: We're not denying your
7 claim. We're just saying that we're not the
8 appropriate jurisdictional body to decide that.

9 MS. BOLOMET: But didn't you decide it?
10 You decided it by saying that they're the owners.

11 CHAIRMAN CHOCK: No. We've said that the
12 Petitioner submitted sufficient evidence based on
13 their title records to our executive officer to deem
14 the Petition complete.

15 So if there is an appropriate venue for you
16 to challenge that that would not be in this body. It
17 would be in the courts.

18 MS. BOLOMET: Okay. So I just want to get
19 on the record that you're denying me due process that
20 you've offered to the Petitioner.

21 CHAIRMAN CHOCK: Okay. So noted. Shall we
22 move on with the first item: Intervenor Bolomet
23 Motion for Extension to Enter Exhibits. Ms. Bolomet,
24 please make your presentation.

25 MS. BOLOMET: I don't need an extension. I

1 got all my -- I got everything in that I needed to get
2 in. So when I put that extension in I thought I was
3 going to need more time. So in following motions I
4 said that I would not need an extension. My witnesses
5 and exhibits were put in as a -- I didn't know I was
6 supposed to call them rebuttals. I thought I was just
7 supposed to put 'em in. So I apologize for my
8 ignorance, but they were always my rebuttal witnesses
9 in rebut to these items and the testimonies.

10 So as far as I understand the rules, which
11 I may be wrong, I don't think I need the extension. I
12 put everything in I wanted to by the dates I was told
13 to.

14 CHAIRMAN CHOCK: Do you have anything
15 further to add?

16 MS. BOLOMET: No. I'm pretty ignorant in
17 this process.

18 CHAIRMAN CHOCK: Okay. Petitioner?

19 MR. GEIGER: If I understood Ms. Bolomet
20 correctly, it sounds like she's withdrawing her
21 motion. And if that's the case I wouldn't have any
22 further comment. If she's not withdrawing her motion
23 obviously I believe the pleading set forth that there
24 was no good faith basis for an extension time.

25 MR. GIROUX: We're of the same position.

1 We'd feel more comfortable if on the record it was
2 stated the motion was withdrawn so we don't have to
3 make any argument in that position.

4 CHAIRMAN CHOCK: Ms. Bolomet, are you
5 trying to withdraw your exhibits?

6 MS. BOLOMET: Okay. Let me just get some
7 clarification. My water person, Robin Knox, that I
8 got in her partial testimony on July 2 and amended it
9 with the full testimony on July 3rd, I am not asking
10 that that be excluded.

11 I think I did that correctly by amending it
12 therefore I wouldn't need the extension. And if you
13 can clarify to me that I don't need the extension to
14 make sure that all my exhibits and my witnesses are
15 accepted, then I will withdraw the motion.

16 CHAIRMAN CHOCK: I believe your exhibits
17 came in after the stated deadline, so the parties are
18 asking if you're trying to withdraw those exhibits at
19 this time. Or are you acknowledging that you've been
20 late in submitting them?

21 MR. GEIGER: Chair, if I could. I think
22 this is -- all I'm asking is her to withdraw the
23 Motion to Request an Extension of Time at this time.
24 I'm not speaking to the exhibits at this time. I
25 think we have another motion that addresses that.

1 CHAIRMAN CHOCK: Yes. We're taking up her
2 Motion for an Extension to Extend right now at this
3 point. So....

4 MS. BOLOMET: Okay. If we're just talkin'
5 about extension of time, yes, I withdraw it. But I'm
6 not withdrawing my exhibits or my witnesses.

7 CHAIRMAN CHOCK: So we'll move on to the
8 next item: Petitioner's Motion to Exclude Intervenor
9 Bolomet Witnesses on International Law and Title.

10 MR. GEIGER: Chair, just so I'm clear for
11 the record. The Motion for an Extension by
12 Ms. Bolomet has been withdrawn and that's been
13 accepted by the Commission?

14 CHAIRMAN CHOCK: Sorry, can you restate
15 that.

16 MR. GEIGER: Sure. I just wanted for the
17 record to make certain that the Commission has
18 accepted Ms. Bolomet's withdrawal of that Motion to
19 Extend.

20 CHAIRMAN CHOCK: Are you aware that you've
21 submitted exhibits after the deadline that will not be
22 admitted?

23 MS. BOLOMET: No, I don't remember. Sorry.
24 I'm getting very affected by all the off-gassing in
25 here. I'm not remembering all the things that I did.

1 As you can see I have binders of things that I did.

2 So the witnesses that I put in there and
3 especially now that you've denied my motion, I want to
4 keep and I'm going to fight to keep all of my
5 witnesses in place.

6 So I thought when I was putting in the
7 Motion for an Extension I thought I was going to be
8 late. But when I looked at the rules it was saying
9 that I needed to get in -- now, I did misunderstand
10 when I was supposed to get the actual exhibits.

11 I thought I was supposed to get those in
12 with the testimony so that the testimonies were
13 referring to the exhibits. And that's why I didn't
14 put it in. I thought it was just the Exhibit List.

15 So then I tried to remedy my mistake by
16 putting in an extension. But I was then told that, if
17 I understood correctly, that if I put in the list and
18 then said it was an amendment, that I didn't need the
19 extension.

20 So I'm just confused by your procedures.
21 I'm not withdrawing any witnesses or any exhibits.
22 I'm just saying I think I don't need the time because
23 I think I got everything in correctly. I may have
24 just labeled things incorrectly according to your
25 procedures.

1 MR. YEE: Chair, may I have leave briefly
2 to comment? As we understand that Ms. Bolomet's
3 submission of some of the exhibits were late. She
4 filed a Motion for Extension. I believe, she means an
5 extension of time beyond the deadline to allow for the
6 late filing. If she withdraws her Motion for
7 Extension of Time, those exhibits will be late.

8 MS. BOLOMET: Oh, okay. Then I don't want
9 to do that. I take back my withdrawal. Thank you for
10 the explanation.

11 CHAIRMAN CHOCK: Okay. Petitioner, then
12 would you like to kind of restate your comments?

13 MR. GEIGER: Sure. Effectively in order
14 for her to get an extension she's going to have to
15 show either excusable neglect under your rules or good
16 cause or lack of substantial prejudice under the
17 Pre-hearing Order.

18 Now, I've gone through the law on that.
19 And in order to establish excusable neglect she has to
20 show that it was the result of basically a mistake.
21 But it can't be something as simple as reading what
22 the time deadline is. That is not excusable neglect.

23 Good cause, on the other hand, requires
24 something from third parties. But, again, she has to
25 establish that the third-party caused some reason why

1 she could not get the documents in on time. And she's
2 given you nothing within her moving papers that would
3 establish either excusable neglect or good cause.
4 Accordingly, this motion must be denied and no
5 extension can be granted. Thank you.

6 CHAIRMAN CHOCK: County?

7 MR. GIROUX: I believe the County responded
8 so we have no position at this time.

9 CHAIRMAN CHOCK: State?

10 MR. YEE: The State does not disagree with
11 the Petitioner's comments regarding good cause. But
12 with respect to the exhibits that have already been
13 submitted the Office of Planning has no objection to
14 their late submission.

15 We do this with the understanding that no
16 further exhibits are to be submitted as there are
17 several exhibits or some exhibits that have not yet
18 been filed or delivered.

19 We understand Ms. Bolomet is going to be
20 withdrawing those exhibits that have not been filed.
21 So with that understanding we have no objections to
22 the extension of time.

23 CHAIRMAN CHOCK: Ms. Lincoln.

24 MS. LINCOLN: I have no objection.

25 CHAIRMAN CHOCK: Okay. Before I make a

1 determination on the extension, Ms. Bolomet you should
2 know that this is a Commission that has very
3 structured rules, deadlines and procedures for
4 submission of evidence, exhibits and witnesses. I
5 expected you to be able to follow that to a T going
6 forward.

7 But given that you are a new intervenor and
8 new to the process, I'm going to give you some
9 latitude here early on and grant you an extension and
10 give you to August 1 to submit whatever you have not
11 submitted today in order to get onto the record.
12 Okay. So you have 'til August 1 to get those
13 documents in on time.

14 Again, I'm going to be very patient early
15 on. And know that as we move through these
16 proceedings I expect everything to be filed timely and
17 in the proper format. And we will not be as lenient
18 going forward. So please try to kokua us and get
19 everything in on time.

20 MS. BOLOMET: Mahalo.

21 MR. GEIGER: Chair, if I may, if you are
22 going to allow an extension then there should be also
23 an opportunity for the Petitioner to provide a
24 rebuttal.

25 CHAIRMAN CHOCK: Absolutely.

1 MR. GIROUX: The County would like to be
2 afforded that too.

3 MR. YEE: OP as well.

4 MR. GEIGER: So what period of rebuttal are
5 you going to grant?

6 CHAIRMAN CHOCK: August 10th.

7 MR. GEIGER: Chair, just so you understand
8 because these exhibits will be coming later, and I
9 assume it's exhibits only as opposed to witnesses,
10 that some of the witnesses we would be calling today
11 and tomorrow may be required to come back in to rebut
12 this information if it comes in.

13 CHAIRMAN CHOCK: That's fine.

14 MR. GEIGER: Okay.

15 MS. BOLOMET: May I ask a question? Am I
16 supposed to submit a rebuttal to the rebuttal or no?

17 CHAIRMAN CHOCK: No.

18 MS. BOLOMET: Okay.

19 CHAIRMAN CHOCK: You know, I really
20 encourage you to work closely with staff, with Dan and
21 with Riley to get clarity on any of the procedures or
22 rules that you may not be clear on. You can call them
23 at any time, catch them during a break after the
24 proceedings or come early to try to get as much
25 additional information so you can get this stuff in

1 properly.

2 MS. BOLOMET: Okay. Thank you.

3 CHAIRMAN CHOCK: Next item is Petitioner's
4 Motion to Exclude Intervenor Bolomet's Witnesses on
5 International Law and Title.

6 MR. GEIGER: Commissioners, we filed this
7 motion because if you look at the Exhibit List you
8 will note there are a number of witnesses who have
9 been identified to testify about international law, or
10 allodial title or sovereignty matters, including
11 myself as one of the people identified as a witness,
12 and the attorney general for the state of Hawai'i.

13 Obviously that is a matter or those are
14 matters that are not within the jurisdiction of this
15 Commission. And as you've already ruled, the title
16 matter is not within the jurisdiction of this
17 Commission. And as Ms. Bolomet's indicated that these
18 items were being submitted only to go to whether or
19 not you have jurisdiction to proceed.

20 And as you've made a ruling in connection
21 with the oral motion earlier today that you *do* have
22 jurisdiction to proceed, I would suggest that each of
23 these witnesses should be excluded. And if you wish I
24 could read the List of Witnesses but effectively it's
25 in the motion. I believe there are around seven.

1 CHAIRMAN CHOCK: County?

2 MR. GIROUX: We have filed to join in that
3 the County sees this as a use issue not an ownership
4 issue. And we would like the Commission to focus on
5 the proper use of this land and not the ownership.

6 CHAIRMAN CHOCK: State?

7 MR. YEE: The Office of Planning strongly
8 supports this motion. We believe that the issue of
9 completeness has been determined. And that any of
10 these witnesses and exhibits are relevant to the
11 contested case hearing. On that basis we believe that
12 these exhibits and witnesses listed by Petitioner
13 should be excluded from this hearing for the purposes
14 of efficiency and relevance.

15 CHAIRMAN CHOCK: Ms. Lincoln.

16 MS. LINCOLN: I don't know. Um...

17 CHAIRMAN CHOCK: You can say "no comment".

18 MS. LINCOLN: No comment.

19 CHAIRMAN CHOCK: Okay. Ms. Bolomet.

20 MS. BOLOMET: All my witnesses lay the
21 foundation for the use of my land as agriculture and
22 keeping the land in agriculture. There are witnesses
23 that will talk about laws that relate to the HRS laws,
24 that relate to me being able to choose how I use this
25 land. And I am, come from a family of farmers. I do

1 actively farm. And I plan on using my land as
2 agricultural land.

3 And a lot of my -- one of my witnesses in
4 particular, Robin Knox, who speaks about water issues,
5 will actually show you how any housing program or
6 housing development that would be there can actually
7 put the people in eminent harm. And I think that all
8 of these issues we bring up which goes, that touches
9 on my cultural practices that's protected under
10 Article XII, section 7, all lands has to allow native
11 access.

12 I have kupuna iwi that's still on the land.
13 We have artifacts that are still on the land. And if
14 you deny my witnesses we won't be able to demonstrate
15 how all of those things come into effect with the use
16 of our land. And it is in my scope. And I feel as if
17 this would protect my due process through these
18 proceedings.

19 CHAIRMAN CHOCK: Rebuttal?

20 MR. GEIGER: Certainly. We have not
21 objected to Robin Knox. We have not objected to
22 Michael Lee. We have objected to David Kianu Sai,
23 Dexter Kaima, Wilmont Kahaiali'i, Leon Siu, myself,
24 David Louie and Aaron Ardaiz. Each of those people
25 have not been identified. There's nothing in there

1 that indicates they're going to talk about anything
2 other than for an foreign or allodial title,
3 international law and sovereignty.

4 And so to allow them to come in would be
5 irrelevant. It would be immaterial to any decision
6 and it would unduly extend these proceedings. So we
7 would suggest that the answer is clear that these
8 people should be excluded. Thank you.

9 CHAIRMAN CHOCK: Chair's going to rule on
10 the motion at this time to exclude witnesses on
11 international law and title, Ms. Bolomet. So we are
12 not excluding the other witness that you intend to
13 bring forward on issues that may relate to farming,
14 water, Native Hawaiian cultural traditions or
15 practices but.

16 I am going to exclude the witnesses who
17 you've attempted to bring forward on international law
18 and title. That would include David Keanu Sai,
19 Dexter Kaiama, Aran Ardaiz, Wilmont Kahaiali'i, Leon
20 Tsui, James Geiger and David Louie.

21 MS. BOLOMET: May I say something? I'm
22 okay with getting rid of everybody except Wilmot
23 Kahaiali'i because Wilmont Kahaiali'i will bring in
24 all the tenant laws that Kamehameha III put into the
25 law so that we would protect all of our tenant rights

1 and our cultural rights as well as our right to farm
2 our lands.

3 So I think it's important that we include
4 him to demonstrate the full picture and the full scope
5 of our rights.

6 CHAIRMAN CHOCK: So will the scope of his
7 expert testimony be limited to farming, cultural
8 traditional practices, things of that sort?

9 MS. BOLOMET: The laws that pertain to
10 that, yes.

11 CHAIRMAN CHOCK: Okay. I'll accept him
12 based on that limited scope.

13 MR. GEIGER: Chair, I don't believe that he
14 would be available to provide expert testimony because
15 I don't believe a written direct examination was
16 provided for that witness. I'll have to go back and
17 check but I didn't recall that one had been provided.

18 MS. BOLOMET: It was provided.

19 MR. GEIGER: So if it was provided, then if
20 there's nothing within the written direct testimony
21 that deals with the cultural issues, then I would
22 assume that when he would come to testify that his
23 testimony would be limited and not allowed as far as
24 the direct that is not relevant.

25 CHAIRMAN CHOCK: Okay. So noted. Okay.

1 The next item is Petitioner's Motion to Exclude
2 Intervenor Bolomet's Exhibits 1 through 13 and 15
3 through 17. Mr. Geiger, would you like to make your
4 presentation?

5 MR. GEIGER: Certainly. And it's in the
6 motion. But just briefly there are three essential
7 grounds that we're bringing up to exclude these. One,
8 that some of these exhibits are immaterial.

9 And that's because they deal with topics of
10 international law, foreign allodial title, sovereignty
11 or amending interim instream flow standards which is
12 somethin unique with the jurisdiction fo the
13 Commission on Resource Management, not within the Land
14 Use Commission jurisdiction.

15 We also would object some of them are
16 immaterial and some of them are cumulative. Some of
17 them actually were not even provided. So just to make
18 certain that we're not having exhibits that have not
19 been produced in time for this hearing we ask they be
20 excluded.

21 For the Commission's record, the ones that
22 deal with international law, foreign allodial title or
23 sovereignty are Exhibits 1, 2, 3, 4, 5 --

24 CHAIRMAN CHOCK: Slow down, please.

25 MR. GEIGER: Sorry.

1 CHAIRMAN CHOCK: Can you start over?

2 MR. GEIGER: One, 2, 3, 4, 5, 5A, 5B, 6, 7,
3 8, 8A, 9, 11 and 13. And if you look at the list, and
4 I have it put as a part of the motion, I've got just
5 her Exhibit List, which is attached as exhibit -- or
6 attachment B to the motion.

7 You can see clearly that these documents
8 that I've just identified all deal with matters that
9 have nothing to do with the issues of statewide
10 concern that this Commission looks at in making a
11 determination on a district boundary amendment. So we
12 think it's very clear that all of those items should
13 be excluded.

14 Now, as to certain of the items they have
15 not been provided. Those come into two categories:
16 The exhibits that were not provided at all or portions
17 of the exhibits that were provided that were not
18 provided.

19 And those particular exhibits that were not
20 provided at all were exhibits 10, 12, 16 and 17. Now,
21 there's been some indication that No. 10 might have
22 been withdrawn, but I need to go ahead since I don't
23 have a formal withdrawal, I need to go ahead and bring
24 this motion to exclude it because it was not produced
25 at all in accordance with the pre-hearing order.

1 And it would be prejudicial and unfair for
2 the Petitioner and the other parties in this matter to
3 have gone forward, prepared their presentation based
4 upon the information that we expected to be part of
5 these proceedings, and then have to come in and gather
6 new -- prepare new information because it wasn't
7 provided as required. The ones that were provided in
8 part were Exhibits 1, 2, 8 and 13. These are
9 incomplete.

10 They're incomplete because, for example,
11 one of those was videos, links to a video presentation
12 by one of the witnesses you've excluded. Well,
13 obviously those things should not be included as part
14 of the record because you don't have them before you.

15 So to the extent someone tries to provide
16 an exhibit that's incomplete, the portion that's not
17 provided should not be a part of the record. And
18 we've objected to that.

19 Finally, Exhibit 13 is cumulative. It's
20 also partially incomplete. If you look at the
21 description it says it's supposed to be a map and
22 photographs. No photographs were provided. A map was
23 provide but the map is the exact same exhibit as
24 Petitioner's Exhibit 15A, which is a survey map for
25 the property.

1 So it is cumulative of other evidence that
2 will be before you. And we would ask that it be
3 excluded on that grounds. Thank you.

4 CHAIRMAN CHOCK: County?

5 MR. GIROUX: We'll rest on our concurrence
6 with the argument.

7 CHAIRMAN CHOCK: OP?

8 MR. YEE: The Office of Planning generally
9 supports the motion, in particular those exhibits that
10 deal with Title 1 through 9, 11 and 13. I understand
11 that the Commission has allowed Intervenor Bolomet to
12 submit additional exhibits.

13 We certainly reserve our right to dispute,
14 then, Exhibits 10, 12, 16, and 17 which have never
15 been submitted to the parties as to whether that would
16 be prejudicial or not.

17 The remaining Exhibit 15, which I haven't
18 discussed, we have just noted that although the
19 subject matter is a matter involving water and water
20 is a land use issue, there is no clear link between
21 that exhibit and this particular Petition Area.

22 We're simply reserving our position on that
23 until Intervenor can explain why that particular
24 exhibit would be relevant to *this* case. So while we
25 aren't affirmatively asking that it be excluded now,

1 we don't think it should be admitted at this time, at
2 least until Ms. Bolomet's able to establish why that
3 document is relevant to this Petition Area. Thank
4 you.

5 CHAIRMAN CHOCK: Ms. Lincoln?

6 MS. LINCOLN: No comment.

7 CHAIRMAN CHOCK: Ms. Bolomet?

8 MS. BOLOMET: Okay. Can I start with 1
9 'cause it was too much information. Okay. So I
10 understand what you said we're gonna exclude things
11 about kingdom laws as it pertains to my title.
12 However, kingdom laws that pertain to my right to farm
13 and how I can use my lands I would like to keep those
14 in as exhibits.

15 And I tried to -- as you could see some of
16 the exhibits that I sent you they were over, close to
17 a hundred pages of exhibits. I tried to include as
18 much information without going overboard but I think I
19 went overboard giving you that many documents.

20 So I tried to give the full extent of the
21 law so you could see it in context rather than taking
22 an excerpt of one line which would then not let you
23 see the whole context of the law.

24 So I do need to refer to some of these
25 kingdom laws that will be as it pertains to my rights

1 to use these lands, that could be found in Exhibit 1.
2 And then if you don't need me to prove that these
3 rights to use my lands under kingdom law are protected
4 as they're a lot of HRS laws. We put in the HRS laws
5 and kingdom laws and you can see how they're mirrored.
6 One mirrors the other law.

7 So HRS is it not a law. It's a statute.
8 But they are mirroring the actual law which is in
9 kingdom law that they cannot -- nobody can override.
10 That's why there are Hawaii Revised Statutes in its
11 place. They revised the statutes but they cannot
12 revise the law that govern these properties.

13 This is why it was important for me to show
14 you why these properties are, were foreign allodial
15 titles. And they were ruled by these laws. Hawai'i
16 in the Revised Statutes in the constitution -- Hawai'i
17 constitution they're recognizing these laws. So for
18 this body to try to ignore the laws would not be
19 giving a true scope of how to make a decision.

20 As we go down, when it's describing the
21 konohiki lands, the royal patents and that sort of
22 thing, it tells you how you could use these lands. My
23 family and my grandfather was the konohiki of this
24 land. My other relative, Princess Kamamalu, she was
25 the awardee of the whole ahupua'a.

1 So you need to see these documents to see
2 why I have these rights and for me to say what I'm
3 saying that I can farm this land and I can use this
4 land as I'm granted through the laws.

5 As we go down to -- let's see. If we go
6 to -- so the allodial land title laws for Exhibit 3 I
7 would like to keep that in because I think it's going
8 to give you guys a better scope of what I'm trying to
9 demonstrate with my ability to use the lands as the
10 law grants me.

11 Exhibit 4 will go into how my rights
12 supercede someone with a lease or anything on that
13 level. My allodial titles are, like, the highest
14 titles you can get. And these titles were only given
15 to kanaka. They were not given to corporations or
16 anyone else. So -- and at the time you had to be part
17 of the kingdom in order to even get these kind of
18 allodial titles which my family received.

19 So Exhibit 5, kuleana lands revert to
20 ahupua'a of awardee. That's the law in the kingdom
21 law that shows that if there are no -- the Petitioner
22 says they couldn't get ahold of everybody; that there
23 weren't people that came forward.

24 The law states if you cannot get ahold of
25 anybody it reverts back to the owner of the ahupua'a.

1 That was my relative.

2 I can claim the whole ahupua'a if there are
3 no lineal descendants that are coming forward for all
4 the different kuleana lands in there. That's the
5 reason I put that in there.

6 I'm trying to establish how I do have the
7 power to make the claims that I'm making. And that
8 would help you folks to make a decision that would be
9 better for the usage on this and keeping it
10 agriculture.

11 I'll go on to this Exhibit 5 are the same
12 things. Exhibit 5B it talks about how one of the
13 lands for Victoria Kamamalu went into the Bishop
14 Estate Trust. A trustee, they're not the owners of
15 the land. They're simply managers. The lineal
16 descendants are still the owners. So we have -- they
17 answer to us. We don't answer to them. They cannot
18 make a decision without our agreement.

19 Now, they continue to do so but it's
20 against the law. And once we challenge that then they
21 can't continue to move forward doing this. And this
22 is documents that I thought I gave the full extent of
23 the different U.S. laws that corroborate that
24 argument.

25 Some of these exhibits, just so you know,

1 where they said I didn't put those exhibits in, I
2 purposely because I didn't think I could make a
3 reasonable time and I didn't know I could get an
4 extension, I withdrew those. And I can use the maps
5 that are already submitted by both Michele Lincoln and
6 the Petitioner.

7 It demonstrates the argument that I'm
8 trying to make. So the konahiki rights, my
9 grandfather was the konohiki. He has rights in there.
10 I -- you get to be a konohiki by inheritance. I, in
11 effect, am the konohiki of that ahupua'a, of that
12 area. And so I make the decisions even if there are
13 other allodial titles. My job is to manage. The
14 konohiki manages the lands, and manages how the
15 resources are used so that everybody has what they
16 need.

17 That's why I'm taking the position that I
18 am, is I'm taking the responsibility of being the
19 konohiki for these lands and manage the sources
20 properly so that everybody in the neighborhood will
21 benefit. That's my job. That's my inherited job is
22 to protect everybody in the neighborhood, even the
23 neighborhood that's already developed.

24 That was all of our land. It goes into the
25 Aki ahupua'a. And that was part of any grandfather's

1 kuleana. So I -- that's why I'm putting in all of
2 these rules. The allodial title water rights, if you
3 look at some of the maps, my grandfather's lands went
4 all the way across the water.

5 Now, not everybody's land go across the
6 water. It's because he controlled the water. And the
7 only other people that controlled the water were the
8 ali'i.

9 And we were ali'i. That's why we were
10 granted that because we had the responsibility to make
11 sure everybody was taken care of. The water was taken
12 from these lands. And it was taken illegally and
13 diverted illegally. That's why we get into Robin Knox
14 who brings in the Clean Water Act, the EPA Act. There
15 was a lot of things that were done on that property
16 that was illegal. And what the Petitioner is asking
17 you to do continues to be illegal. And she will
18 demonstrate how it's illegal.

19 So it's important that even though you're
20 seeing just a bit of the picture, I didn't know how to
21 not turn in a thousand-page document that would give
22 each individual argument for each individual exhibit.

23 But I assure you I understand that I'm not
24 supposed to talk about title, but I am talking about
25 what my kuleana is for these lands, how they're

1 supposed to be used and what I'm supposed to be doing
2 to protect them, and what gives me the right to do
3 that in this forum or in any forum because of the way
4 these titles were structured and under what law.

5 So on the things that I didn't put in I'm
6 withdrawing. I actually put it in to, I don't know if
7 it was the June 29th or the July 2nd items where I
8 said I withdraw it. So if it wasn't put in it's
9 withdrawn. I can use the other items that, the other
10 maps that are there.

11 I will, now that I have an extension to
12 August 1st, there's a very special water map that
13 shows how the streams, karsts, how the land was used.
14 I will now be able to have the time to get that and
15 bring that in to you. And it's important for you to
16 see this because there were ponds on these lands.

17 CHAIRMAN CHOCK: Ms. Bolomet, are you on
18 Exhibit 8A? We're trying to get through, I think a
19 total of 17 exhibits here, so if you'd start to make
20 your way through.

21 MS. BOLOMET: Sure. Yes. So it's No. 8,
22 8A -- oh, oh, yes, so Exhibit 9. I was told that I
23 had to show that, that this would -- is still in
24 court, these lands. And on Timoteo Keaweiki property
25 that's currently in court in the Land Court or in

1 Second Circuit Court where they're trying to quiet
2 title. And all the ancestors have already -- not
3 ancestors, the, the lineal descendants have come
4 forward to make their claim.

5 So that's what No. 9 is. I just want you
6 to know there are people that are alive and kicking
7 and claiming but I don't know if that pertains to
8 our -- the title. And if you want to have me exclude
9 that I'm okay with that. Because they'll all be
10 showing up and doing public testimony.

11 No. 10. We can withdraw No. 10. No. 11,
12 11 Article XII, Section 7 this is part of the Hawai'i
13 Constitution which protects our cultural rights, and
14 on all deeds. It puts in there that all native
15 tenants rights are protected.

16 So they're asking -- it says that we have
17 access even if the lands are sold. But these lands
18 aren't sold. They were claimed by somebody else but
19 they were never sold. There was no agreement by the
20 owners.

21 So No. 12 the Federal Water Act. We are
22 just trying to point you to which part we're going to
23 be looking at in the Federal Water Act.

24 The maps and pictures No. 13 I will submit
25 an old spring map before August 1st.

1 The iwi and cultural standing there was no
2 objection on that.

3 The water laws, Clean Water Act Exhibit 15
4 will demonstrate how, what this Petitioner is asking
5 to be done with this land will cause great harm on a
6 cultural level, but will also put the people in
7 imminent harm's way with the way this is set up. And
8 Robin Knox can separate that through the EPA laws how
9 you're not even allowed to do what they're asking you
10 to do.

11 Historical and cultural insights. We were
12 going to put in some testimony but the people that --
13 they were non-experts so we can put in -- they were
14 just -- I was told it wasn't required.

15 So they will be coming forward and just
16 making a testimony telling you in their lifetime what
17 they saw on the land, how it was used, particularly
18 these ponds and the topography, how it protected the
19 other neighborhood because of overflow and what was
20 built into the topography.

21 That's going to be important for you to
22 understand so that you understand how the current
23 proposed topography will actually wipe out Michele
24 Lincoln in a big storm. And so you will be putting
25 other families in imminent harm based on the way they

1 are proposing the subdivision be laid out into this
2 property.

3 And No. 17. Well, now I have an
4 opportunity to put some photos in that so I'll take
5 advantage of that and put in more photos. But it's
6 things that I'm getting out of old books that were
7 referred to and the EA reports and other reports that
8 were included in the Petitioner's application. So it
9 shouldn't be too difficult for the Petitioner to argue
10 against.

11 CHAIRMAN CHOCK: Okay. So to summarize,
12 which exhibits are you withdrawing?

13 MS. BOLOMET: No. 10. No. 10.

14 CHAIRMAN CHOCK: Rebuttal?

15 MR. GEIGER: It's easy to say: Well, gee,
16 these exhibits have something to do with culture. But
17 if you actually look at the exhibits, put aside her
18 description of them, if you go through the description
19 it's clear that they're being offered for title. And
20 as you heard her presentation she kept saying, "my
21 land", "my claims", "my obligations."

22 That's not what this Commission is tasked
23 to do. But if you actually look at the exhibits, for
24 example, Exhibit No. 1 is a Supreme Court case which
25 was overruled three years later. And a portion or all

1 of the article of W.D. Alexander which was written in
2 the 1880's, 1890's on History of Land Titles in
3 Hawai'i, it has nothing to do with the culture of this
4 particular property.

5 It has everything to do with a claim about
6 title which you folks have already ruled on and said
7 is not part of this.

8 Same thing with No. 2. That is a brief
9 that was submitted to the International Court in the
10 Hague concerning title matters. Has nothing to do
11 with the culture of this particular property.

12 No. 3 was an excerpt of the laws of Hawai'i
13 in 1872 that dealt with issuance of royal patents for
14 title after 1872. Doesn't have anything to do with
15 the culture or use of this property.

16 No. 4 was an excerpt from W.D. Alexander's
17 article again: History of Land Title in Hawai'i.

18 No. 5. Again 5 and 5A, excerpt from W.D.
19 Alexander's article.

20 No. 5B is some statement from somebody
21 that's unsourced concerning the trustees' obligations.
22 It doesn't relate. It isn't referred to as a law. It
23 isn't referred to as a Law Review article. It's
24 referred to as just: Here's trustees' duties from
25 someone we have no idea who it is, nor do we have any

1 idea how that relates to any of the issues of
2 state-wide concern dealing with this property.

3 No. 6 was again an excerpt for W.D.
4 Alexander's History of Land Title in Hawai'i.

5 No. 7 was an excerpt from an article on
6 allodial title.

7 No. 8 was a copy of HRS 7.1 and a link to a
8 publication. Again, has nothing to do with the issues
9 that are involved in this case.

10 No. 8A was HRS section 1872-A-23 which
11 deals with konahiki rights. But it's konahiki rights
12 of fisheries. This property is not on the ocean.
13 This property doesn't have a fishery with it.

14 No. 9 was a quiet title action to a
15 property that is not this property. It's an adjacent
16 property. It's not owned by my client, doesn't have
17 anything to do with this property that's in front of
18 you.

19 No. 11 again was, I heard it was the
20 constitution. But, in fact, if you look at it it's
21 excerpts from Mr. Alexander's article again and the
22 decision in the PASH matter that the Hawai'i Supreme
23 Court issued. Again, nothing to do with the matters
24 that are in front of you.

25 No. 12 supposedly, I heard, something to do

1 with the Clean Water Act. It's identified as
2 "photographs". I don't know what the photographs are.
3 They weren't produced. They should be excluded.

4 No. 13 as I understand is going to be
5 withdrawn and something else substituted in exchange
6 for it, although that may be a misunderstanding from
7 what I heard Ms. Bolomet say.

8 No. 14 we didn't include as part of this
9 motion but we did reserve our right to object to it
10 because it had not been produced at the time. And it
11 may or may not have relevance. And we'll have to find
12 out when it's actually being offered. So we're going
13 to reserve our right concerning that motion or that
14 particular exhibit when it comes up.

15 No. 15 was a press release concerning the
16 Waiahole Ditch case which was an interim instream flow
17 standards case that the Water Resource Commission
18 acted on, not a Land Use Commission matter.

19 It was a press release -- or excuse me, a
20 news article, by the way, the Waiahole Ditch as I'm
21 sure all you know is over on O'ahu. It's not in
22 Lahaina.

23 No. 15 also included a news article on
24 Nawaeha dispute that is here on Maui, but it involves
25 streams in Central Maui. Doesn't involve anything

1 over in Lahaina.

2 No. 16 obviously wasn't produced. It's
3 referred to as a film. We have no idea what it was.

4 And 17 were videos. And again they weren't
5 produced so we don't know what they were.

6 So I think if you actually fo through these
7 you'll find out that they really don't have anything
8 do with this property. They really don't have
9 anything do with cultural or the cultural use of this
10 property. But, again, it's strictly an attempt to
11 bring in irrelevant, immaterial matters concerning
12 title and concerning claims of former allodial title.
13 Thank you.

14 CHAIRMAN CHOCK: Okay. The Chair's going
15 to take a five-minute recess and come back and rule.

16 MS. BOLOMET: Can I please make one more
17 comment.

18 CHAIRMAN CHOCK: Briefly.

19 MS. BOLOMET: Because the Petitioner
20 obviously doesn't understand culture and how all these
21 laws and all the water, it all pertains to farming and
22 land use. He keeps saying that it's about fisheries.
23 Well, the fishery is connected. it's all part of the
24 same ahupua'a. And it has to do with the water that's
25 coming from this land affecting the limu all the way

1 down into the fisheries.

2 Everything is connected. So even though,
3 you know, it's hard for you to see how all of this is
4 connected now, through our testimonies we will -- and
5 our exhibits -- we will be able to bring together a
6 full picture that Mr. Geiger is obviously not aware
7 of.

8 And that's what makes him not an expert on
9 culture and why we need to bring this in because he
10 could never represent the argument properly. And
11 their whole argument is there is no cultural
12 significance on this property, when, in fact, there is
13 which is why I have this stone here.

14 But we can get into this when we start
15 getting into the testimonies. It's really relevant
16 for you to understand the use of this property, how
17 it's supposed to be used, and how it's connected to
18 farming rights and agriculture and why this particular
19 property was used for agriculture, and not for a bunch
20 of houses in the past.

21 CHAIRMAN CHOCK: Thank you, Ms. Bolomet.
22 I'm going to take a five-minute recess and come back
23 and rule on the motion. Five minutes.

24 (Recess was held. 11:30)

25 CHAIRMAN CHOCK: We are back up on the

1 record. Chair is going to rule on these, on the
2 motion to exclude certain exhibits. But first I'd
3 like to remind Intervenor Bolomet that for the
4 exhibits that I am going to admit, you still have to
5 adhere to the extension to get those in in a timely
6 fashion. That doesn't necessarily mean you can submit
7 new exhibits to start all over again that are
8 off-topic.

9 So let me go through this here. I'm going
10 to exclude Exhibits 1 through 9. You've withdrawn 10.
11 Going to exclude 11. Going to accept 12. Going to
12 exclude 13, accept 14, 15, 16 and accept 17. Now, at
13 any time in these procedures, Ms. Bolomet, you can
14 always cite laws and statutes. You don't necessarily
15 have to submit them as exhibits. Okay? Any
16 questions, parties?

17 MR. GEIGER: Chair, I assume what your
18 ruling is that you're denying the motion as to those
19 when you said "in". But that doesn't necessarily mean
20 that they will be coming in. They still have to show
21 that they're relevant material.

22 CHAIRMAN CHOCK: Right.

23 MR. GEIGER: Thank you.

24 CHAIRMAN CHOCK: We're on Petitioner's
25 Motion to Exclude Expert Testimony from Witness for

1 which no written direct testimony was provided.

2 Intervenor? I'm sorry. Petitioner?

3 MR. GEIGER: Thank you, Chair. Just real
4 briefly. The Pre-hearing Order required that if
5 they're experts they needed to have written direct
6 testimony submitted by no later than July 2. There
7 was some written testimony or at least summaries in
8 some cases, written testimony from Ms. Bolomet on her
9 witnesses. None of the testimonies were signed. But
10 they -- at least something in writing was submitted.

11 However, there were a number that there was
12 no testimony submitted. And those were Mele Carroll,
13 Ke'eaumoku Kapu, Victoria Kaluna, David Keanu Sai, but
14 since he's been excluded I presume that we will not
15 need to address him here.

16 Dexter Kaiama which again was excluded;
17 Leon Siu, which was excluded, Hannah Bernard who it's
18 unclear if she's been withdrawn, and Ms. Knox has been
19 substituted for her or not, but if there is an attempt
20 to offer Ms. Bernard, we would object. Victoria
21 Kaluna, Jonah Kaihi, I apologize, and Clare Apana.

22 The motion's real simple. We didn't get
23 any written direct testimony on them. It would be
24 unfair and prejudicial to my client, the other parties
25 and this Commission if you would allow expert

1 testimony from these people. To the extent that they
2 have testimony as a lay witness concerning some issue
3 of relevance, obviously we can take that up when they
4 testify. But it would be appropriate to exclude any
5 attempt to have expert witness testimony from any of
6 these people. Thank you.

7 CHAIRMAN CHOCK: County?

8 MR. GIROUX: County concurs.

9 CHAIRMAN CHOCK: State?

10 MR. YEE: OP has no objection to the
11 motion.

12 CHAIRMAN CHOCK: Ms. Lincoln?

13 MS. LINCOLN: No comment.

14 CHAIRMAN CHOCK: Ms. Bolomet?

15 MS. BOLOMET: I have a comment.

16 CHAIRMAN CHOCK: Proceed.

17 MS. BOLOMET: Except for Mele Carroll she's
18 simply coming in to --

19 CHAIRMAN CHOCK: Ms. Bolomet, you don't
20 necessarily have to go expert by expert. Just in
21 summary respond to the concern.

22 MS. BOLOMET: Okay. I did withdraw some of
23 the -- and replace some of the witnesses. The ones
24 that were not excluded by this Commission I would like
25 to keep them on because I believe they will help you

1 get a better scope of the land use which is what you
2 guys are ruling on is the land use.

3 So, uhm, then, but I will say with Mele
4 Carol who is the representative for Maui and for
5 farmers on Maui and Molokai, she will testify that she
6 as a representative is held to uphold the U.S.
7 Constitution and all the constitutional laws. And
8 when they're making laws they have to follow certain
9 guidelines which also affects what you are going to be
10 having to follow.

11 So I just wanted it to be really clear what
12 it is that she as a representative is sworn to do and
13 you all took the same oath. So that everybody's clear
14 so when I'm introducing these rules and the laws, it's
15 because these are the rules and the laws that apply to
16 these lands, the land use, and why it was -- and all
17 the protections I get as a farmer in keeping this land
18 as agriculture instead of having houses built on my
19 farmland.

20 CHAIRMAN CHOCK: Okay. Ms. Bolomet, I have
21 a question. Why was the expert testimony for your
22 witnesses not provided in a timely manner?

23 MS. BOLOMET: For my witnesses?

24 CHAIRMAN CHOCK: The testimonies.

25 MS. BOLOMET: I believe -- oh, the

1 testimonies. They were out of town. They were out of
2 town. And they told me they could not do it. We
3 continued to try to get that. We put together
4 everything that we could on their behalf. And they
5 just could not do it due to other obligations either
6 out of the state or they were in other projects or
7 court cases.

8 So they just couldn't do it in the
9 timeframe that I had. That's why I was putting in
10 extensions and trying to figure out how to get their
11 testimonies.

12 But on the non-experts I was told I didn't
13 need to have the testimony.

14 CHAIRMAN CHOCK: Right.

15 MS. BOLOMET: So I was concentrating my
16 time and effort on the experts.

17 CHAIRMAN CHOCK: Okay. Rebuttal?

18 MR. GEIGER: I think it's clear that for
19 these witnesses we don't have an objection to call
20 them as lay witnesses. But we would have an objection
21 for them to give expert opinions.

22 So as a lot of the issues involved in this
23 case would involve expert testimony, I just want to
24 make certain that the Commission is clear with these
25 witnesses, that they will not provide expert

1 testimony.

2 And so I would ask that the motion be
3 granted as to the witnesses that we identified. Thank
4 you.

5 CHAIRMAN CHOCK: On what basis are you
6 trying to have them excluded as experts when you
7 haven't seen their testimony?

8 MR. GEIGER: Because we haven't seen their
9 testimonies. It would be prejudicial to us to have
10 them come in as expert testimony.

11 CHAIRMAN CHOCK: Okay. Chair in the same
12 manner in terms of flexibility and patience to you as
13 a new intervenor, Ms. Bolomet, I'm going to give you a
14 brief extension of time to the same deadline of
15 August 1st to submit. Okay? And in no way prejudice
16 Petitioner's case. And at that time we can deal with
17 relevancy and qualifying them as experts at that time.

18 MS. BOLOMET: Okay. Can we specifically go
19 over which expert testimony you want?

20 CHAIRMAN CHOCK: Mele Carroll, Robin Knox.

21 MS. BOLOMET: You already received Robin
22 Knox's testimony.

23 MS. LINCOLN: He's just going through the
24 list.

25 MS. BOLOMET: Oh, okay.

1 CHAIRMAN CHOCK: Ke'eaumoku Kapu, Victoria
2 Kaluna, Jonah Keahi, William Spence, Clare Apana.

3 MS. BOLOMET: So when we're talking about
4 cultural practices and somebody does a cultural
5 practice with me, I consider them an expert because
6 they've been doing it for many, many years. But how
7 do you want me to show that they're an expert?

8 CHAIRMAN CHOCK: You work with the staff on
9 your submission.

10 MS. BOLOMET: Okay.

11 CHAIRMAN CHOCK: They can give you some
12 guidance on that.

13 MR. GEIGER: So for clarification which of
14 these witnesses is she going to identify as experts
15 and provide written testimony on?

16 CHAIRMAN CHOCK: Ms. Bolomet, are those
17 names that I just provided?

18 MS. BOLOMET: Mele Carol, Clare Apana. The
19 others are people that just lived on the land or lived
20 near the land. I guess they're experts because they
21 live there. But I don't know that we need to qualify
22 them as experts. I really just wanted you to know how
23 the land was used and when it was affected and when it
24 wasn't, when the topography was changed. It was just
25 their experience. So I don't think I need to have --

1 MS. LINCOLN: No, they're lay witnesses.

2 MS. BOLOMET: Okay. So I'll just submit
3 them as lay witnesses. So for Mele Carol she's still
4 very busy and traveling. So I will still try to get
5 that in. But I was told by her and her staff since
6 she's just referring to the oath that you all have
7 taken as well, it's just her explanation and everybody
8 knows that she is the representative here. You know
9 that she's an expert on being a representative.

10 CHAIRMAN CHOCK: We're just trying to
11 clarify who we're getting in as experts. Right now
12 you don't need to provide a justification at this
13 time. I just want to get through giving you the
14 extension of time, try to qualify these folks as
15 experts, give the Petitioner an opportunity to object
16 and then we'll rule coming back in our August meeting
17 on whether or not to accept them or not.

18 MS. BOLOMET: Okay. So for --

19 CHAIRMAN CHOCK: So I'll recap them for
20 you and you tell me --

21 MS. BOLOMET: Okay, but I only have two.
22 I only have two. So you don't need to recap for me
23 for experts. But I just want to get clarification.

24 CHAIRMAN CHOCK: Okay.

25 MS. BOLOMET: For Mele Carol because she's

1 a representative and all of you know, you know, that
2 her testimony is about what she's sworn to do and how
3 laws are made, do I need to have her write a testimony
4 because she said she's still busy til' the middle of
5 August and she will not make the August 1st? So is it
6 necessary for me to do that?

7 CHAIRMAN CHOCK: She's not going to appear
8 before August 1st. You're just trying to have her
9 admitted as an expert before August 1st.

10 MS. BOLOMET: She can't do that.

11 CHAIRMAN CHOCK: Okay. Then if you can't
12 make the deadline --

13 MS. BOLOMET: So then she'll just be a
14 non-expert.

15 MS. LINCOLN: Lay testifier.

16 CHAIRMAN CHOCK: She can testify as a
17 member of the public.

18 MS. BOLOMET: Okay.

19 CHAIRMAN CHOCK: So you have two experts.
20 Who are they?

21 MS. LINCOLN: Just so he knows --

22 THE REPORTER: Excuse me, Ms. Lincoln.
23 We've got three people going back and forth here.
24 Thank you.

25 MS. BOLOMET: I'm sorry. What was your

1 question?

2 CHAIRMAN CHOCK: So you have two expert
3 witnesses that you'd like to have?

4 MS. BOLOMET: Clare Apana, yes.

5 CHAIRMAN CHOCK: Clare Apana.

6 MS. BOLOMET: And I think William Spence
7 was already shown to be an expert. So I don't need
8 to have -- oh, I'm supposed to put in the testimony?
9 See, I'm getting mixed up. I'm sorry.

10 CHAIRMAN CHOCK: Not a problem. Just work
11 with the staff in the interim --

12 MS. BOLOMET: Okay.

13 CHAIRMAN CHOCK: -- to try to meet the
14 August 1st deadline so we can take up your experts.
15 Okay? And --

16 MS. BOLOMET: So how do I solicit? That's
17 one of the things I was asking. How do I solicit to
18 get a testimony from somebody that like William
19 Spence? Do I have to, like, put in a subpoena?

20 CHAIRMAN CHOCK: Staff can give you some
21 guidance in the interim or during the break on how
22 you can go about doing that. What I want to do is
23 give you every opportunity whoever witnesses, expert
24 witnesses that you want to have as part of your case
25 be admitted --

1 MS. BOLOMET: Okay.

2 CHAIRMAN CHOCK: -- potentially. Okay?

3 So why don't I just recap the names that I have here.

4 If you want to call them or try to have them admitted
5 you can reserve that right between now and August 1.

6 MS. BOLOMET: Okay.

7 CHAIRMAN CHOCK: Okay. So let me just
8 recap those names for you again: Robin Knox,
9 Ke'eaumoku Kahu, Victoria Kaluna, Jonah Keahi, William
10 Spence, Clare Apana.

11 MS. BOLOMET: Okay.

12 CHAIRMAN CHOCK: So you have until
13 August 1.

14 MS. BOLOMET: Okay.

15 CHAIRMAN CHOCK: There's folks on there
16 that you don't want to have? So be it.

17 MS. BOLOMET: Okay. Thank you.

18 CHAIRMAN CHOCK: But work with the staff on
19 the procedural issues August 1.

20 MR. GIROUX: Chair, just for the record
21 Mr. Spence is on our Witness List and she'll have an
22 opportunity to cross-examine. We will be presenting
23 him as an expert as far as his planning expertise.

24 CHAIRMAN CHOCK: Okay. Thanks.

25 MR. GEIGER: And just that the, I guess the

1 order is going to be clear, we would have until
2 August 10 to respond to anything that's submitted. In
3 addition we would still have our rights to object as
4 to relevancy, materiality and cumulative nature,
5 correct?

6 CHAIRMAN CHOCK: Yes.

7 MR. GEIGER: And then am I correct in
8 understanding that the Order requires written
9 testimonies of each of those persons? Or only of the
10 persons which are going to be called or offered as
11 experts?

12 CHAIRMAN CHOCK: Can you restate your
13 question again? I believe you want to know if there
14 are requirements to have...?

15 MR. GEIGER: Certainly. I recognize the
16 Order, the Pre-hearing Order did not require written
17 testimonies of the lay witnesses.

18 However, since we are now starting the
19 hearing and since we are going to be continuing, it
20 would certainly be more efficient for all of the
21 parties if the Chair would direct Ms. Bolomet to have
22 written testimonies of all witnesses she's going to
23 call, expert and lay, by August 1. I'm just asking if
24 that's part of the ruling or not.

25 CHAIRMAN CHOCK: I'm just going to require

1 her to have the experts to submit.

2 MR. GEIGER: Okay. Thank you.

3 CHAIRMAN CHOCK: All righty. Are we having
4 fun yet? (Laughter).

5 MS. BOLOMET: I'm glad I'm a farmer.
6 (Laughter).

7 CHAIRMAN CHOCK: The Commission will now
8 begin proceedings on Docket No. A12-795 Petition for
9 the reclassification of approximately 16.7 acres of
10 land from the Agricultural District to the Urban
11 District at Lahaina, Maui for a residential
12 subdivision to provide 68 single-family affordable
13 housing units to families earning less than
14 160 percent of the median family income of families in
15 Maui County.

16 Okay. Before we go into taking public
17 testimony I'd just like to remind all the parties
18 please work with staff in advance of the hearing dates
19 to make sure you have your witnesses and case ready
20 to go. We've had cases in the past where parties have
21 not been ready to present witnesses -- and this goes
22 for everybody -- all the governmental agencies that
23 are parties, State, County, please work with staff to
24 be timely; have your witnesses ready to go.

25 And we can proceed on that note. So we

1 have three testifies signed up to testify. We are
2 going to take public testimony and then we're going to
3 break for lunch. So, Executive Officer can you...

4 MR. ORODENKER: Yes. The three individuals
5 signed up to testify are Mike Gerry, Michele Kanehe
6 and Bobby Paia. In that order.

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

10 THE WITNESS: Yes.

11 CHAIRMAN CHOCK: Name and address for the
12 record, please.

13 THE WITNESS: My name is Mike Gerry. I
14 live at 186 Ali'inui Place in Kula, Maui.

15 CHAIRMAN CHOCK: Proceed.

16 THE WITNESS: I'm a construction supervisor
17 for Habitat for Humanity Maui and have been for the
18 last five or six years. I was asked to come and
19 address the Intervenor's question as to why Habitat
20 instead of building new homes, was going to -- why we
21 weren't getting bank repos and working with those
22 instead of building new houses.

23 And it's a very good idea. It's actually
24 done quite a bit on the mainland. But they're getting
25 those homes way cheaper. And they're also working

1 with the banks. The banks call them first even and
2 say, "If you want this house, help us out here and
3 work a deal."

4 Unfortunately on Maui we found we can't
5 really get any for less than the cost of a lot plus
6 some. And that all of a sudden that's a couple
7 hundred thousand dollars which right away takes us out
8 of the picture because we get our land basically for
9 free in Hawaiian Home Lands. Or if there's other
10 grants that are given us or something where we get the
11 land very, very inexpensively.

12 And our costs are basically the hard
13 construction costs and some overhead administrative
14 costs which keep the whole cost of the house well
15 under a hundred thousand dollars. We just can't
16 acquire any land for that.

17 We have done a limited amount of
18 condominiums that have been donated in an extremely
19 low price. We can bring those to usage. But as I
20 said it's a good idea and we'd love to be able to work
21 it here on Maui but the land costs are just so high it
22 won't work out.

23 MS. LINCOLN: Do I get to ask?

24 CHAIRMAN CHOCK: Parties, questions?
25 Petitioner?

1 MR. GEIGER: No questions.

2 CHAIRMAN CHOCK: County?

3 MR. GIROUX: No questions.

4 CHAIRMAN CHOCK: State?

5 MR. YEE: No questions.

6 CHAIRMAN CHOCK: Intervenor Lincoln?

7 MS. LINCOLN: When one of their expert --
8 no, lay witnesses, was testifying he's a potential
9 occupant, he said that he's been checking in real
10 estate and in foreclosures and whatnot.

11 And he said, and I'd have to look it up to
12 quote it -- I didn't know this was going to be
13 addressed right now -- but that when they did look
14 there was only, like, 4 to 10 properties at a time
15 that were in the 175 to \$300,000 that were in Lahaina
16 but in his opinion they were teardowns.

17 I was actually going to make a comment when
18 he finds a place like that he should probably contact
19 you because if you can find --

20 CHAIRMAN CHOCK: Ms. Lincoln, do you have a
21 question?

22 MS. LINCOLN: Yes. So my question is if he
23 can find those for a 175,000 with a house on it that's
24 considered a, teardown, why can't Habitat? Because
25 then you've already got the plumbing and electrical.

1 It may not be to code or whatever. I don't understand
2 why he's finding them and he's just not finding them
3 acceptable for him.

4 But why can't you be buying \$175,000 house
5 in our neighborhood and rehabbing them? Because
6 you're saying the lot prices is 200. I'm saying
7 according to his testimony they're in the 175 for a
8 house on a lot.

9 THE WITNESS: Okay. We get lots for free
10 basically in Hawaiian Home Lands. And we keep our
11 construction cost, the actual hard cost to build the
12 house, at a hundred or less. So the whole package is
13 at a hundred. Now we're talking 175 for something
14 that we're going to have to add construction costs to.

15 MS. LINCOLN: But these aren't Hawaiian
16 Home Lands.

17 THE WITNESS: Right.

18 MS. LINCOLN: What normal houses on Maui,
19 not Hawaiian Homes, have you bought any other houses
20 on Maui that aren't Hawaiian Home Lands? And what do
21 you pay for a house and lot on Maui?

22 THE WITNESS: We haven't done any
23 single-family homes on anything other than Hawaiian
24 Home Lands. We did do a couple of rehabs in Paukukalo
25 on Hawaiian Home Lands that we were basically going to

1 go in and upgrade the electrical, maybe the roofing,
2 maybe the ceiling.

3 As we got into it we found we had to tear
4 the whole house down right down to the slab, rebuild
5 it at more cost than our new construction would cost
6 with time delays, architect delays, the family's out
7 of their house for a very long time.

8 I'd love to do it but, again, if you start
9 with \$175,000 cost we've already blown our budget in
10 the whole thing. We haven't done any work at all. So
11 it's just -- we work at the extremely affordable end.
12 We're picking up condominiums at Harbor Lights for
13 \$25,000.

14 MS. LINCOLN: Okay. So all these lands,
15 the 10 lots, are free from West Maui Land. You're
16 paying zero for the lots?

17 THE WITNESS: That's not part of my thing.
18 I was just going to address that one issue of why we
19 haven't been doing repos.

20 MS. LINCOLN: Okay. And what would it cost
21 for the main construction on those lots? What's it
22 gonna cost?

23 THE WITNESS: I haven't seen the drawings
24 so I don't really know. See, the way we work we
25 build--

1 MS. LINCOLN: What'd it cost to build a
2 Hawaiian Home Land house?

3 CHAIRMAN CHOCK: Ms. Lincoln, please let --

4 THE WITNESS: It varies.

5 CHAIRMAN CHOCK: Mr. -- hang on. Hang on,
6 sir.

7 THE WITNESS: Okay.

8 MS. LINCOLN: Sorry.

9 CHAIRMAN CHOCK: Ask your question and then
10 let the witness finish and then go on with your next
11 question.

12 THE WITNESS: Yeah. I was just addressing
13 the thing of why we haven't done any repos so far.
14 Any other questions as to what our total costs are, I
15 just run the jobs, and I try to get things donated. I
16 get volunteer labor. We try to keep the costs way
17 down.

18 As to this Project what the costs are going
19 to be or anything I don't know 'cause I don't know
20 what the design restrictions are. Some place we have
21 to put a garage, some place we have to put a driveway.
22 You know, I don't know. Sherry Dodson will be
23 speaking. She's the executive director and she could
24 answer those questions much better than I could.

25 MS. LINCOLN: And does Habitat For

1 Humanity -- and you're speaking and she might be able
2 to answer that -- like in Malibu, and like their
3 downtown area, whatever, do they have Habitat for
4 Humanity homes, say, in Malibu, California?

5 THE WITNESS: Habitat for Humanity -- I
6 just saw this thing this morning -- is the sixth
7 largest home builder in the United States. I think
8 they're referring to number of units.

9 There are areas that didn't want it in
10 their backyard, Marin County being one of them. Now
11 Marin County is finally realizing, you know, maybe we
12 really do need to provide houses that working people
13 can afford. Just in the last week they're putting
14 their first ones in.

15 Malibu? I rather doubt it unless someone
16 wants to give them the land. That's the big thing:
17 How much are you going to spend for the land?

18 MS. LINCOLN: Okay.

19 CHAIRMAN CHOCK: Sir, hang on. There's
20 more questions.

21 THE WITNESS: Sorry.

22 MS. BOLOMET: I have a couple questions.
23 Thank you for coming to give us these insights. I
24 have a little bit of experience with Habitat because
25 my stepfather works with you folks, and we were

1 discussing the land issues.

2 So one of the things that you said was that
3 you either get the lands for free or you have some
4 kind of arrangements with the owners. Do you and I
5 have any kind of arrangements for you to build on my
6 lands?

7 THE WITNESS: I have no idea.

8 CHAIRMAN CHOCK: Ms. Bolomet, we've already
9 kind of established that we're not going to get into
10 questions of title in this Petition.

11 MS. BOLOMET: Okay.

12 THE WITNESS: Yeah. That's not my part. I
13 couldn't address it anyway.

14 MS. BOLOMET: So when you build your houses
15 you're really looking to provide low cost houses or
16 houses to people that normally would not be able to
17 afford their housing, correct, in the regular
18 marketplace like Lahaina?

19 THE WITNESS: They'd be able to afford it
20 if they lived anywhere other than Maui maybe. On
21 Maui, again, because of the land costs it just drives
22 so many people -- and they have a whole formula for
23 who we can build for. They have to fall into a
24 certain income range. It's not free. We don't give
25 it to them. They have to pay back the cost.

1 We do provide the mortgage with no loan ap
2 fee, no interest. That's what really makes the whole
3 Project work is they get a 20 year, maybe longer,
4 mortgage at zero interest. All of a sudden now the
5 cost has gone way down.

6 We don't build affordable housing. We
7 build extremely affordable housing to get Maui
8 families in their own place. That's our whole
9 mission.

10 MS. BOLOMET: So would you build houses for
11 farmers that were farming the land? You said that you
12 built some kind of complexes for working people.
13 Farmers are working people.

14 THE WITNESS: There's, again, I'm not on
15 the homeowners selection committee. But I know across
16 the country Habitat's a national organization. They
17 give the individual affiliates a lot of reign. They
18 have guidelines and they have assistance and all that
19 but you basically -- there isn't somebody in Atlanta,
20 Georgia telling me how to build a house in Kula.

21 It's a totally different world. They don't
22 know. We know better than they do how to do that.
23 And when opportunities come up in different ways they
24 have done inner city rehab in some areas. You go
25 where the opportunity is.

1 Building a house for a farmer I have no
2 problem with that. But our selection committee, they
3 decide and our board of directors decides where we're
4 going to focus our energies, you know. Then they call
5 me up and say, "Hey, we got a homeowner, we got a lot,
6 here's the drawings, make it happen." That's just my
7 end of it so I don't know how it goes to that point.

8 MS. BOLOMET: Okay. So if I provided you a
9 lot -- not saying this one -- but if I provided you a
10 lot -- 'cause I have lots of land -- and I want to
11 provide housing for my farmers so that we can keep the
12 cost down because our mission is to feed wherever
13 we're at -- to feed the neighborhoods and to make our
14 lands offer sustainability to the communities.

15 In order for me to do that I have to keep
16 these people in housing. Because then we can work --
17 instead of where I live we have to pay people because
18 we can't provide housing. We're paying them 15 to \$20
19 an hour. Well, that translates to a lot of money when
20 it comes to food in the grocery store. So I see this
21 as an opportunity. Would you be willing to work with
22 farmers like us?

23 THE WITNESS: Well, I can't speak for
24 Habitat Maui. I'm only here to speak with the issue
25 about why we're not doing repos. But from my

1 experience with them they're very open to a lot of
2 things.

3 MS. BOLOMET: Terrific. We'll be talking.

4 THE WITNESS: I certainly am.

5 MS. BOLOMET: Thank you.

6 MS. LINCOLN: I have one other question but
7 I'm not sure if it's for him or for Sherry.

8 THE WITNESS: It's for Sherry. (Laughter).

9 CHAIRMAN CHOCK: Commissioners, any
10 questions? Thank you for your testimony.

11 THE WITNESS: I just want to say this has
12 been very educational. Very good.

13 MR. ORODENKER: Michelle Keahe.

14 UNIDENTIFIED SPEAKER: (off mic) She had to
15 leave. She'll be back to try to testify again.

16 MR. ORODENKER: Bobby Pahea.

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

20 THE WITNESS: Yes, I do.

21 CHAIRMAN CHOCK: name and address for the
22 record, please.

23 THE WITNESS: My name is Bobby Pahea. My
24 address is 111 Pueo Drive, Kula.

25 CHAIRMAN CHOCK: Proceed.

1 THE WITNESS: I'm speaking here today on
2 behalf and in support of Habitat for Humanity Maui.
3 I'm a partner family with Habitat for Humanity.
4 Together we have jointly built my home for my family.
5 Today I want to speak on behalf of the people that do
6 not qualify for conventional type of home loans
7 because I was one of 'em.

8 And for me Habitat for Humanity was a, was
9 a beacon of light for me to give me hope to have and
10 own my own home. And I am a full-time taro farmer.
11 If it wasn't for Habitat for Humanity I would have
12 lost my lot. My family and I probably would have
13 ended up on the beaches. In my opinion we need these
14 kind of programs. I believe we should have these kind
15 of programs in every development. We need to keep our
16 people off the beaches.

17 Like you heard earlier, you know, this is a
18 program that offers zero interest. Can't find that
19 anywhere. And I want to speak for that group of
20 people who don't have any home 'cause of the cost of
21 living on Maui, and because of my low mortgage I can
22 be a full-time farmer and a full-time taro farmer.
23 That's my heritage. That's my culture. And if it
24 wasn't for them I don't think I could do what I love
25 to do in my own land in Hawai'i. So thank you.

1 CHAIRMAN CHOCK: Petitioner, questions?

2 MR. GEIGER: No questions.

3 CHAIRMAN CHOCK: County?

4 MR. GIROUX: No questions.

5 CHAIRMAN CHOCK: State?

6 MR. YEE: No questions.

7 CHAIRMAN CHOCK: Intervenor?

8 MS. LINCOLN: Thank you for testifying.

9 And I'm a hundred percent for Habitat for Humanity.

10 And I wish that the Petitioner would have put some
11 Habitat for Humanity out at some of his other projects
12 that he's done on West Maui 'cause then people could
13 already be in those and --

14 CHAIRMAN CHOCK: Ms. Lincoln.

15 MS. LINCOLN: --and actually be farming
16 them. So thank you very much for your testimony.

17 CHAIRMAN CHOCK: Ms. Lincoln, I'm going to
18 have to ask you and remind you not editorialize in
19 your questions, ask a question. Don't state an
20 opinion.

21 MS. LINCOLN: Okay.

22 CHAIRMAN CHOCK: Do you have a question?

23 MS. LINCOLN: If you could have gotten or
24 one of your friends or family that farms taro or have
25 to be something, probably up at Launiupoko, but they

1 have 2-acre and larger farms out there.

2 Would that have been something that's
3 needed for Habitat to have some house up at Launiupoko
4 that actually had farmland with a house? Not only
5 would you get a house, but you'd get an occupation.

6 Do you think that would have been good for
7 people like you that are looking for a home? Because
8 it'd be providing a home and a livelihood.

9 THE WITNESS: Well, I'd like to address the
10 2-acre parcel first.

11 MS. LINCOLN: They might be bigger. I
12 don't know. I'm just saying.

13 THE WITNESS: Well, depending on what you
14 want to achieve as a farmer. If you want to be a
15 farmer that's farming for subsistence living, that's
16 fine. But to survive in this economy and in this
17 place in Hawai'i as a farmer, especially as a taro
18 farmer we need more land just because of the process
19 of how it works.

20 MS. LINCOLN: But my question is: If there
21 could be farms out in Launiupoko right now with
22 Habitat occupants, would that have been, in your
23 opinion, nice to have Habitat homes available on the
24 West side already with occupants in them?

25 THE WITNESS: I'm not sure if I understand

1 the question.

2 MS. LINCOLN: If you had an opportunity,
3 if -- you're trying -- you're speaking for -- you're
4 trying to get 10 homes in Lahaina for Habitat. Could
5 they be out at Launiupoko instead of Lahaina is what
6 I'm asking? If it was offered out at Launiupoko -- do
7 you know where Launiupoko is?

8 THE WITNESS: Yes.

9 MS. LINCOLN: Okay. If it was offered at
10 Launiupoko would that still be good for Habitat?
11 'Cause it's a home. They're providing a home, zero
12 interest in the same price range that yours is. Would
13 that be, in your opinion, good?

14 THE WITNESS: And you're saying this home
15 is built by Habitat for Humanity?

16 MS. LINCOLN: Yes. The land was given.
17 And it was built by Habitat.

18 THE WITNESS: Sure.

19 MS. LINCOLN: That's it. That's my
20 question.

21 CHAIRMAN CHOCK: Ms. Bolomet, any
22 questions?

23 MS. BOLOMET: Yes. I sympathize with you
24 because I work with farmers. But would you say -- as
25 a farmer and a cultural farmer do you feel a sense of

1 more who you are by being able to work with the land
2 and to practice your cultural practices in your life
3 rather than having to get a job somewhere else?

4 THE WITNESS: Yes.

5 MS. BOLOMET: Do you see that there are
6 other people that you may know that are on the beach,
7 would they value having a place to come to farm and to
8 live without having 68 homes, you know, in one place
9 but rather having maybe 10 homes in the same amount of
10 land? And the rest of the land you unveil all of the
11 auwa'i that are there, all the -- bring back the
12 stream bed?

13 Have all the lo'i, all the native birds and
14 insects and plants that are for healing. Do you think
15 the people that you know would value that?

16 THE WITNESS: I'm sorry. I'm still not
17 clear about that.

18 MS. BOLOMET: Would you like to live in a
19 place where you're surrounded by lo'i and all the
20 cultural practices of your ancestors?

21 THE WITNESS: Yeah, definitely.

22 MS. BOLOMET: And if you could live on
23 lands that still were providing you homes with no
24 fees, you just worked the land, you do not pay for a
25 home, you just work the land, you're provided a home,

1 does that sound interesting to you? Do you think
2 other people would be attracted to that, other kanaka
3 maoli?

4 THE WITNESS: Sure.

5 MS. BOLOMET: That's my questions.

6 CHAIRMAN CHOCK: Commissioners, any
7 questions? Thank you for your testimony.

8 THE WITNESS: Thank you.

9 CHAIRMAN CHOCK: Is there anyone else in
10 the audience wishing to provide public testimony at
11 this time? Please come forward.

12 MS. APANA: I don't know if I can.

13 CHAIRMAN CHOCK: I believe Intervenor is
14 going to have you or is going to attempt to have you
15 as an expert. Are you here to testify as a member of
16 the public?

17 MS. APANA: I wasn't sure which one, what I
18 would allowed to do.

19 CHAIRMAN CHOCK: I would encourage you to
20 wait until we take up your expert status and admission
21 and then we'll come back to you. And every time we do
22 have a public hearing you can always come back and
23 provide public testimony if you're not submitted as an
24 expert.

25 MS. APANA: Thank you very much.

1 CHAIRMAN CHOCK: Okay. Anyone else from
2 the public wishing to provide testimony? Please come
3 forward. Aloha.

4

5 JOHANNA KAMAUNU
6 being first duly sworn to tell the truth testified as
7 follows:

8 THE WITNESS: Yes, I do.

9 CHAIRMAN CHOCK: Name and address for the
10 record.

11 THE WITNESS: My name is Johanna Kamaunu.
12 And I'm from 222 Waihe'e Valley Road, Wailuku.

13 CHAIRMAN CHOCK: Proceed.

14 THE WITNESS: As I understand the land use
15 purpose I also see that it was to protect some of the
16 cultural rights. And in doing that I have to wonder
17 if what's been evaluated here in all the reports that
18 have been submitted with this application if it has
19 been properly addressed.

20 I'm suspecting that -- 'cause I don't see
21 it in the reports -- I suspect that there are sites
22 and places and information that should be made a part
23 of the record that isn't or part of the reports that
24 isn't.

25 One of the things that I'm thinking is

1 important is that we need to see what the
2 possibilities of production in this land are. And I
3 find that in a development process like -- development
4 Project like this -- it is a good thing that you can
5 provide homes. But I'm weighing that against the
6 possibility of the production of food, the possibility
7 of how this may impact people whose character is
8 connected or built upon those values that are
9 connected with the land.

10 And I'm speaking as one who has had family
11 members incarcerated. And when they are released from
12 incarceration some of the most important things that
13 we're hearing from them is that, "I'm so glad to be
14 home. I'm so glad I can touch the soil. I'm so glad
15 that I can see the mountains. I would love to be able
16 to work this land."

17 Over the past five, six years we've had
18 many people suggest to us that their lives would be
19 very different if they could work the land as cultural
20 or traditional practitioners. Those opportunities
21 aren't being opened to them.

22 I'm also suspecting that people who have
23 been incarcerated, and we know there's a
24 disproportionate amount of Native Hawaiians in the
25 prison systems, that this constitutes a huge amount of

1 commitment on the part of the state and the counties
2 to provide services to them.

3 How better would that be applied if there
4 were other uses for this particular land. I'm
5 probably getting into areas that this body has no
6 jurisdiction over. But I felt that that was really
7 important that there are things as a people that are
8 not being valued in the system that's not being
9 brought to the attention to the laws.

10 And some of these practices, some of the
11 effects of our practices are not being brought
12 forward. Thank you.

13 CHAIRMAN CHOCK: Parties, any questions?

14 MR. GEIGER: No questions.

15 MR. GIROUX: No questions.

16 MR. YEE: No questions.

17 CHAIRMAN CHOCK: Ms. Lincoln?

18 MS. LINCOLN: No questions.

19 CHAIRMAN CHOCK: Ms. Bolomet?

20 MS. BOLOMET: I have a question. Do you
21 put your hands in the soil and work the soil?

22 THE WITNESS: Do I put my hands in the
23 soil?

24 MS. BOLOMET: Are you a farmer?

25 THE WITNESS: Yes.

1 MS. BOLOMET: And it's from -- sorry.
2 I've seen the magic of people putting their hands in
3 the soil. They come to life to know that they can
4 grow their own food. Have you seen this?

5 THE WITNESS: Yes.

6 MS. BOLOMET: Have you witnessed this?

7 THE WITNESS: Yes.

8 MS. BOLOMET: Do you think it would be more
9 valuable to keep this land agricultural land, helping
10 people to rejuvenate themselves to learn how to become
11 sustainable and to become more of who they are by
12 keeping this land agriculture?

13 THE WITNESS: If I may explain. My husband
14 and I are in the process of doing something like that.
15 We've created our proposal called A Sense of Place.
16 We're suggesting that through some of our cultural
17 practices that we may be able to, I guess they call it
18 remediate or rehabilitate those who are incarcerated,
19 those who are addicted, those who are going through
20 drug court.

21 And do I see a change in people who do
22 that? Unfortunately the system, especially the drug
23 court system right now, has no venue for Native
24 Hawaiians. They are in their western and the
25 jurisdictional and psychological venues. But there's

1 no cultural context. I don't know. It's like a duck
2 out of water and you're trying to teach him how to be
3 a duck out of water or help him be a duck out of
4 water.

5 A lot more is said. I was what they call a
6 Hawaiian studies teacher in the DOE for 14 years. And
7 one of the projects our school had was to take
8 students to Kukuipuka He'iau. One of our teachers
9 discovered it from reading Kamakau. And it was all
10 inundated and overgrown. You wouldn't have recognized
11 it for anything. But today it's different.

12 And for all the years that we took children
13 there and we were worked cleaning it up, the land is
14 totally cleared now. So that you have a vision of
15 Kahakuloa all the way over to Makena. You didn't have
16 it when we started it.

17 When we finish our day's work which we may
18 be there for about an hour and-a-half, the one thing
19 the kids all enjoy is being able to sit and just enjoy
20 that vista.

21 And even with people who were not our
22 students, who are visitors that come through one
23 program or another, one thing they enjoy is being able
24 to enjoy that vista and to try and understand what
25 kind of people existed here.

1 Is it beneficial? It's necessary.

2 MS. BOLOMET: I have another question. And
3 I need to preface it first before I ask it. When I
4 was small and I grew up on the farm, nature -- I was
5 always taught life lessons and morals by nature. So
6 my father would teach me about love by looking at the
7 plants and planting seeds.

8 And the Hawaiian culture -- my father was
9 Portuguese so my -- in the Hawaiian culture would you
10 say that all of our or much of our culture and our
11 belief systems are related to nature? And being in
12 nature is more of how we learn rather than from books?

13 THE WITNESS: Hawaiians were here for
14 hundreds of years before western impact. So there was
15 nothing to distract them like what we have today.
16 Barring all that distraction their TV was the world
17 around them, their environment. So they became very
18 in tune with every single thing that affected their
19 lives.

20 So is it -- I don't think you can separate
21 who they are from that land. When we look at the kalo
22 plant in the lo'i you see the oha. You see the corm
23 surrounded by keikis. And in that is the lesson of
24 family. The OHA is the family unit. 'Ohana is the
25 family unit. So that's represented there.

1 We talk about it all the time. I can look
2 at the plumb trees that I have on my property and
3 compare it to, say, something like the Lama tree or a
4 hard wood tree, a koa tree. The value in one is that
5 it's hard. The other is soft. So why would I want to
6 use a soft tree in building a home or using it as a
7 tool? I'd want to use the hard tree.

8 I use that as a lesson with my own
9 children. you don't want top much stock into something
10 that looks good, can stand tall and straight but
11 doesn't have much substance to it or strength to it.
12 But I could go on and on but I think I answered your
13 question?

14 MS. BOLOMET: Yes. And one last question.
15 I noticed when I cleared land even though the land
16 might look barren and useless, when I clear it it's
17 as if all the insects come back. Like we have
18 dragonflies and butterflies and bees and sort of
19 things that come to the property and native plants
20 just start to appear.

21 Have you noticed that in your experience as
22 a farmer and as a teacher working the land?

23 THE WITNESS: A really good example is
24 right down the road here at Kanaha Beach Park. At one
25 time it was all overgrown. You have all these shrubs,

1 rubbish shrubs we call them, with spines and burrs and
2 nothing good was there. And this one man decided he
3 wanted to clean up that area.

4 And over the years he cleaned up a
5 substantial part of which I was able to participate
6 with my church. We found that after we cleaned up the
7 area barring nothing else other than nature and rain,
8 native plants came back.

9 MS. BOLOMET: Thank you.

10 CHAIRMAN CHOCK: Commissioners, any
11 questions? Thank you for your testimony. I believe
12 there was one other individual wanting to provide
13 public testimony.

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

17 THE WITNESS: Yes.

18 CHAIRMAN CHOCK: Name and address for the
19 record?

20 THE WITNESS: Alena Walker with Hawai'i
21 Realty here on Maui. My address is 1975 Vineyard
22 Street in Wailuku.

23 CHAIRMAN CHOCK: Proceed.

24 THE WITNESS: I'm here because listening to
25 the testimonies from Habilitat (sic) I kinda wanted to

1 give a little bit of information regarding real estate
2 per se on affordable housing and what Habilitat (sic)
3 has been doing.

4 There are a lot of people out there that
5 can't qualify for these homes that are currently on
6 the market. So I believe Habilitat (sic) is the only
7 agency currently working with a particular income
8 bracket in providing homes. I notice there were
9 questions about real estate. And I thought I would
10 step forward if there were any. That's what I really
11 wanted to comment on.

12 CHAIRMAN CHOCK: Questions, parties?

13 MR. GEIGER: No questions.

14 CHAIRMAN CHOCK: County?

15 MR. GIROUX: No questions.

16 CHAIRMAN CHOCK: State?

17 MR. YEE: No questions.

18 MS. LINCOLN: No questions.

19 MS. BOLOMET: I have a question. So would
20 you say it would be valuable? Right now this Petition
21 is proposing 10 homes, correct? So what if we were to
22 make it *all* homes for people to just work the land and
23 have a place to live? We're not selling the homes,
24 we're providing homes and a lifestyle, and a sense of
25 culture and getting back to knowing who they are.

1 Would you find -- well, maybe not because
2 you don't get a commission -- but do you think this
3 would be valuable, you know? 'Cause there are people
4 that just can't afford homes but still have services
5 that are valuable to the whole community.

6 THE WITNESS: Well, I believe this
7 particular housing for Habilitat (sic) is essential
8 for the area. Lahaina is a very expensive area to
9 live in. And even with 10 homes in that area would be
10 very, very affordable.

11 MS. BOLOMET: But doesn't it say that after
12 three or five years it can go back on the market at
13 market rates...not --

14 THE WITNESS: I haven't seen any deed
15 restrictions or anything pertaining to this Project.
16 But I have heard some projects in the past may have
17 that.

18 MS. BOLOMET: Because I thought I was
19 reading something about that which I found confusing
20 that it comes in under being affordable homes and then
21 in a few years you could sell it at market rate and
22 therefore it's not affordable anymore.

23 THE WITNESS: I believe it's project to
24 project. I'm not familiar with the deed restrictions
25 for this particular Project.

1 MS. BOLOMET: But we both agree that having
2 Habitat, whether it's for farmers or any other
3 project, it's necessary for Lahaina in this particular
4 area?

5 THE WITNESS: I fully support Habilitat
6 (sic) for their providing affordable housing in the
7 Lahaina area.

8 MS. BOLOMET: Thank you.

9 CHAIRMAN CHOCK: Commissioners, any
10 questions? Thank you for your testimony. I believe
11 that concludes the public witness testimony portion of
12 our agenda. It's 12:30. We're going to take a 1-hour
13 break and reconvene at 1:30 from lunch. Thank you.

14 (Lunch recess was held.)

15 CHAIRMAN CHOCK: Welcome back. We're back
16 on the record. It is 1:45. We will start with a
17 brief staff orientation. Scott.

18 MR. DERRICKSON: Commissioners, this is a
19 map orientation for A12-795 West Maui Land, Inc. and
20 Kahoma Residential, LLC. Petition Area is in the
21 northwest section of the island of Maui, about one
22 mile from -- well, actually half a mile from Lahaina
23 Town proper.

24 Petition Area is approximately 16.7 acres
25 in size located on the USGS M-2, quadrangle map.

1 Petition Area is mauka of Lahaina Town. Directly
2 adjacent to the Project is the Kahoma Stream flood
3 control channel and south of the older residential
4 neighborhoods up Kelaweia and Kahua. And major roadway
5 below is the Honoapi'ilani Highway.

6 CHAIRMAN CHOCK: Okay. Thank you, Scott.
7 Commissioners, any questions? Okay. Mr. Geiger, do
8 you have any exhibits you'd like to have admitted for
9 the record?

10 MR. GEIGER: Yes, Chair.

11 CHAIRMAN CHOCK: Proceed.

12 MR. GEIGER: We would offer Exhibits 1
13 through 14, 15A through 34 and 36. And in addition at
14 the time of the testimony of the witnesses we will be
15 offering the direct testimony of the witnesses.

16 CHAIRMAN CHOCK: Okay. Parties, any
17 objections? County?

18 MR. GIROUX: County, no objection.

19 CHAIRMAN CHOCK: OP?

20 MR. YEE: No objections.

21 CHAIRMAN CHOCK: Ms. Lincoln?

22 MS. LINCOLN: No objection.

23 CHAIRMAN CHOCK: Ms. Bolomet?

24 MS. BOLOMET: No.

25 CHAIRMAN CHOCK: Commissioners, any

1 questions? Okay. County, exhibits?

2 MR. GIROUX: We'd be offering Exhibits 1
3 through 13 along with the written testimonies of all
4 of our witnesses.

5 CHAIRMAN CHOCK: Okay. Thank you.
6 Parties, any objections?

7 MR. YEE: No objection.

8 CHAIRMAN CHOCK: Commissioners? Okay.
9 Mr. Yee?

10 MR. YEE: No objections. I'm sorry, the
11 Exhibits 1 through 5 Office of Planning.

12 CHAIRMAN CHOCK: Had a lot for lunch, huh?

13 MR. YEE: Yeah. (Laughter). I'm up.
14 Okay. OP Exhibits 1 through 5 be offered into
15 evidence.

16 CHAIRMAN CHOCK: 1 through 5. Parties, any
17 objections?

18 MR. GEIGER: No objections.

19 MR. GIROUX: No objection.

20 CHAIRMAN CHOCK: Intervenors?

21 MS. LINCOLN: No objections.

22 MS. BOLOMET: No objections.

23 CHAIRMAN CHOCK: Commissioners? Everybody
24 okay? Ms. Lincoln, any exhibits you care to admit?

25 MS. LINCOLN: No. Well, the one I already

1 gave you in addition to the ones you've already been
2 served. I don't know what the question is. I'm
3 sorry.

4 CHAIRMAN CHOCK: That ones that you've
5 already identified.

6 MS. LINCOLN: Yes, I'd like to admit them
7 into evidence.

8 CHAIRMAN CHOCK: Okay. Any objections,
9 parties?

10 MR. GEIGER: Yes. I do have some
11 objections. Exhibit 1 there is a one page of a
12 portion of an article on Lahaina culture which is page
13 11 of that exhibit. I would object on relevancy
14 grounds and there's been no connection to property.

15 Next there's excerpts of county council
16 hearing of November 2011 pages 14 through 20. That
17 would be cumulative testimony that's going to be given
18 by witnesses here, so I would I object to that.

19 CHAIRMAN CHOCK: That's on Exhibit 1.

20 MR. GEIGER: Exhibit 1, yes. It's all part
21 of Exhibit 1. There's also excerpts from the county
22 council hearing of May of 1995. I believe that would
23 also be cumulative of testimony by the witnesses that
24 are being offered by Ms. Lincoln and other parties.

25 Then finally -- I'm sorry that's pages 23

1 through 38 of the exhibit. Finally, on Exhibit 1
2 there is a statement that is attached as last page
3 exhibit on Page 40 which is effectively the Position
4 Statement of Ms. Lincoln. I believe it's cumulative
5 of the Position Statement.

6 CHAIRMAN CHOCK: County?

7 MR. GIROUX: We'll concur with those
8 objections.

9 CHAIRMAN CHOCK: Mr. Yee?

10 MR. YEE: No objection.

11 CHAIRMAN CHOCK: Ms. Bolomet?

12 MS. BOLOMET: No objection.

13 CHAIRMAN CHOCK: Ms. Lincoln, can you
14 provide us some background on Exhibit 1 and the pages
15 that were referenced by the Petitioner in terms of its
16 relevance to the hearing?

17 MS. LINCOLN: I'm trying to find it.
18 Sorry.

19 MR. GEIGER: And, Chair, just so you're
20 clear I also have objections on the other exhibits but
21 I thought it would be best to take them one at a time.

22 MS. LINCOLN: It would just go through my
23 whole document and decide what's --

24 CHAIRMAN CHOCK: We're just on Exhibit 1.

25 MS. LINCOLN: Open space needed for

1 children rules --(inaudible. Mic off)

2 CHAIRMAN CHOCK: Can you please speak into
3 the mic.

4 MR. GEIGER: Ms. Lincoln, it's Page 11
5 which is the first page of an article apparently of
6 Lahaina.

7 MS. LINCOLN: Exhibit 1.

8 MR. GEIGER: Ms. Lincoln, it's Page 11, the
9 first page of an article apparently on Lahaina.

10 MS. LINCOLN: I'm sorry. What?

11 MR. GEIGER: I'm objecting to that on the
12 grounds it isn't relevant, it isn't related to the...

13 MS. LINCOLN: That's fine. You can get rid
14 of that.

15 MR. GEIGER: Okay. I'm also objecting to
16 Pages 14 -- point to --

17 CHAIRMAN CHOCK: Hang on. Just for point
18 of clarification. So you're withdrawing Exhibit --

19 MS. LINCOLN: I'm withdrawing Exhibit --
20 Page 11, whatever that is, Exhibit 1.

21 CHAIRMAN CHOCK: So you're withdrawing
22 Page 11 of Exhibit 1? Or are you withdrawing the
23 entire exhibit?

24 MS. LINCOLN: The entire Exhibit 11.

25 CHAIRMAN CHOCK: Okay. Next?

1 MR. GEIGER: Exhibit 2. I'm sorry, Chair,
2 just want to make sure you're withdrawing all of
3 Exhibit 1.

4 MS. LINCOLN: No. The page 11.

5 MR. GEIGER: Okay.

6 MS. LINCOLN: The historical significance.

7 CHAIRMAN CHOCK: So to clarify. You're
8 withdrawing Page 11 of Exhibit 1.

9 MS. LINCOLN: Page 11 -- I'm sorry, yes.
10 Page 11 of Exhibit 1. Thank you.

11 MR. GEIGER: The next item was Page 14 of
12 Exhibit 1. Or the page numbered 14 of Exhibit 1. And
13 that is cumulative because Mr. Frampton is here to
14 testify so she can ask the question of Mr. Frampton.

15 CHAIRMAN CHOCK: You would like to withdraw
16 pages 14 through 20, and 23 through 38 for, I'm
17 assuming for the same reasons, Petitioner?

18 MR. GEIGER: Yes. Actually 14 is
19 Mr. Frampton and the others were I believe
20 Councilmember Cochran who's going to be testifying.

21 MS. LINCOLN: Her written testimony if the
22 parties agree. I don't agree to have that removed.
23 And not based on that but Will Spence's testimony
24 saying that there was -- and I'm sorry I don't have
25 his questions ready -- but in Will Spence's -- not

1 regarding the Petitioner's -- but in Will Spence's
2 testimony he said the county council gave the open
3 space and park great deliberations.

4 And this is one of my points on no they did
5 not. In fact it was described as "out of the box".
6 So I wouldn't call that great. It's in rebuttal or in
7 testimony to that. So I wouldn't want that taken out.

8 CHAIRMAN CHOCK: I've noted your objection
9 for the record, Petitioner, and we're going to go
10 ahead and just exhibit -- enter it, all of Exhibit 1
11 minus Page 11.

12 MR. GEIGER: Okay. And will I still be
13 able to object as it comes up, if it comes up?

14 CHAIRMAN CHOCK: Sure.

15 MR. GEIGER: Thank you.

16 CHAIRMAN CHOCK: Next.

17 MR. GEIGER: Okay. On Exhibit 2 we would
18 object to Pages 42 and 45 because it is cumulative of
19 the testimony of the witnesses who will be present at
20 the hearing. Again, it's excerpts from the county
21 council hearing of November of 2011. And Page 47
22 which, again, is a statement which would be cumulative
23 of the position statement that's been submitted.

24 CHAIRMAN CHOCK: How many of the
25 Intervenor's exhibits in your analysis are cumulative

1 and you're going to be objecting on the same basis?
2 Because my inclination is to note your objection but
3 include the exhibits and deal with them as we move
4 through the proceeding.

5 MR. GEIGER: That's fine. It would be
6 Exhibits 2, 3, 4 and 5 and 6.

7 CHAIRMAN CHOCK: So 2 through 6. So I've
8 noted your objection.

9 MR. GEIGER: I apologize. There's also a
10 video which has four separate exhibits on it. It's
11 Exhibit 8. One excerpt is a video of the same
12 testimony that was Page 14 of Exhibit 1. It's just
13 the video of the transcript. So that I would object
14 to as cumulative. The same would be true of Exhibit 3
15 of the video which is, again, a video of the traffic
16 engineer testifying before the county council.

17 And Exhibit 4 which is an interchange
18 between two councilmembers, which is again this is the
19 video of the transcript that's been submitted.

20 CHAIRMAN CHOCK: So noted, your objections.

21 MR. GEIGER: I also had an objection to
22 video No. 1 which is a slide show. There is a song on
23 the side show. I'd object to the song. I don't have
24 any problem with the video, the slide show being
25 shown.

1 CHAIRMAN CHOCK: What exhibit number?

2 MR. GEIGER: It is video No. 1 of Exhibit
3 8. If she wants to play it without the music that's
4 fine. I don't have any problem. It's just I don't
5 believe the music's appropriate.

6 CHAIRMAN CHOCK: Okay. So noted.

7 MR. GEIGER: And the ruling?

8 CHAIRMAN CHOCK: I'm going to admit
9 these -- parties, any other concerns or objections?

10 MR. GIROUX: County, no.

11 CHAIRMAN CHOCK: State?

12 MR. YEE: No objection.

13 CHAIRMAN CHOCK: Ms. Bolomet?

14 MS. BOLOMET: No objections.

15 MR. GEIGER: Okay. And then the final one
16 was Exhibit 14 which are just excerpts from the
17 constitution. Again I don't know what the relevancy
18 would be of that. It's a law. If she wishes to refer
19 to it she can refer to it.

20 CHAIRMAN CHOCK: We've dealt with that
21 earlier in the day too. We did give Ms. Bolomet
22 some -- we actually gave her a little bit of latitude
23 on some of those areas as well. But we didn't admit
24 some of those exhibits where she was citing laws. You
25 can bring that up, if you like, on your own as part of

1 your presentation. So that was Exhibit 14,
2 Petitioner?

3 MR. GEIGER: 14.

4 CHAIRMAN CHOCK: So we'll strike that one.

5 MS. LINCOLN: That's what most of those, my
6 things are, are just part -- that's more my testimony
7 then. You just basically saw my whole entire case.
8 So I don't fully understand what -- will I be able to
9 do all my exhibits and you'll decide as we go whether
10 to allow them or not? Is that the final ruling?

11 CHAIRMAN CHOCK: All but 14.

12 MS. LINCOLN: What was 14?

13 CHAIRMAN CHOCK: I think Petitioner just
14 said it was an exhibit based on an excerpt from the
15 constitution. Is that right?

16 MR. GEIGER: Yes. It was your rebuttal
17 exhibit where you just attached portions of the
18 constitution.

19 MS. LINCOLN: Okay. So I did that more as
20 a reference to things I quoted elsewhere. So it's
21 just more. Yeah, that's fine.

22 CHAIRMAN CHOCK: Okay. Ms. Bolomet?

23 MS. BOLOMET: Yes.

24 CHAIRMAN CHOCK: Your exhibits.

25 MS. BOLOMET: Didn't we do this already?

1 CHAIRMAN CHOCK: Why don't we take her
2 exhibits up at the next hearing because her portion of
3 the case is going to be up. We gave her an extension
4 and you an opportunity.

5 MR. GEIGER: As I understand it will be
6 Exhibits 12, 14, 15, 16 and 17.

7 CHAIRMAN CHOCK: Correct.

8 MR. GEIGER: That's fine from Petitioner's
9 standpoint, Chair.

10 CHAIRMAN CHOCK: I didn't have 16 actually.
11 I have 12, 14, 15 and 17.

12 MR. GEIGER: That would fine.

13 MR. YEE: I'm sorry, Chair, just to be
14 clear. Frankly, my notes indicate Exhibit 16 was one
15 of the exhibits that had not been produced by
16 Intervenor at this point. And you gave her 'til
17 August 1 I believe.

18 CHAIRMAN CHOCK: For 16. Okay.
19 Ms. Bolomet, you okay with that?

20 MS. BOLOMET: Hmm-hmm.

21 CHAIRMAN CHOCK: Okay. Very good.

22 MS. BOLOMET: I'm already exhausted.
23 (Laughter).

24 CHAIRMAN CHOCK: Petitioner, are you
25 prepared to proceed?

1 MR. GEIGER: We are.

2 CHAIRMAN CHOCK: Okay.

3 MR. GEIGER: I presume that the Commission
4 would like a short opening statement.

5 CHAIRMAN CHOCK: Proceed then.

6 MR. GEIGER: Good afternoon. We've met
7 earlier today, but I'm Jim Geiger. I'm the attorney
8 representing Petitioner in this matter West Maui Land
9 Company, Inc. We're here -- and I'm going to keep
10 these remarks brief -- but with me is Heidi Bigelow
11 who's West Maui Land Company.

12 And we're here because we're asking this
13 Commission to review a request to change the state
14 land use classification of a 17, slightly under
15 17-acre parcel of land from its present classification
16 of Agricultural to the classification of Urban.

17 As you saw from the staff's identification
18 on the map, the Project Area that we're talking about,
19 the Petition Area we're talking about is that yellow
20 sliver of land. And you'll note that it is surrounded
21 by the red or pink or whatever color you want to call
22 it which is urban designation.

23 What this is it is a piece of land that
24 historically was part of a field that was farmed and
25 cultivated for sugarcane by Pioneer Mill.

1 And in the late 1980s because of a flood
2 issue with Kahoma Stream a public works project was
3 done which re-channelized or moved Kahoma Stream from
4 its then existing location to a new, large concrete
5 channel.

6 And what that did was it cut off this part
7 of the field from the rest of the field. That was
8 done in 1990. Once that happened since that time this
9 property has not been in active cultivation. It's
10 been fallow. There isn't any water that gets to it.
11 Or there was none from the ditch systems because the
12 ditch systems were cut off. So it's not been farmed,
13 although it's remained agriculture.

14 Now, you're going to hear from a number of
15 consultants. They will tell you that from the state
16 perspective, matters of statewide concern, the
17 criteria that you must apply, that this change from
18 Agricultural to Urban meets with all of the criteria
19 that you must apply.

20 You will hear from an architect who's going
21 to talk to you about the economic benefits of the
22 Project. You're going to hear from an agronomist
23 who's going to tell you why this property can't be
24 farmed. Commercially it doesn't make sense.

25 You're going to hear from an archaeologist

1 who's going to tell you that they did a study and they
2 couldn't find any archaeological features or any
3 archaeological structures.

4 You're going to hear from a cultural
5 specialist who's going to tell you that there was no
6 evidence of any current cultural use of the property.
7 You're going to hear from a flora and fauna specialist
8 who's going to tell you that there are no endangered
9 species that are on the property.

10 You're going to hear from a soils engineer
11 who's going to tell you that the soils are good for a
12 residential housing project.

13 You're going to hear from a traffic
14 engineer who's going to tell you that there's no
15 impact because of the traffic.

16 And you're going to hear from a civil
17 engineer who's going to tell you that this Project can
18 be developed within the guidelines allowed by the
19 state.

20 You'll also hear that the state Office of
21 Planning and the county planning department, county of
22 Maui planning department support this Project.

23 And then you're going to hear from Habitat
24 for Humanity because they're one of the -- they are
25 effectively the partner developer on this Project.

1 They're going to develop 10 of the 68 lots. And this
2 is a 100 percent affordable housing Project under the
3 Maui County Workforce Housing Ordinance.

4 Now, one of the things that people think
5 when they hear "affordable housing" is oh, my
6 goodness, it's going through a quick review process
7 and there hasn't been an opportunity for public input,
8 and we gotta take more time and look at these things.

9 That may be true with some projects. But
10 I can tell you that this Project has taken longer to
11 get to this position than it took to be build Hoover
12 Dam. We started this process in 2004. Consultants
13 were out there in 2005. The environmental assessment
14 process started in 2007. It continued in 2011.

15 It was part of the Maui Island Plan. And
16 it's included, you'll hear, in the Maui Island Plan
17 maps both within the Urban Growth Boundary for Lahaina
18 and as a project that was part of the maps.

19 Then ultimately in November and December of
20 last year, the Maui county council had an opportunity
21 to look at this, held hearings and decided to approve
22 this as an affordable housing project.

23 And you're going to hear about the
24 particular conditions that were imposed by the county
25 council and the exemptions. You're going to find that

1 this particular Project didn't get all of the
2 exemptions that you might expect for an affordable
3 housing project. And it had conditions imposed upon
4 it.

5 So all these things you will find out. I
6 tell you that because it's taken my client eight years
7 to get to this point. And it only took four
8 and-a-half years to build the Hoover Dam.

9 So I think once you hear from all of our
10 folks, and once you have an understanding of the
11 Project, what you'll find is that this property is the
12 right property to be reclassified to urban and it's
13 the right Project to go in that property. Thank you.

14 CHAIRMAN CHOCK: Okay. Your first witness.

15 MR. GEIGER: We'd call Rory Frampton. And
16 we may need just a minute or two to set up the slide
17 show.

18 CHAIRMAN CHOCK: Sure. Just for the
19 benefit of the Intervenor, when it's your respective
20 turn in the proceeding you'll have an opportunity to
21 give your opening statement as well. So right now
22 we're taking Petitioner first, County, OP, then both
23 Intervenor. So when you start your case that's the
24 appropriate time for you to give an opening statement.

25 MS. BOLOMET: So we have this many chances

1 to learn, right?

2 CHAIRMAN CHOCK: You got a couple bites at
3 the apple before it gets to you.

4 (Pause)

5 MR. GEIGER: Thank you, Chair.

6 CHAIRMAN CHOCK: Mr. Frampton, I need to
7 swear you in.

8 RORY FRAMPTON

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

11 THE WITNESS: Yes, sir.

12 CHAIRMAN CHOCK: Name and address for the
13 record.

14 THE WITNESS: My name is Rory Frampton and
15 I live at 340 Kapoko Place, Kula.

16 CHAIRMAN CHOCK: Proceed.

17 DIRECT EXAMINATION

18 BY MR. GEIGER:

19 Q Mr. Frampton, did you prepare written
20 direct testimony for this particular proceeding?

21 A I did.

22 Q And if you look at the book in front of
23 you, I believe your written direct testimony is in
24 there under the tab marked "Frampton" which should be
25 at the back.

1 A Yes, it is.

2 Q And is the information contained in your
3 written direct testimony true and correct?

4 A Yes. But I have one minor correction.

5 Q Please tell us what correction.

6 A It's very minor, but on Page 23 it talks
7 about views from the Project site, and it says that
8 Moloka'i is visible to the west. It's actually
9 Lana'i. And Molokai is visible to the northwest.
10 That's about it.

11 Q Could you please identify the line number
12 that you're talking about so we can all find this.

13 A Line 13.

14 Q Are the qualifications, your
15 qualifications, educational history, and employment
16 experience accurate?

17 A Yes.

18 Q And you've been a planner engaged in
19 planning for effectively most of your adult life?

20 A Yes.

21 MR. GEIGER: We would offer Mr. Frampton as
22 an expert on planning.

23 CHAIRMAN CHOCK: Proceed.

24 Q (By Mr. Geiger) Rory, we've already got
25 your direct testimony. I don't want you to read it,

1 but did you prepare a presentation for the Commission?

2 A Yes.

3 Q Could you please provide the presentation,
4 give it to the Commission. If it's okay rather than
5 have the witness turn his back to the Commissioners if
6 we could have him stand over there.

7 CHAIRMAN CHOCK: You can take the mic with
8 you.

9 MS. LINCOLN: May I ask a question?

10 CHAIRMAN CHOCK: Yes.

11 MS. LINCOLN: Were we able to see this
12 previous to him showing this?

13 MR. GEIGER: The answer is it is
14 Exhibit 23. The slides are Exhibit 23.

15 MS. LINCOLN: But did we actually get to
16 see the slides or are they just slides now?

17 MR. GEIGER: What you see is --

18 MS. LINCOLN: Is what's in the book.

19 MR. GEIGER: Yes.

20 MS. LINCOLN: Okay. That was it. Thank
21 you.

22 THE WITNESS: Thank you very much. Good
23 afternoon, Commissioners. Again, my name is Rory
24 Frampton. I'm a land use planning consultant. And I
25 just wanted to provide an overview of the Project, a

1 description of the Project itself. I'll elaborate a
2 little on the surrounding land uses in the area and
3 kind of try to focus towards the end of my
4 presentation on the criteria that this Commission
5 needs to consider when granting a Land Use Commission
6 district boundary amendment.

7 So this slide basically shows the Project
8 layout. It's a linear Project that runs makai to
9 mauka along the Kahoma Stream channel. There's a
10 roadway that will run right through the middle of it
11 with lots on either side. A connection to the roadway
12 system will be made on the bottom of the Project as
13 well as to the top. I'll elaborate a little bit more
14 on that later.

15 The Project is 68 single-family house or
16 lot packages; 31 of the lots are over 7500 square feet
17 in size. And the Maui County ordinance allows 'ohana
18 units to be built on those, so that will be possible
19 on 31 of the lots.

20 The Project size, as was mentioned earlier,
21 is 16.7 acres, just over the 15 acre limit, which is
22 why we're here today. If it was under 15 acres we
23 would have been pau when we were at the Maui county
24 council. Because it's 16.7 acres, it's over the 15
25 acres and we're here before the Land Use Commission

1 because of that criteria.

2 As Mr. Geiger noted earlier it's an
3 affordable housing Project as defined by Maui County's
4 workforce housing ordinance. Under the county's
5 workforce housing ordinance they address low income,
6 low to moderate income as well as gap group income
7 houses. And it goes all the way up to 160 percent of
8 median income.

9 For a regular project on the county of Maui
10 in order to comply with the workforce housing
11 ordinance you have to provide 25 percent of your units
12 under 160 percent of median. We're doing all of the
13 units under 160 percent of median. So that's why
14 we're calling 100 percent affordable based on Maui
15 County's definition.

16 Ten of the houses, as was noted earlier,
17 will be developed by Habitat for Humanity. Those lots
18 are shown in the darker tan color more towards the
19 bottom of the property.

20 The remaining 58 lots will be developed
21 either as house/lot packages or as vacant lots which
22 will provide opportunities for families to be
23 owner/builders on the property.

24 These slides just show a couple area maps
25 of the Project. And I'll go through a couple of these

1 to try to get you oriented. This first map just shows
2 the Lahainaluna corridor. The dark lines are parcel
3 lines. And you can see the heavy concentration of
4 single-family units next to the Project. The Project
5 is outlined here in orange. You also see the block
6 patterns within Lahaina Town and north and Waihikuli
7 area.

8 This next map shows that it's an aerial
9 photograph from around 2011, shows a lot of the recent
10 buildout of the area. Again, here's the Project site
11 along the stream channel shaded in gray. You see the
12 single-family uses to the south, the light industrial
13 park to the north. The portions of the Lahaina Bypass
14 that were under construction back in 2011 that's
15 progressed considerably since then.

16 You'll see the onramp from the bypass
17 that's going to go to Lahainaluna Road. And I'll talk
18 about the roadways in a little bit more detail on a
19 slide further into my presentation.

20 This is a regional map of West Maui with
21 Lahaina Town on the south all the way up to Kapalua on
22 the north and the various urban developments in
23 between Kapalua Airport, Mahinahina, the Ka'anapali
24 Resort, the Waihikuli development, and Lahaina Town.

25 The Project is right in the proximity of

1 Lahaina Town as was noted earlier. This map also
2 shows the proposed Lahaina Bypass and the various
3 connector roads that would connect to the bypass. And
4 importantly, this phase of the bypass down here right
5 near Lahaina Town, which I'll show on a later map, is
6 currently under construction.

7 And this connector road, Keawe Street, is
8 also under construction right now. And that's
9 important for the people on Lahainaluna Road and for
10 all the people that attend the schools up there.

11 There's a high school, an intermediate
12 school, and an elementary school. The only way to get
13 up there right now is via Lahainaluna Road. There's
14 one way in, one way out. With the construction of
15 Keawe Street and the bypass you'll have another
16 opportunity to get up to those schools.

17 Again another map. This map really shows
18 the Lahaina vicinity, the commercial area of Front
19 Street and how close the Project is to Front Street's
20 commercial corridor. Shows the Lahaina Recreational
21 Center with swimming pools, ball fields, a number of
22 ball fields.

23 And up above, again, up Lahainaluna Road is
24 Lahainaluna High School complex. There's an
25 intermediate school as well as an elementary school up

1 on Lahainaluna Road.

2 This map was from May 2005. And you see
3 some vacant areas here along, next to Kahoma flood
4 channel. These projects have now or actually have
5 been built out as multi-family units on either side of
6 the flood control channel. There's also a little
7 commercial development along, abutting the channel
8 down there right above Honoapi'ilani Highway.

9 So in terms of the creation of the Project
10 site, as was mentioned earlier, in 1977 this shows
11 the highlight of the Project Area. We've done the
12 same thing on the 2005 photo. Let's look at this 1977
13 photo. For the better part of the last century this
14 area was all cultivated in sugarcane. And Kahoma
15 Stream ran right down along the southern boundary of
16 the property.

17 And right next to the homes, the old
18 plantation camp of Kahua or Mill Camp, as they used to
19 call it, and Kilauea Mauka is a new project. But that
20 stream used to run right down through here. And when
21 it hit the lower lands it would spill over. And there
22 were oftentimes flooding in the Lahaina Cannery Mall
23 area and this portion of Lahaina.

24 So it was identified as kind of a
25 long-standing problem with the flooding overflowing

1 the banks of the stream and impacting downstream
2 neighbors.

3 So they did -- in 1990 they completed the
4 flood control project which basically grabbed all the
5 waters from the stream, put it into sedimentation
6 basin and then channeled it all the way to the ocean
7 down near Mala Wharf.

8 That's what created this parcel as a
9 remnant piece of former ag land and basically
10 bifurcated it from the rest of what was formerly under
11 cultivation by Pioneer Mill.

12 This is standing at the lower edge of the
13 Project site, makai end looking mauka. And you see
14 the Lahaina Business Park off to the left, the Lahaina
15 flood control channel runs right along the boundary of
16 the business park, the homes of Kilauea Mauka are
17 visible to the right. Again, this long linear strip
18 of property.

19 From the top looking down this is standing
20 up right by the top of the flood control channel near
21 the basin. And it looks down along the county's
22 access road. So this dirt road is actually on county
23 property. The property line runs a little bit inland
24 of that, but the majority of the Project site is down
25 here.

1 You see the Pioneer Mill smoke stack,
2 various commercial areas of Lahaina and the highland
3 lot of Lana'i off to the west.

4 The surrounding land uses. As I mentioned
5 earlier the single-family projects of Kilauea Mauka
6 and the older Kahua tract subdivision border the
7 property to the south.

8 The multi-family -- new multi-family
9 projects the Opukea, and Ho'onaunea, Lahaina
10 condominiums, have been built on either side of the
11 flood control channel just above Honoapi'ilani
12 Highway. So there's now neighboring projects.

13 There's light industrial projects. The
14 newer light industrial project of the Lahaina Business
15 Park, which includes light industrial and commercial
16 uses across the stream.

17 And, of course, down here right at the
18 bottom is light industrial area that was the old
19 Pioneer Mill yard. So right in this area, which is
20 also abutting the Project site, was where the Pioneer
21 Mill had their mill operations centered for the better
22 part of the last century.

23 Lastly, there's commercial projects that
24 are built. The Lahaina Gateway Shopping Center is
25 new. This Project is going to have almost a direct

1 connection to that area through the road improvements.
2 And across the street is the Lahaina Cannery Mall. So
3 again the surrounding uses are all urban in nature and
4 it includes a variety of land use types.

5 The adjacent roadway network: The major
6 roadways in the area -- *the* major roadway in the area
7 today is Honoapi'ilani Highway, which serve as a
8 regional highway that connects the rest of Maui to
9 Lahaina, to Kapalua. It's the only major roadway that
10 actually travels through the area from one area to the
11 other.

12 So it serves a regional function. But it
13 also has to serve as a local function for the people
14 above Lahainaluna Road because their only way in and
15 out is Lahainaluna Road.

16 In order for these people to go shopping to
17 the business park, the cannery mall or any of these
18 places they have to come down onto the regional
19 highway, get on the highway, go a little ways and then
20 get off. Or vice versa, if they're in these areas
21 they're gonna go that way and get back on.

22 With the construction of the Lahaina Bypass
23 Phase IA, which is under construction now, and IB is
24 also under construction, they also have Keawe Street
25 being built. Phase 1A and Keawe Street were

1 accelerated because of the need to relieve congestion
2 on Lahainaluna Road.

3 And primarily you have a lot of people in
4 Waihikuli and all the way up to Kapalua who have kids
5 who go to school up here. And their only way to get
6 to the school is through the Lahainaluna Road
7 intersection.

8 With Keawe Street they'll have another way
9 to get up to the Lahainaluna School complexes. So
10 that's an important secondary access. And that's the
11 access that will be used by the people on a regional
12 basis.

13 The other roads in the area include some of
14 the local roads: Kalena Street is where we're going
15 to be connecting to on the top via Lumi, Lumi and
16 Kalena, actually. And on the bottom we're going to be
17 connecting over to Keawe Street via what's now called
18 Kahua Street. It used to be Mill Street.

19 I'll explain how that name came about on
20 my -- I'll just go to the next slide right now. So
21 this is a slide, lot of colors on there. But the
22 orange color is Keawe Street and Phase IA of the
23 bypass.

24 You see the little jug handle shape offramp
25 that will connect Lahainaluna Road. Because that

1 intersection will be grade separated, meaning the
2 bypass is underneath it.

3 Lahainaluna is over the top so there will
4 be no traffic light. So it will provide an easy way
5 for people to get up to the school areas and the
6 people from above here to go north if they want to go
7 out that way.

8 The yellow line here is the, what's called
9 the Kahua Street extension plan. It actually runs
10 along Mill Street for the most part. Mill Street was
11 the main cane haul road or haul cane road as they
12 called it in West Maui, that services the Pioneer Mill
13 site which was right there.

14 When they did the Master Plan and looked at
15 doing -- well, I should step back. The county has
16 determined that this is an important Project to build
17 because right now, as I mentioned earlier, there is no
18 north-south connectivity in this area because the only
19 way in and out is Lahainaluna Road.

20 So in order to address that they've Master
21 Planned improvements to Mill Street. It's gonna be
22 realigned to actually overlap with Kahua Street in
23 this area which is -- and they renamed it Kahua Street
24 for that purpose. So it's really the Kahua
25 Street/Mill Street Road Improvement project.

1 We're going to be constructing pavement
2 from the Project site to Keawe Street. And we've
3 coordinated with the county's plans and actually had
4 to reconfigure the property somewhat to accommodate
5 this curve on the bottom.

6 We lost a lot, but we're doing that in
7 order to make sure that our roadway plans are
8 consistent with the county's long range plans for this
9 Mill Street Extension project.

10 So that will make that connection there.
11 And what that does for the people in the subdivision
12 as well as in the neighboring area, it allows one more
13 opportunity to do local trips from, say, these homes
14 through the Project site over to the business park or
15 the various commercial areas without having to get
16 onto the regional highway.

17 So we feel -- and the traffic consultant
18 will tell you too -- that it's an important aspect of
19 this Project to enhance or increase the connectivity
20 between land uses above the highway so that you don't
21 impact the highway as greatly down here in the
22 Honoapi'ilani Highway.

23 I'll just add that with the construction of
24 this bypass phase, this neighborhood up here used to
25 be integrated and the roads actually connected. Now

1 the road -- the Lahaina Bypass has bifurcated the
2 Kilauea Mauka to the mauka section and the makai
3 section. The people right underneath the bypass,
4 their only way in and out right now is primarily
5 through Kalena Street or through some of the older
6 neighborhood streets down below.

7 Before, they had, they could go mauka and
8 get up to the schools that way. Right now this is
9 really their only way in or out. By providing this
10 alternative connection down through Keawe Street the
11 people in this neighborhood are no longer limited just
12 to the one way out via Lahainaluna Road.

13 So that's another positive benefit related
14 to this enhanced connectivity that we're talking about
15 above the highway.

16 So the Project improvements: The main one
17 is the roadway which runs right up through the center
18 of the Project. And the size of the Project actually
19 fits nicely for the road to go right in the middle.
20 And there's lot sizes. It creates lot sizes that are
21 suitable for single-family residential dwellings. The
22 lot sizes range from 5,000 square feet up to about
23 12,000 square feet.

24 We spent a lot of time looking at this
25 roadway and trying to design it in response to

1 concerns from the community. And I'll get into that
2 in my next slide in terms of the various features we
3 have added in that roadway to address some of the
4 community's concerns that came up.

5 We've got sidewalks on both sides of that
6 roadway. There's a park in the middle of the Project
7 about an acre that will provide recreational area for
8 the residents. We've also done a little greenway
9 connection where we could to the existing community to
10 the south. They'll also be able to access the park
11 through the roadway to the north.

12 There's a drainage retention basin designed
13 to handle the increase in flows from a 50-year storm
14 that'll catch the water down here at the bottom of the
15 site. The water system is gonna connect both the
16 mauka portion as well as over the Keawe Street.

17 And there will be a sewer connection to
18 Keawe Street as well, Keawe Street being the roadway
19 just to the north which accesses the Lahaina Business
20 Park, of course underground utilities throughout the
21 Project site.

22 This is the roadway improvements. It's a
23 roadway profile. And I'll show it again from a plan
24 view. But it's a 58-foot right-of-way. The county's
25 requirement is a 40-foot right-of-way. We've enhanced

1 it by putting on-street parking areas. In between the
2 on-street parking areas we have landscape pullouts.

3 Because if you do on-street parking areas
4 and you have that much pavement and the people see
5 that wide of a pavement strip they tend to like to
6 speed.

7 So we've basically, we've allowed for
8 parking but we've had planter pullout -- planter
9 pop-out areas as traffic calming measures. And the
10 idea there with the traffic calming measures is to
11 alleviate the concerns of the neighbors who thought
12 that maybe this roadway would be used as a short cut
13 to go up to -- to take the kids to school up mauka.

14 And so to try to get more people to use
15 Keawe Street, which is going to be designed for
16 efficient travel and the Lahaina Bypass, we've tried
17 to discourage the use of this for regional traffic by
18 putting in these traffic calming measures, the
19 planters strips. And we've put in speed bumps as
20 well, speed humps.

21 So again on this slide we show two travel
22 lanes, two bike lanes on either side which is above
23 the county's requirements, sidewalks on each side as
24 well as planter strips. And this just shows it from
25 the top. The lighting here is a little tough but you

1 see this major area here is the park.

2 We have on-street parking alongside of the
3 park, as well as various on-street parking in front of
4 the homes where possible. We have landscape pop-outs
5 to minimize the perceived width of the roadway to slow
6 people down, bypass on both sides.

7 We've also, as part of our development
8 standards, increased the setback for garages. So the
9 homes can be 15 feet from the roadway, but your
10 garages have to be 20 feet back.

11 What that does it allows for two on-street
12 parking stalls in addition to the required two covered
13 parking stalls that would be in the carport or the
14 garage.

15 If you have an 'ohana, 'ohana unit you'd
16 have to do an additional onsite parking requirement.
17 So with the setback for the garages with two-car
18 garage requirement, we're going to have a minimum
19 requirement of at least 8 parking stalls onsite.

20 If you have an 'ohana they'll have to be
21 five parking stalls onsite against -- to prevent kind
22 of overcrowding or spillage -- spillover parking to go
23 onto the streets. That was the concern that in
24 looking at some of the neighboring subdivisions in the
25 area there's a lot of cars in the area and a lot of

1 people park on the street. So, again, we tried to
2 make each parcel accommodate more stall onsite.

3 And we also widened the right-of-way to
4 allow for on-street parking to address the concerns of
5 overflow parking kind of tangling up the streets.

6 As part of the CC&R's for the Project we
7 are going to prohibit transient rental units. And,
8 again, we talked about the requirements for onsite
9 parking. I will add also that on any of the lots that
10 abut the existing homes to the south we've doubled the
11 setback.

12 Right now the rear yard setback for the
13 county would say 10 feet. But we've increased it to
14 20 feet. You can see more setback in these areas.
15 And that's just to give a little more breathing room
16 to the existing residences that border the property to
17 the south.

18 Offsite improvements. I mentioned earlier
19 this strip that's shown here in yellow, the Kahua --
20 will be paved along Kahua Street from the Project site
21 to Keawe Street. So that portion we're gonna pave.
22 There'll be a waterline extension to Keawe Street and
23 a wastewater extension to Keawe Street as well.

24 One of the beauties of this property or one
25 of the advantages of this property is they have

1 infrastructure services abutting the property. So
2 there's no major off-street connections except for the
3 connections down to Keawe Street down here.

4 But for the most part the water up here,
5 the power, electrical, cable, all that stuff is all
6 there around the surrounding community. And it
7 really, truly is an infill Project. So it really
8 makes the provision of infrastructure a lot more
9 efficient.

10 So here's some photos. This is standing
11 at the bottom corner of the property looking north
12 along Kahua Street. And I just took it from this
13 angle so you could see the Kahoma flood control
14 channel bridge. And that's the water that goes
15 underneath that bridge.

16 The next slide is standing up looking
17 straight down the middle of that bridge. So this is
18 the old cane haul road. It goes all the way up to
19 Keawe Street. And that's the section that we're going
20 to be paving.

21 This is a little further north showing the
22 new project -- the new multi-family projects on makai
23 side, Lahaina Business Park on the mauka side. And in
24 the distance there is a stop sign at Keawe Street. It
25 actually runs right alongside the railroad tracks for

1 the historic sugarcane train.

2 This photo is taken from the Kalena Street
3 which is the access for the mauka portion of the
4 property. On this slide over here it's looking south
5 along Kalena right with your back facing the Project
6 site.

7 So Kalena Street has a parking but it's not
8 improved. It's about a 40-foot right-of-way, about
9 24 feet of pavement and two lanes with speed bumps in
10 it. This would be the connection to Lahainaluna Road.

11 This is further down Kalena Street looking
12 at the stop sign at Lahainaluna Road showing the
13 pavement width and the nature of that street.

14 This is Lahainaluna Road looking makai.
15 You see the smoke stack down there in the distance.
16 This intersection is the Kalena Street intersection.

17 This slide as well as the next one shows
18 you -- this is looking up Lahainaluna Road, shows you
19 the adequate sight distance from the Kalena Street
20 intersection and the Lahainaluna Road.

21 These orange construction signs are giving
22 you notice of the Lahaina Bypass work that's occurring
23 up mauka above the Project.

24 So in terms of the land use decision-making
25 criteria to look at changing land from agriculture to

1 urban, the major criteria that you're looking at is
2 the conformity with the Hawai'i State Plan, conformity
3 with Urban District standards.

4 You look at impact on resources of
5 statewide concern which are listed there and
6 representations and commitments made by the
7 Petitioner.

8 I'm going to look at the conformity to the
9 Urban District standards. The standards in your rules
10 say that lands in the Urban District shall be
11 characterized by citylike concentrations of land uses
12 and services.

13 And as I discussed earlier, the whole
14 surrounding area is essentially urban with urban
15 levels of services, proximity to centers of trading
16 and employment. There's all kinds of business uses in
17 the business park nextdoor, the shopping areas at the
18 Lahaina Gateway Center, the Lahaina Front Street
19 Urban District as well as the Cannery Mall.

20 So there's a lot of trading and employment
21 centers nearby and basic services. It is proximate to
22 existing residential developments.

23 (Pause: Witness adjusting computer)

24 MR. GEIGER: If it's okay if he could
25 approach the computer.

1 CHAIRMAN CHOCK: Go ahead.

2 MR. FRAMPTON: Sorry. So I will just work
3 the computer from here. And I'll sit down so I won't
4 block the view.

5 So, again, continuing with the Urban
6 District standards -- it seems like my computer might
7 have froze up. I'll keep going from here. So it's
8 "Properties in Urban District shall be free of
9 topographical and environmental constraints." And the
10 property is relatively free of any type of topographic
11 or environmental constraints. Again, it's contiguous
12 with urban uses.

13 And the last criteria is that, "Shall not
14 contribute to spot urban development." And again this
15 certainly qualifies as an infill Project.

16 The conformity to the Hawai'i State Plan:
17 The Office of Planning has submitted testimony saying
18 that the Project is in conformity with the various
19 plans.

20 And you'll hear testimony relating to the
21 agricultural use of the property and how it's really
22 not viable because -- primarily because of the shape
23 and it's now only contiguous to residential areas and
24 it lacks a cheap source of water or non-potable water.

25 The Project in terms of meeting the Housing

1 Functional Plan is aimed at providing a wide range of
2 housing opportunities to a variety of income levels.

3 In terms of the Recreational Functional
4 Plan we do have bikeways -- sidewalks, the
5 recreational park that we're providing as well as a
6 pathway running along the flood control channel that
7 we'll be doing in conjunction with the county of Maui.

8 The Transportation Functional Plan. The
9 State Department of Transportation has noted that they
10 do not foresee significant impacts to their regional
11 transportation routes.

12 The historic -- in terms of historic
13 preservation the state Historic Preservation
14 Department has concurred with the Project
15 archaeologist that there's no immediate impacts to
16 archaeological resources.

17 And they also recommend that if any are
18 encountered during construction that appropriate steps
19 be taken. So we are consistent with the Preservation
20 Functional Plan.

21 And, lastly, with regard to sustainability
22 there's a new chapter in the State Plan that talks
23 about sustainability. A lot of the emphasis is on
24 locating new projects close to centers of employment
25 and places of business so that you reduce the reliance

1 on the automobile.

2 And we're certainly, if there's, one
3 Project that does that or meets that criteria it is
4 this one in terms of its locational advantages.

5 The assessment of the impacts: We did do a
6 final environmental assessment which looked at all of
7 these various areas of statewide concerns. When
8 looking at natural systems or habitats the
9 environmental consultant concluded that there are no
10 significant habitats in the area.

11 Similarly with the existing, existing
12 cultural or historical resources, they've essentially
13 been wiped out through the years of sugarcane
14 cultivation or creation of the flood control channel.

15 We talked a little bit about agriculture
16 earlier. The commitment of state funds, which is
17 essentially whether or not there has to be
18 improvements to state facilities. In this case either
19 the highway, which the state has concluded that
20 there's no need, there's no significant impact on the
21 regional highway.

22 And the educational components, the
23 Applicant is going to be paying a Department of
24 Education impact fee of almost \$400,000 based on their
25 formula. That agreement has been executed with the

1 Department of Education.

2 There will be employment opportunities
3 provided during the construction phase of the Project.
4 And, lastly, there's going to be housing opportunities
5 provided for low income, moderate income as well as
6 gap group income households.

7 In terms of regional planning, the figure
8 here on the left is the 1996 West Maui Community Plan.
9 This area in orange, is, we've highlighted it, it
10 shows where the Project is.

11 And there's an open space designation along
12 this corridor. And there's also a dotted line which
13 represents the desire to create a pathway along that
14 area.

15 We are working with the county to do a
16 pathway along the flood control channel. But the
17 recent planning -- so this plan was done in 1996. The
18 community plans in Maui are part of the General Plan
19 process.

20 Maui County is currently in the process of
21 doing a directed growth management plan for the
22 island. It's called the Maui Island Plan. In that
23 Maui Island Plan they're designating Urban Growth
24 Boundaries. And you can see the red and white line
25 here is the Urban Growth Boundary proposed for

1 Lahaina.

2 And the Kahoma Project has now been
3 included in that as well as some of the other Lahaina
4 infill projects in Lahaina Town and the Villages of
5 Leiali'i to the north.

6 So the Kahoma Project, it was included in
7 the boundary, it was actually specifically -- it's
8 specifically mentioned in the Maui Island Plan. And
9 there's a description of it included in the planning
10 document. And that's gone through about four or five
11 years of public review that I'll highlight on one of
12 my next slides.

13 What's really changed between 1996 and 2012
14 is the heavy emphasis that's being placed on infill.
15 Whereas in '96 they recommended this area for open
16 space.

17 In 2012 they're saying, "Hey, we should
18 really look -- as a strategy we should try to maximize
19 on our efficiency of existing infrastructure and
20 really take on infill as a land use strategy to
21 embrace." That's really what this Project represents
22 is an infill Project.

23 So in terms of county review the General
24 Plan Advisory is part of the Maui Island Plan, the
25 M-I-P the Maui Island Plan, they recommended inclusion

1 in the Urban Growth Boundary back in, I want to say,
2 2007 or 2008.

3 The Maui Planning Commission specifically
4 looked at the Kahoma Residential Project and included
5 it in the Urban Growth Boundary as part of the Maui
6 Island Plan. And then very importantly, as Mr. Geiger
7 noted earlier, the Maui county council took action on
8 our resolution, which was our request to approve the
9 Project as an affordable housing project.

10 The Maui county council is the body that
11 acts on zoning and acts on the Community Plan in Maui
12 County. They're the legislative authority. By this
13 action, by approving this resolution they effectually
14 said we don't have to go get a change in zoning and
15 the Project can go forward in this location as
16 approved.

17 So it was basically we took the 201-H route
18 so we could have more of a fast track approval in
19 terms of the zoning process. As Jim noted earlier the
20 Project's been anything but fast tracked. And that's
21 just the nature of how things are, at least on Maui.

22 So the county council, again, they approved
23 that resolution. The major exemptions were from the
24 Community Plan designation and the change in zoning
25 was an exemption to not have to provide parking and a

1 restroom facility for the park. The rest of the
2 exemptions are very minor exemptions and it has to do
3 with permit application fees.

4 There's no exemptions from standards,
5 roadway standards. In fact, we meet or exceed the
6 roadway standards. And we've increased side yard
7 setbacks. We've really more in this affordable
8 housing project than I've seen in a lot of the regular
9 standard residential projects built on Maui.

10 So we're not substandard in terms of
11 infrastructure requirements. We've just basically got
12 the exemptions from having to go through a longer
13 process of the community plan and zoning changes.

14 The community review of this Project in
15 February 2008 was a draft EA was published. There was
16 a community meeting in May 2008.

17 In 2009 I guess was the GPAC, the General
18 Plan Advisory Committee approval. I'm sorry. It
19 wasn't 2007. It was 2009. In September 2009 the
20 Planning Commission approved it. In March 2010 we had
21 another community meeting. And then in September 2011
22 we did the Final EA.

23 One of the reasons why the Project was
24 delayed was we were originally partnering with a third
25 non--- well, there was -- Habitat for Humanity was

1 always involved. And then Lokahi Pacific was
2 involved. And Lokahi Pacific was gonna do a
3 multi-family component to the Project. We had 25
4 multi-family units on it. And because of their
5 agency's issues they pulled out of the Project.

6 And we had to reconfigure the Project to
7 eliminate the multi-family. We tried to find another
8 person that would do multi-family units. We couldn't.
9 So we changed it to all single-family units.

10 That's really the reason for the delay
11 between 2010 and September 2011 was going from 90 some
12 odd total units down to 68 single-family lots.

13 In October 2011 we submitted the
14 application for affordable housing Project to the
15 council. And, of course, in December 2011, about six
16 months ago, we got the county council approval.

17 So just to summarize. The community
18 benefits for the Project is housing that's affordable
19 to the workforce group on Maui, close to employment
20 centers and business centers. We've got increased
21 roadway connectivity above the highway as well as
22 alternative transportation opportunities.

23 And so in consideration of all these
24 positive community benefits when the county council
25 looked at it back in 2011, they granted us approval

1 to do the Project. That essentially concludes my
2 PowerPoint presentation.

3 Q Thank you, Rory. You've signed your
4 written direct testimony in June 29, 2012. Have you
5 learned anything or has anything come to your
6 attention between that day and today that you need to
7 supplement or add to your written direct testimony?

8 A No, not that I'm aware.

9 MR. GEIGER: And with that I'll finish the
10 witness.

11 CHAIRMAN CHOCK: County, cross-examination?

12 MR. GIROUX: Thank you, Chair. There's not
13 going to be a searing cross.

14 CROSS-EXAMINATION

15 BY MR. GIROUX:

16 Q Mr. Frampton, you were part of the Project
17 as it went through the county process, the 201-H?

18 A Yes.

19 Q Can you kind of describe that process to
20 the Commission.

21 A The 201-H process, if you have an
22 application that's complete and ready for processing
23 the mayor's office through -- well, the Department of
24 Housing and Human Concerns through the mayor's office
25 will submit an application to the county council. And

1 the county council has 45 days to act.

2 In this case they held two public meetings
3 in which testimony was received. And we made a
4 presentation. There was a bunch of questions and
5 comments from the councilmembers. And the members of
6 the public had an opportunity to testify at those two
7 meetings. At the conclusion of the process they voted
8 to pass the Project.

9 Q Was there also a site visit involved?

10 A Yes. There was also a site visit involved.

11 Q The councilmembers attended that site
12 visit?

13 A Yeah, I believe it was at least seven or
14 eight of them that attended.

15 Q As far as the process when they passed the
16 resolution, have you had a chance to review that
17 resolution?

18 A Yes, I have.

19 Q And have you looked at the amendments to
20 that resolution?

21 A Yes, I have.

22 Q Can you explain to this Commission what
23 that means, what the amendments are?

24 A Essentially we make a presentation to the
25 council and they have an opportunity to impose any

1 kind of modifications that they want or basically any
2 requirements. They are essentially conditions.
3 They're very similar to conditions that the Land Use
4 Commission would put on a Project. But they call them
5 modifications and they're attached as an exhibit to
6 the resolution.

7 Q Okay. And do you have a copy of that
8 resolution with you?

9 A Yes, I do.

10 Q Can you read those amendments to the
11 Commission?

12 A Do you want me to summarize 'em?

13 Q Yeah, just summarize.

14 A There's eight conditions.

15 Q Okay.

16 A The first one has to do with -- it's
17 Exhibit 11 in case anybody's following. The first one
18 has to do with the opportunity for West Maui Land
19 because the Project exceeds the workforce housing
20 ordinance, they asked for 10 credits. And it talks
21 about how the credits can be used in other areas of
22 West Maui. That's credits for the workforce housing
23 ordinance.

24 The second condition states that the
25 initial marketing period -- this is for the developer

1 in terms of marketing these units -- he has to keep
2 these prices fixed for 10 years. So the developer is
3 locked into the price ranges that we've included in
4 this, the various breakdowns which you'll hear in more
5 detail later, for 10 years.

6 The third condition says that if any unit
7 is sold at market rates above the 160 percent of
8 income that they're going to have to be subject to all
9 the fees that we're exempt from.

10 The fourth one basically says that the
11 subdivision improvements have to start within three
12 years and have to be completed within seven years.

13 Condition No. 5 says that the West Maui
14 Land shall pay the Department of Education the
15 appropriate school impact fee. We have since executed
16 an agreement to do that.

17 The sixth condition says that all dwelling
18 units shall be built and physically occupied within 36
19 months of the close of escrow of the respective lot.

20 So if any of these parcels are bought as
21 vacant land that the owner's going to have 36 months
22 to complete it. That's with the exception of Habitat.
23 Habitat could exceed that period.

24 Condition 7 says that if in the future if
25 the Lahaina Wastewater Reclamation Facility does not

1 have capacity or cannot be expanded to serve the
2 Project, then the Applicant shall pay its fair-share
3 contribution to address the needs of the improvements
4 to the capacity of the wastewater treatment facility.

5 And lastly, Condition No. 8 says that
6 during the construction phase West Maui Land shall
7 ensure that vehicles under their control with a gross
8 vehicle weight rating of over 10,000 pounds shall not
9 travel along Kalena Street. That's the street through
10 the neighborhood. So they didn't want us to have
11 heavy trucks going through or accessing the Project
12 through Kalena Street.

13 So that's the summary of the eight
14 conditions that were attached to the resolution.

15 Q Are you okay or is the developer okay with
16 those conditions being incorporated into the Land Use
17 Commission's Order?

18 A Yes.

19 MR. GIROUX: I have no further questions.

20 CHAIRMAN CHOCK: Thank you, County. OP?

21 CROSS-EXAMINATION

22 BY MR. YEE:

23 Q Mr. Frampton, you're the first witness. So
24 if I'm asking any questions that should be directed to
25 a subsequent witness, please feel free to let me know.

1 You mentioned in your testimony that an educational
2 agreement has been reached with the Department of
3 Education. Correct?

4 A Correct.

5 Q And how's the possibility of 'ohana units
6 in this Project going to be dealt with regarding
7 educational contributions?

8 A Okay. So it's a lower -- the single-family
9 units has -- the larger unit has a higher fee. The
10 'ohana unit there's a small fee that's attached to it.
11 But basically the developer will be responsible for
12 the impact fee for the main house which is about
13 \$5,000 each. The 'ohana unit, if anyone elects to
14 construct a 'ohana unit they will pay that fee at the
15 time they go get their building permit. And it will
16 be their responsibility to pay the 2,000 some odd
17 dollars impact fee for the 'ohana unit.

18 Q And what mechanism, if any, are you aware
19 of that will be used to insure that buyers are
20 informed of their obligation to make an educational
21 contribution if an 'ohana units is built?

22 A I believe it will be a deed restriction.
23 And Heidi Bigelow, Project manager, could clarify
24 that.

25 Q Stormwater issues are best addressed to

1 Mr. Kurt Tanaka, is that correct?

2 A For the most part, yes.

3 Q Same would probably be true regarding
4 potable water?

5 A Yes.

6 Q By the way, I noticed in your slide
7 presentation on commitments you mentioned setbacks.
8 That would be, that's a commitment in the Project.
9 But that was not listed among the CC&R conditions.
10 How would setbacks be accounted for or required for
11 these projects -- for the individuals lots?

12 A They will be included as part of the --
13 they are included as attached to the resolution that
14 runs with the land. They will be -- as part of the
15 CC&R's the setbacks will be included as deed
16 restrictions for the property, especially the
17 increased setbacks along those lots which abut the
18 existing single-family homes, the 20-foot setback will
19 be included as part of that.

20 Q With respect to traffic you mentioned in
21 your testimony that the developer will be making
22 improvements to Kahua Street as it connects to, I
23 think, Keawe Street, correct?

24 A That's correct.

25 Q Can you tell me when in the process those

1 improvements will be made? Such as prior to
2 subdivision approval, prior to occupancy? Do you know
3 when those improvements will be completed?

4 A It'll be during the construction of the
5 various utilities and the roadways for the Project and
6 certainly prior to any occupancy of any of the units.

7 The reason I'm hesitating is I'm not sure
8 whether or not we're going to do bonded final or final
9 subdivision approval. And that can affect the timing
10 of those improvements. So let's just say for certain
11 it will be done prior to occupancy of the units.

12 Q And just for the record can you explain why
13 it's important to have those improvements done before
14 occupancy?

15 A It's obviously gonna -- the benefits that I
16 described with having access to the Project site
17 through both the mauka and the makai portion is
18 advantageous to not just have kind of a one-way in or
19 a one-way out situation. So it is important to have
20 connectivity on both ends of the Project.

21 Q And this Project will increase the traffic
22 needs for that Kahua Street.

23 A Yes.

24 Q With respect to -- I noticed in the FEA the
25 U.S. Fish and Wildlife Service recommended the

1 down-shielding of external lights. Will that be done
2 by this Project?

3 A Yes.

4 Q And you've described the total number of
5 lots at 68, ten of which will be used for Habitat for
6 Humanity and 58 will be house lots, house or lots,
7 correct?

8 A Yes.

9 Q Do you know what the -- do you have an
10 expectation of the division of those 58 lots as to how
11 many will be houses and how many will be vacant lots?

12 A No, we don't right now. We're trying to
13 have flexibility built into the Project so that when
14 we do go out and try to find occupants, that we have
15 the opportunity to either do the house/lot package or
16 the vacant land package.

17 And what's going to happen is we're gonna
18 do a -- we're gonna notify everybody that this process
19 is that we're going to be accepting applications. And
20 once we get all the list of qualified people we'll do
21 a lottery and then establish a wait list.

22 And we really -- the type of the Project
23 that we've actually built out will in part be
24 dependent on the desires of the people on the wait
25 list. And the people on the wait list will have to be

1 residents of Maui County. There's going to be a
2 preference if you have not owned a house in the last
3 three years. You're going to have to be income
4 qualified, over the age of 18.

5 So it's going to take some amount-- well,
6 you're going to have to fit the qualifications to
7 actually be put on the wait list. Then when you do so
8 the Applicant, West Maui Land, will be looking at the
9 wait list and given a sense of the needs and desires
10 of the people on the wait list to determine the exact
11 mix.

12 So we are trying to build that flexibility
13 into the Project so that we can really address the
14 needs of the people who qualify.

15 Q So will you be asking the people on the
16 wait list if they prefer a vacant lot, 3-bedroom or a
17 4-bedroom affordable home?

18 A That's what's envisioned right now. And
19 we'll let Heidi talk about that a little bit more.

20 Q It seems to me, and let me know if you
21 think this is incorrect, that generally the price of a
22 home, of the per home cost is generally higher if you
23 built a single home rather than building 58 homes,
24 correct?

25 A Oh, you mean like the per unit cost?

1 Q Yes.

2 A You might get economies of scale if you go
3 for a larger number of units?

4 Q Right.

5 A That's correct.

6 Q So since this is an affordable housing
7 Project can you explain what is the role of selling an
8 affordable lot in this purpose of providing affordable
9 housing if the per unit costs would tend to be higher
10 by selling just the lot?

11 A Well, for a lot of local people they can
12 figure out ways to actually build a house cheaper than
13 a contractor could. And we wanted to create that
14 opportunity for people who qualify who might be in the
15 construction trade, who might have family in the
16 construction trade that where they could -- they would
17 qualify to buy the lot. There's a formula to
18 determine the price of the lot-only situation.

19 And with that we're hoping that for some
20 people it might be advantageous. It might be a lot
21 cheaper for them to actually do the construction
22 themselves as an owner/builder.

23 Q Is there any obligation by the Petitioner
24 to build houses if the vacant lots cannot be sold?

25 A I don't know if it's obligation other than

1 we have to -- we have to sell all. The developer's
2 going to be motivated to sell all the units in the
3 Project.

4 And they have a -- they have a requirement
5 that they have to keep those prices fixed for 10
6 years. So they can't go above these ceilings that are
7 established for the various income groups for 10
8 years.

9 In my experience with this developer they
10 like to price the products so that it can be sold
11 quickly. They don't like to sit on inventory. So I
12 guess it's more of a motivation as opposed to an
13 obligation in terms of finding the right mix to meet
14 the market needs.

15 Q Just to be clear, the 10-year period that
16 you're saying the price is fixed, meaning that the
17 developer could not sell the lots at a market rate
18 until 10 years after.

19 A Yeah. That's the developer, yes. There's
20 a requirement on the initial sales that they be capped
21 at the prices that were represented by the developer
22 for 10 years.

23 Q By the way, what was the trigger for the EA
24 in this case? Do you remember?

25 A I want to say use of county lands, the

1 connection to the water system? It could be use of
2 state or county lands. Those were the most likely.

3 Q Then you mentioned sustainability as one of
4 the areas in which the Commission has to look at.
5 Other than requirements in your state or county law,
6 other than its base location of where this Project is
7 located, could you list for me the sustainability
8 measures that will be performed for this particular
9 Project?

10 A The primary, as you just mentioned, the
11 primary sustainability aspects of this Project is the
12 location. And if you look at the Department of
13 Health's checklist on sustainability the majority of
14 those items refer to locational attributes and
15 connectivity and walkways and the such.

16 In terms of the Project itself, the
17 developer-constructed homes they've committed to make
18 them PV ready but put on PV panels. We're really
19 looking at the -- we'll be incorporating what we can
20 do. That's depending on balancing the economics of
21 it. 'Cause it is an affordable housing/work force
22 housing type Project.

23 So we can't have unlimited costs, if you
24 will, in terms of incorporating other types of green
25 amenities.

1 Q For the 180 percent of median income an
2 affordable house would qualify as high as almost
3 600,000, is that correct?

4 A Right. Correct.

5 Q So within that range -- and it goes lower
6 obviously for lower income individuals, correct?

7 A Correct.

8 Q So I certainly understand the need to meet
9 that requirement. If homes are built by the developer
10 are there any types of commitments that are being made
11 as to any type of resource conservation other than
12 what is currently required by either state or county
13 law?

14 A We haven't identified any other than what I
15 mentioned earlier about making them PV ready.

16 Q Anything about Energy Star appliances if
17 provided?

18 A We certainly -- we haven't got to that
19 level of detail, but in certain cases would like
20 appliances and that type of stuff which can easily be
21 done and economically done, I'm certain the developer
22 would be willing to do that.

23 Q So you haven't gotten to the level of what
24 any of these houses might look like.

25 A We have concept designs and we've included

1 those in the environmental assessment. But they're
2 very conceptual in terms of the -- they're just
3 bascially the overall house plans. But we didn't get
4 into the specifics of the appliances and that type of
5 stuff.

6 Q Have you looked at non-potable water use
7 for any part of the Project including the park?

8 A The challenge there is that there's none
9 available nearby. And there is a wastewater
10 reclamation facility a couple miles to the north but
11 there are no wastewater reuse lines that come into the
12 area.

13 And the former irrigation lines that were
14 utilized by Pioneer Mill are no longer in place. So
15 there's really not an adequate supply available for
16 non-potable water.

17 Q No non-potable wells that would be
18 available for irrigation.

19 A No.

20 Q So in the FEA, which noted that you would
21 look at non-potable sources, am I understanding
22 correctly your conclusion's there were no non-potable
23 sources to be used for this Project?

24 A That's correct. I would add that there was
25 a nearby reservoir that had non-potable water up

1 mauka, the Kahoma Reservoir, but the state of Hawai'i
2 is dismantling that.

3 So it's effectively removing the source of
4 the non-potable water that was nearby. It's moving
5 that source much farther away.

6 Q Was a dam safety issue?

7 A Yes.

8 Q Will there be any type of analysis that
9 will be applied if homes are built to look at
10 sustainability measures for this Project? So without
11 necessarily reaching a conclusion can you make any
12 commitments that some type of analysis will be done?

13 A I'm sure it will be looked at. But I'll
14 defer that question to Heidi Bigelow, the Project
15 manager.

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

18 CHAIRMAN CHOCK: Ms. Lincoln.

19 MS. LINCOLN: Chair, could we take a very
20 short break because I have as many questions as he
21 has.

22 CHAIRMAN CHOCK: Sure. We'll take a few
23 minutes. I think our court reporter probably needs a
24 break anyway.

25 (Recess was held. 3:10)

1 CHAIRMAN CHOCK: We're back on the record.
2 Ms. Lincoln, your witness.

3 CROSS-EXAMINATION

4 BY MS. LINCOLN:

5 Q I'm first going to ask questions regarding
6 your slide presentation if that's okay. And then I
7 have some for your written testimony.

8 A Okay.

9 Q So hopefully -- I don't know if I have them
10 in order. If I give you a slide number you'd be able
11 to pull it back up?

12 A Yes.

13 Q Okay. Great. First question is were you
14 at the November 16, 2011 county council meeting?

15 A Yes.

16 Q Okay. Do you recall before the
17 councilmembers made their vote that each of them sort
18 of made a comment as they went down -- it was --
19 obviously towards the end of the meeting? And one of
20 the members made a comment about, "Remember if we
21 don't pass it here, when it goes to state Land Use
22 they won't consider all the amendments that we put
23 in." Do you recall that?

24 A I believe they were saying that if -- they
25 had two options. One was if they didn't act on it the

1 Project would be automatically approved. Or they can
2 act on it adopting modifications. So what they wanted
3 to do was to make sure they acted on it with the
4 proposed modifications so that those would be sent
5 along to the State Land Use Commission.

6 Q Right. So that could have been one of the
7 main reasons they passed it at the county council
8 level? Could have been.

9 MR. GIROUX: Objection. It's speculation.

10 MS. LINCOLN: That's fine. I liked his
11 first answer anyway.

12 Q Which council -- who's the councilmember
13 for the west side? Do you know that?

14 A Elle Cochran.

15 Q Okay. And what was her vote?

16 A She was against the Project.

17 Q Did she say why?

18 A Because it was, she felt she needed to
19 speak up for the neighbors in the vicinity bascially
20 is what I remember.

21 Q Okay. Just the neighbors?

22 A That's what I recall, yeah.

23 Q Okay. In slide 5, I think it's slide 5.

24 A Yes. That one?

25 Q Yes. Thank you. You made a comment when

1 you were pointing at this saying, and I don't know if
2 I'll say it exactly how you did -- I don't write that
3 fast, but you made a comment about the heavy
4 concentration of houses. Do you recall saying that?

5 A Yes. Along Lahainaluna Road?

6 Q Yeah, that whole neighborhood.

7 A Lahainaluna, yeah.

8 Q Yeah, all of that neighborhood. And then
9 down at the bottom you said there's two new places
10 down there that have been built, is that correct?

11 A Yes.

12 Q Like condos.

13 A I was referring to the two vacant pieces
14 that are shown on this 2005 photo that are on either
15 side of the flood control channel.

16 Q Yes. And all the houses along there.
17 Okay. And as an expert in planning -- Mr. Geiger said
18 you were testifying as an expert in here. Is that in
19 planning then?

20 A Yes.

21 Q Okay. Where are the greenways and open
22 spaces and parks when you do a Community Plan or where
23 are the parks for this?

24 A Well, there's regional parks that are
25 available at the -- near the Lahaina Aquatic Center,

1 the Lahaina Recreational Center and the Waine'e ball
2 fields. There's also various facilities up near the
3 high school and the intermediate school and the
4 elementary school.

5 But in this size of a Project we have also
6 incorporated the park which will be called a
7 neighborhood park within the Project itself.

8 So when you look at park planning you look
9 at trying to fulfill neighborhood needs, community
10 needs as well as regional needs.

11 Q Okay. And then the concentration of
12 houses, let's look at more like the Lahainaluna area
13 next to it and going all the way up to the school. So
14 they're a mile from the nearest recreational center
15 and they have a couple small parks and the school
16 playgrounds of course.

17 Do you know the number of actual houses?
18 Like when you say there's a high concentration, do you
19 know how many houses are up there?

20 A I don't know the exact --

21 Q And approximately the population of that
22 area?

23 A I don't know the exact number, no.

24 Q And culturally do you know what our
25 neighborhoods are like? Like there's always

1 demographics of types of people that live there.

2 A This will just be a rough generalization.
3 But the lower neighborhood, which is the Kahua
4 Subdivision, as I mentioned in my testimony, was an
5 older subdivision developed by the plantation.

6 In fact all of these subdivisions were
7 developed by the plantation. But the older one has a
8 lot of older homes, a lot of older kama'aina families.
9 The lots are small. The roads are very narrow.

10 So I would think that's really kind of an
11 older, traditional neighborhood. As you move further
12 up those projects were developed more in the '70s.
13 They were plantation-built subdivisions.

14 And I would generally categorize it as
15 housing that the local people live in as opposed --
16 'cause there hasn't been a lot of new housing
17 developed in Lahaina.

18 Q Right.

19 A As you know in this vicinity the only new
20 housing project that's been built is Hawaiian Homes
21 Project. So that's a project that's not really open
22 to the general public. But in this area of Lahaina
23 Town I don't think there's been a new project in that
24 vicinity for 20 or 30 years. So the people here are
25 people that have been here for quite some time.

1 Q Housing versus -- you mean like single
2 family dwellings. There's been --

3 A Single family --

4 Q -- like condo type or townhouse type?

5 THE REPORTER: Excuse me. Would you let
6 each finish.

7 MS. LINCOLN: Okay.

8 THE WITNESS: I'm sorry. Yes, you're
9 right. I'm talking about single-family residential
10 homes.

11 Q (By Ms. Lincoln) Okay. And then sort of at
12 the top of the property where the red is there, that's
13 about where the 1970's kind of era of the development?
14 Is that kinda right, where the 1970s?

15 A Yeah. I would say it's about the top --

16 Q Kilauea mauka?

17 A -- about the top third.

18 Q Yeah. Okay. And then, so just to address
19 the cultural. Like up at the school are you aware
20 it's predominantly like a lot of Filipinos and just
21 the type of people that live there culturally,
22 families? You might have a higher concentration of
23 families per household?

24 A Yes.

25 Q And Tongans and Hawaiians?

1 A I don't know about their nationalities.
2 But I do know that when you drive through the streets
3 you can tell that there are a lot of people living in
4 some of these homes because of the cars that are on
5 the street. That's why we responded.

6 People are concerned about having an
7 overload of cars and stuff on the street. That's why
8 we made those extra provisions for parking that I
9 talked about earlier.

10 Q But what I find, and maybe you have found
11 here too, do you find that in Hawai'i sometimes
12 families live together in high concentrations, not
13 because of affordability but because it's cultural?

14 A I can say that in West Maui the housing
15 shortage is pretty severe. And the price of housing
16 in West Maui is extremely high. So I would think that
17 the financial situation has a much higher relevance or
18 importance in Lahaina than it does elsewhere.

19 So, yes, culturally that might be the case
20 but also just because of the economic situation in
21 Lahaina you tend to see a lot more crowding. You see
22 people renting out rooms for waiters and this type.
23 You know the market. It's crazy in Lahaina.

24 Q Okay. Oh, the park that you guys designed,
25 why is it such an odd shape? I don't know what slide

1 it was on. But when you had it you showed it was kind
2 of like an odd shaped park. It didn't have -- you
3 wouldn't be able to play soccer or baseball --

4 A Basically what we tried to do with the
5 Project site -- well, let me just go to a slide that
6 shows that.

7 Q Sorry. I didn't write fast enough.

8 A Okay. So here's the park site. What we
9 did was, you know, the property kinda runs along --
10 it's shaped by the former stream channel and by the
11 flood control channel.

12 So what we did with the roadway was we
13 tried to kinda basically set the roadway right in the
14 middle of it. We chose the park site right in the
15 middle. It's just basically the shape of the roadway
16 and the channel on that side that dictates the shape
17 of the park.

18 Q Okay. And what are the viewplanes from
19 that park? Like when you're in the park what will you
20 be getting to look at?

21 A Well, certainly if you look up the roadway
22 there will be mauka views. If you look down the
23 roadway they'll be makai views towards the ocean.

24 Q Okay. But basically houses on one side,
25 houses on the other, houses on the other flood channel

1 made out of cement and the backside of Emerald Plaza.

2 A Yeah. There are very nice views looking
3 mauka that you'll be able to see up through this
4 corridor. You'll be able to see down through the
5 corridor looking out through the roads, up across the
6 channel, down across the channel.

7 Q Will they be able to be building 2-story
8 houses along this property?

9 A There's a potential to build 2-story houses
10 or single story, yes.

11 Q Sure. Okay. And then -- oh, I found out
12 from the county that you don't have to have that
13 cul-de-sac at the top. You could just have the exit
14 because it's necessary for a fire truck to turn
15 around.

16 So if this Project goes through would you
17 consider putting a park at the top of the property
18 rather than there just so that -- because you don't
19 need that cul-de-sac for a turn around for a truck
20 because you have the exit onto Lui Street?

21 A You know, I'm not -- I haven't looked at
22 that alternative. And I don't recall the requirements
23 that dictated that cul-de-sac.

24 Q Okay. All right. But from planning is
25 that true? As an expert in planning that exit up at

1 the top and exit at the bottom would not require that
2 cul-de-sac to be there? So that could be viable
3 option.

4 A Typically those types of things are put in
5 because of the concerns by the fire department in
6 terms of maneuverability and their trucks and stuff.

7 Q But I checked with Roads. And I'm asking
8 them and I'm asking you as an expert. I know that it
9 is consideration. But because there is an exit at the
10 top and at the bottom. So when you're in the planning
11 department you would make subdivisions have both an
12 exit at both ends *and* a cul-de-sac, like, in that
13 application?

14 A I think given the configuration of the
15 property, the access point of where we're able to
16 connect and the fact that there's a chunk of land
17 here, the cul-de-sac allows us to configure more lots
18 in that situation.

19 Q How many lots are in that?

20 A One, two, three, four, five.

21 Q Five. Okay.

22 A So if we didn't have the cul-de-sac we
23 would probably eliminate a few lots and make 'em
24 larger.

25 Q But I'm saying you'd put them where the

1 park is now, how many would you be able to fit into
2 the park spot there? It looks they'd be able -- like
3 four or five would be able to fit in there.

4 A You're saying --

5 Q If you put houses and put the park at the
6 top at least you'd have a view. Which brings me to my
7 next. You took a picture. I'm going to see if I know
8 what page it's on. I think slide 8. Maybe that will
9 help to explain.

10 MR. GIROUX: Chairperson, at this time
11 since there's a pause can I just make an interjection?
12 I believe the cross-examiner's presenting facts that
13 are not evidence and asking the witness to speculate.

14 What I would ask that you take that under
15 notice that in the future that we confirm that
16 information. Because her statement is not evidence.

17 CHAIRMAN CHOCK: So noted.

18 MS. LINCOLN: I apologize. I thought when
19 he said he was an expert witness that that is what he
20 was. That's why I clarified before I asked the
21 question if he was an expert witness what is he an
22 expert witness in. It was planning. So I apologize
23 for that. I won't ask that question again.

24 MR. GIROUX: To clarify for everybody's
25 benefit, that the issue of the cul-de-sac might be an

1 issue of Public Works. It might be an issue of Fire.
2 And he's a planner. He's not an expert in subdivision
3 or fire code. That's all.

4 MS. LINCOLN: Okay.

5 Q On that picture when you showed the
6 slide -- and I don't know if anybody paid attention --
7 you kinda pointed more towards the bottom of the
8 property. You said, yes, that's where you pointed to,
9 this is where the concentration of houses are. Aren't
10 they kind of where those trees are at the top? Am I
11 mistaken on the boundary on this --

12 A So the property on the top --

13 MR. GEIGER: Wait until she finishes her
14 question before you start answering. And please wait
15 until he's finished answering before you start another
16 question.

17 MS. LINCOLN: Okay.

18 CHAIRMAN CHOCK: Thanks, Mr. Geiger, but
19 I'm chairing the meeting.

20 MR. GEIGER: I am sorry but I do --
21 (laughter)

22 CHAIRMAN CHOCK: I want to remind you,
23 Ms. Lincoln, we do need to have some level of quorum
24 here. So ask the question. Let the witness or the
25 testifier answer your question so that our court

1 reporter can make sure that everything is transcribed
2 properly.

3 THE WITNESS: Want to repeat the question
4 please.

5 Q (By Ms. Lincoln) Yes. What are the
6 boundaries of the property with your slide?

7 A Okay. This photo was taken above the
8 Project site. So we're not on the Project site. And
9 the Project site -- the upper reaches of the Project
10 site starts right about at the edge of these trees,
11 runs all the way down to the edge of the photo over
12 there. So this area of the Project --

13 Q Who owns that part then? What's that?

14 A It's not part of the Project site.

15 Q The very corner tree isn't but the other
16 ones are, is that correct? Do you see it?

17 A Maybe I'll refer to this photo which --
18 well, I'll do it on the slide and show you where I
19 took this photo from. Okay. This photo was actually
20 taken higher up by where the flood detention basin is.
21 And those trees are probably about right here. So
22 this is a separate parcel that you're talking about
23 that's not part of the Project.

24 Q Can you go back to those trees again?

25 A Yes.

1 Q Have you been out there?

2 A Yes, I have.

3 Q I'm pretty sure those trees up at top are
4 part of the Project. But everybody's going to do a
5 site inspection, or some of you are going to do a site
6 inspection so you can actually see?

7 Is someone gonna do that?

8 CHAIRMAN CHOCK: Yes.

9 MS. LINCOLN: Okay. Is someone going to be
10 there and show you where the boundaries are?

11 CHAIRMAN CHOCK: Yes.

12 Q (By Ms. Lincoln) All right. This is
13 regarding water. There's a manhole on the property.
14 Does that have anything to do with potable water?

15 A The manhole on the property is an existing
16 drain line that runs through the mauka portion of the
17 property, that drains the Kilauea mauka subdivisions.
18 There's a drain line that originates from those
19 subdivisions, goes across the Project site.

20 There's a manhole within our Project site.
21 Then the drain line goes into the flood control
22 channel. And there's an outlet on the bank of the
23 flood control channel. So the manhole accesses that
24 in our project site, yes.

25 Q As a planner, and I don't know anything

1 about this, would that be a viable space to put a
2 non-potable irrigation waterline someone was asking
3 about? Would that-- could that be -- maybe I'm not
4 understanding.

5 A It's a drain channel so it collects
6 rainwater runoff from the neighborhoods that are
7 mauka. And it captures that runoff and runs it
8 through a pipe and it discharges the runoff into the
9 flood control channel.

10 Q I guess what I'm saying is since we know it
11 goes through and there's a manhole, would there be --
12 I don't know, would there be any way to make some sort
13 of a retention basin to capture the water to be able
14 to irrigate this land?

15 Whether it's for ag land or for open space
16 use or whatever, is there a way to get water from the
17 streams from whatever direction and re-divert it there
18 and that manhole be --

19 A That's not water from the stream. That's
20 water from --

21 Q I know. What I'm saying -- I apologize --
22 the water from the stream or from runoff?

23 A Water from the runoff? I don't think
24 there's enough rainfall in that area or enough water
25 going through that drainage channel which would make

1 it worthwhile to do a natural, I guess, a capture
2 point --

3 Q Yes.

4 A -- or something that you might be talking
5 about onsite. I don't think so.

6 Q Okay. And is there any way to divert the
7 water from the stream to it whether you pump it up or
8 do something to get it? 'Cause the stream is running
9 pretty much year 'round off and on. I mean it's not
10 just a winter thing.

11 A The flows in the channel -- what you're
12 talking about would be going in and modifying the
13 existing flood control channel in order to divert
14 water from that channel?

15 That would be a very complicated endeavor.
16 That would involve getting stream diversion permits
17 from both the State Water Resource Commission as well
18 as dealing with the flood control channel which has
19 been built for flood and safety purposes and really
20 not for purposes of diverting water for non-potable
21 use. I really don't think that's feasible.

22 Q Any type of on top of the water? Like
23 instead of burrowing to get it, being able to channel
24 it just by having some sort of a pump system from the
25 channel coming up? I'm just talking about how do we

1 get water into this place.

2 A Yeah, I'm not --

3 MR. GEIGER: If I may, Chair. I believe
4 this is well beyond any sort of jurisdiction. You're
5 talking about stream diversion now which would be
6 clearly within the Commission on Water Resource
7 Management. And I don't believe that a planner
8 necessarily has any idea about stream diversions or
9 water resource laws.

10 CHAIRMAN CHOCK: Will your civil
11 engineering expert be able to answer some of these
12 kind of background questions more appropriately than
13 your planner?

14 MR. GEIGER: I would think a civil engineer
15 would have a better idea. But, again, I think that's
16 beyond this scope of this Commission's jurisdiction.
17 If they're talking about water diversions that's
18 clearly with the jurisdiction of the Water Resource
19 Commission.

20 CHAIRMAN CHOCK: Okay. So noted. I note
21 your objection. Maybe you can limit sort of your
22 questions to --

23 MS. LINCOLN: Okay. All right. That's why
24 I was asking. He said he's an expert. I'm just
25 asking.

1 Q If you don't, can't answer that but someone
2 else can, that's fine.

3 A Could I add one thing though? That I don't
4 know of a project on Maui or in Hawai'i that has done
5 the type of system that you're talking about out of a
6 storm channel like the I'ao Stream Channel or another
7 constructed storm channel where they're actually sort
8 of siphoning or diverting the water for non-potable
9 use.

10 And in this case that channel really only
11 runs during extreme events. There's a minor flow
12 that's has been maintained now for well over a year
13 because Kamehameha Schools has made modifications to
14 the diversion structure way up in the mountains to
15 allow for stream flow to make it all the way down to
16 the ocean on a regular basis.

17 So there is a regular stream flow, a very
18 small quantity on a day-to-day basis. But in terms of
19 any sizeable quantity it only happens when the rains
20 really come heavy.

21 Q I've walked on that land every day for
22 many, many years and there's water in the flood
23 channel.

24 MR. GIROUX: Objection. The
25 cross-examine --

1 CHAIRMAN CHOCK: Your question, please.
2 Thank you.

3 Q (By Ms. Lincoln) Okay. Do you live in that
4 neighborhood and notice the actual flood waters
5 yourself?

6 A No, but I'm there quite often.

7 Q I wrote 'Page 7'. I wonder if it's photo
8 7. Can you check photo 7? What is that vehicle
9 there?

10 A It's a derelict vehicle. On this property
11 unfortunately there's, people do come and dump
12 rubbish. They dump piles of rocks. In this case it
13 was an abandoned vehicle.

14 Q Okay. Is this on the lower part of the
15 property then?

16 A Yes.

17 Q It seems lower on this picture than more
18 recent pictures. Can you explain why? Like the
19 topography is lower, how low that vehicle is? Like it
20 goes in at kind of a dip.

21 A Yes. This photo was taken probably in 2008
22 or 2009. The flood channel -- there's a sedimentation
23 basin up mauka that I referred -- that showed on one
24 of the slides. And periodically the county of Maui
25 has to go in and maintain that. They have to remove

1 debris from that. The county of Maui actually removed
2 debris from the basin and deposited in this area. So
3 there are -- there's been a couple feet of fill in
4 this area that happened recently.

5 Q Do you know exactly how much fill was put
6 in there and how many feet we're talking about?

7 A I don't recall the exact number.

8 Q But this is West Maui Land, right?

9 A No. Well, Kahoma owns the land, but it was
10 the county of Maui that did the collection of the
11 material and the dumping of the material.

12 Q Was it approved by West Maui Land?

13 A They okayed it, yes.

14 Q And were there any permits for this?

15 A I don't recall. But, again, you'd have to
16 inquire of the county.

17 Q As an expert in planning do you normally
18 have to get permits for the amount of dirt that was
19 dumped there?

20 A I don't recall what the exact amount. If
21 the fill was over 4 feet they might have needed to get
22 a grading permit.

23 Q Okay. Will there be someone else in your
24 guys' presentation that will be able to address that
25 question? Like decisively, like, how much fill was up

1 there, how deep it is?

2 A I don't recall. I don't know if there is
3 someone that knows that because we weren't the ones
4 responsible for those activities.

5 Q Okay. What are the low and high end of the
6 built homes? Like what's the lowest priced one that
7 you guys are going to be marketing and highest price?
8 'Cause I mighta written down my figures down wrong.
9 If you could do that.

10 A I'll have to find the exhibit that has the
11 table. (Pause) You know what? I don't have the table
12 handy. But the units are going to be affordable to
13 people with qualified incomes earning 100 percent
14 below, 120 percent below. That's a formula that's
15 dictated by the county of Maui housing department.
16 Every year they update their tables.

17 The prices of the units are based on
18 prevailing interest rates and a percentage of the
19 income that can be devoted to mortgage. So it's those
20 price formulas are calculated by the Department of
21 Housing and Human Concerns on a yearly basis.

22 And in our categories we've established
23 ceilings or maximum prices for each one of those
24 income groups. And those would be the maximum price
25 that could be allowed in each one of those groups.

1 And they're readily available in any of the tables in
2 the application.

3 Q Okay. Thank you. At the county council
4 you gave some figures there. And it was 376 or 372
5 for the low end like a 3-bedroom. You were going to
6 have eight homes that were going to be three to four
7 bedrooms of the units. Maybe I misunderstood it.
8 That's why I'm asking.

9 Is -- there's supposed to be eight units
10 that were after -- right after Habitat for Humanity
11 there's eight units are going to be in the 372 to
12 the...

13 A I have it now.

14 Q Thank you.

15 A So for a 3-bedroom house and lot packages
16 the \$372,000 figure is a 3-bedroom house for someone
17 earning 100 percent of the median income and below.

18 Q Okay. And what's the high end on your
19 thing? Forty-four percent of them are going to be,
20 like, the 596 to the 685?

21 A My table says 33 percent of the units could
22 be marketed at 160 percent of median and below. And
23 that would be the high point for a 3-bedroom house and
24 lot package is 596,000.

25 Q That's going to be the highest priced --

1 A For a 3-bedroom. There's different prices
2 for a 4-bedroom.

3 Q What's the highest price for a 4-bedroom?

4 A For a 4-bedroom. 685.

5 Q Do you know what Fannie Mae and Freddie Mac
6 qualifications are?

7 A No, I don't.

8 Q Will there be someone that can answer that
9 question?

10 CHAIRMAN CHOCK: I believe the Petitioner
11 has affordable housing experts from the county and so
12 another witness that'll probably speak to that.

13 Q (By Ms. Lincoln) And then what happens if
14 they don't meet deadlines, like, for vertical
15 construction or infrastructure? You said they have --
16 one of the amendments was they had to be completed in
17 seven years. What are the consequences if you don't
18 meet that?

19 A That's a condition of the County's
20 resolution upon the developer to complete his Project
21 improvements within seven years. I'm not clear as to
22 what the penalties or violations would be.

23 Q Okay. Is there an agency that enforces
24 that, to your knowledge?

25 A I would defer that question to the

1 corporation counsel.

2 Q Okay. Oh. Do the vacant lots have to be
3 vertically constructed and completed in seven years?

4 A The seven years is for all the
5 infrastructure improvements to be completed for the
6 subdivision. The vacant lots have to be built upon
7 within 36 months of closing.

8 So once a buyer closes on a vacant lot
9 he'll have 36 months to do their -- in the case of an
10 owner/builder type of a construction they would have
11 36 months to complete their house.

12 Q Okay. So if there's empty lots and they
13 don't have to do vertical construction until they
14 actually sell it, and it goes into closing, is there a
15 limit on how long they'll stay empty? Like, could
16 there be 20 lots that stay empty for many, many years
17 out there? Is there a time restraint when they have
18 to sell those?

19 A I don't think there's a time constraint
20 except for the fact that the developer is required to
21 maintain the price limits, the price maximum limits
22 for 10 years.

23 Q So there could be, then, empty lots sitting
24 up there for many years between other houses that are
25 developed?

1 A If you're asking for my, just my
2 speculation?

3 Q Sure.

4 A Knowing how this developer's track history
5 in terms of how they sell and price their units, my
6 guess is there would not be many lots that would
7 remain unsold by the developer for longer than a
8 couple of years.

9 Q Again, I'm sorry, you must have
10 misunderstood my question. Oh, I see what you're
11 saying. They're all going to be sold so they have to
12 be built. Gotcha.

13 The rest of my testimony is going to be on
14 your written. That was my questions for your slide.

15 MS. LINCOLN: So I'm going to be referring
16 to his written testimony. If I say a line or a page
17 number --

18 CHAIRMAN CHOCK: Ms. Lincoln, how many
19 questions do you have on the written direct?

20 MS. LINCOLN: Twelve.

21 CHAIRMAN CHOCK: Okay. We may need to -- I
22 was hoping we would have been able to get through this
23 witness today, but we have stuff and some members of
24 the Commission who need to take flights. So we have
25 another, like, 5 to 10 minutes and then I'm going to

1 adjourn for the day. We'll resume tomorrow with the
2 same witness.

3 So unfortunately we're going to be coming
4 to the end of our day very shortly. So about 5 to 10
5 minutes and then we're going to adjourn.

6 MS. LINCOLN: Okay.

7 Q Your Exhibit 7 on Page 6 -- and I'm
8 quoting -- in 1977 --

9 CHAIRMAN CHOCK: Ms. Lincoln, hang on and
10 let him get to that page in his testimony before you
11 start with your question, please.

12 MS. LINCOLN: Okay.

13 CHAIRMAN CHOCK: Thank you.

14 THE WITNESS: Okay.

15 Q (By Ms. Lincoln) In 1977 most of the
16 Project was in sugarcane cultivation. That's
17 basically what you're saying in there. Is that true?

18 A That's not the only thing I say but
19 that's --

20 Q No, but I'm taking that quote from there.

21 A Yeah, on line 12 it says, "Most of the
22 Project was in sugarcane cultivation."

23 Q Okay. And then on Page 20, lines 3 through
24 5 Paul Singleton testifies. And I'm not going to make
25 you read the whole thing. But he testifies and says,

1 "It's not viable for agricultural production given the
2 quality of the soil and the proximity to these 16
3 residential uses."

4 So in one statement you're saying it was ag
5 until 1977 until they moved the flood channel.

6 A Mmm-hmm.

7 Q And then he's saying that it's because it's
8 the proximity to existing residential uses. Is that
9 correct?

10 A Among other things.

11 Q Okay. But that's the quote I'm going for.

12 A Okay.

13 Q So my house is at 452 Aki Street. It was
14 built in 1932. And it was productive ag land for at
15 least 45 years with proximity to residential uses,
16 wouldn't you agree?

17 A So across the stream there wasn't
18 agriculture use right up to the stream. There was --
19 for many years before the flood control channel the
20 border between the existing homes and the sugar
21 plantation fields was the stream corridor. So there
22 was at least some type of a buffer.

23 After the construction of the flood control
24 channel the stream channel was basically obliterated
25 or filled in, plowed over almost the entire length of

1 that corridor. So there wouldn't be that type of
2 buffer today.

3 Q But there was ag land up to the stream
4 which was right behind the house?

5 A That's correct. That's shown in the 1977
6 photo.

7 Q Okay. Right. Then they had, like, the
8 flume that came down right by the stream. So it was
9 active cane activity --

10 A Yep.

11 Q -- out there until then.

12 A Yes.

13 Q And they burned sugarcane back then to
14 harvest it?

15 A Yes.

16 Q So you're saying that close to houses and
17 proximity to everything they did that sort of....

18 A Prior to 1977, yes.

19 Q Okay. Do you want me to go to my next line
20 of questions?

21 CHAIRMAN CHOCK: Go ahead.

22 Q (By Ms. Lincoln): Page 20 lines 5, 6, 7, 8
23 and 9. The one thing that I'm highlighting is that
24 agricultural use is not present. Are you agreeing to
25 that?

1 A By the landowner that's correct.

2 Q Okay. So that was the decision of whoever
3 controlled the land as it was purchased at state
4 agricultural use, is that correct?

5 A No. Prior to the sale by Pioneer Mill once
6 the flood control channel was constructed in 1990
7 Pioneer Mill stopped farming that land. Although they
8 continued farming for another nine years across their
9 plantation and in areas immediately to the north of
10 this area.

11 After the construction of the flood control
12 channel Pioneer Mill no longer farmed this property.
13 Even though it was right literally a hop, skip and
14 jump away from their mill yard they did not farm the
15 property.

16 Q Okay.

17 A Starting from 1990 to 1999 when they
18 stopped farming in Lahaina, the purchase was sometime
19 around there. It has not been used for farming since
20 the purchase as well.

21 Q Okay. But when your -- when the Petitioner
22 purchased the land he purchased it as ag land?

23 A The purchase came -- this land was
24 purchased as part of a large purchase that included
25 many hundreds of acres up mauka too. This piece came

1 along with it. And, yes, it was ag zoned land.

2 Q So within the last two years did the
3 Petitioner lease or rent land use for a nursery?

4 A Yes. A neighboring landowner requested
5 the landowner if he could -- he had already been kind
6 of using -- many of the people have kind of
7 cock-roached the backyard as vacant land. They've
8 kind of been storing stuff on there. He was storing a
9 lot of landscape stuff.

10 And he actually, he was one of the few that
11 came and asked permission for it. And he did
12 establish a nursery baseyard there for about a year or
13 two with permission from the landowner.

14 Q So basically you're saying it was the
15 Petitioner's choice not to have the land in
16 insensitive agriculture use for the last two years
17 prior to the date of filing a Petition pursuant to HRS
18 15-15-77?

19 A Could you repeat that again?

20 Q So it was the Petitioner's choice not to
21 have the lands in intensive agricultural use for two
22 years prior to the date of filing of Petition?

23 A Well, I think it was their choice even
24 longer than that to not have the lands in agriculture
25 use. As well as the prior landowner's choice was to

1 not have it in ag.

2 Q But it was their choice.

3 A Yes.

4 Q Okay.

5 A Considering a variety of factors, yes.

6 Q Has Petitioner ever tried to do any sort
7 of, like, boutique farming or any sort of, like --
8 because that is a small area, to do some sort of
9 farming on it?

10 A To my knowledge no.

11 Q Okay. So the functional plan policies and
12 recommendations come into consideration in light that
13 it meets two of the three criteria of most of the
14 property for ag use. It meets -- there's, like, three
15 criteria for it to be an ag use. Does this property
16 meet two of the three criteria?

17 A I'm not clear in terms of what criteria
18 you're referring to.

19 Q It was the end of the function -- I'm
20 sorry. I'm minus a page number. It says "the state
21 agriculture functional plan and policies and
22 recommendation."

23 A Is there a question? I'm sorry.

24 Q Yes. Oh, I'm sorry. Considering that the
25 state -- considering that it was the Petitioner's

1 choice not to put it in ag, it says that you're
2 supposed to have it in active ag for two years prior
3 to filing a Petition to be able to rezone it. But if
4 you don't even try to do ag...

5 A I'm not familiar with what requirement
6 you're talking about.

7 Q I wrote down 15-15-77 but I don't know if
8 that's the one 'cause that was written further up so I
9 might have to look it up.

10 A Are you referring to the Land Use
11 Commission rules?

12 Q No. It was in your testimony. I'm sorry.
13 I thought you guys would know that. There's a state
14 Agriculture Functional Plan and Policies. You have to
15 meet a certain amount of criteria to rezone ag land.
16 According to you guys' thing it does meet two of the
17 three.

18 CHAIRMAN CHOCK: Ms. Lincoln, what page of
19 his written direct testimony are you referring to?

20 MS. LINCOLN: You know what? I'm sorry, I
21 didn't write that one down for this one. It was
22 all -- I think it was Page 20, line 6 where it talks
23 about agricultural uses not economically feasible.
24 But I didn't refer to that one. I'm sorry.

25 Does somebody know what laws are on state

1 Agriculture Functional Plans and Policies?

2 CHAIRMAN CHOCK: Mr. Frampton, can you
3 refer to -- do you have a recollection of that part of
4 your written testimony that you can answer this
5 question?

6 THE WITNESS: No, I don't talk about that
7 criteria that she's referencing.

8 MS. LINCOLN: Will somebody be able to
9 answer that for me?

10 CHAIRMAN CHOCK: Petitioner, will you have
11 another witness that can speak to that?

12 MR. GEIGER: To the state Agriculture
13 Functional Plan it would be Mr. Frampton. I have no
14 idea what criteria she's referencing.

15 MS. LINCOLN: Page 20 line 7.

16 THE WITNESS: From who? From my testimony?

17 MS. LINCOLN: Yes.

18 THE WITNESS: I'll read that sentence in
19 its entirety. It says, "As agricultural use is not
20 present and is not economically feasible the State
21 Agriculture Functional Plan Policies and
22 Recommendations are not inconsistent with the change
23 in the land classification."

24 Q (By Ms. Lincoln) Do you have a copy of
25 that, what you're referring to there so we can read

1 it, the state Functional Plan?

2 A The state Agriculture Functional Plan?

3 Q Yes.

4 A I don't have it as part of my testimony.

5 Q I'm sorry. I thought that was what this
6 was was rezoning ag lands. On slide 25 you're
7 referring to it too. I'm sorry. I would have written
8 better notes. I thought that's what everybody knew
9 about here. So does anybody know the answer to that?

10 MR. GEIGER: I would ask that the
11 cross-examination be limited to this witness'
12 testimony as opposed to general questions.

13 MS. LINCOLN: It was. It was on page 20.

14 CHAIRMAN CHOCK: Excuse me. You said he'd
15 be able to speak to issues related to agriculture.

16 MR. GEIGER: I agree.

17 CHAIRMAN CHOCK: So if he's sworn in as an
18 expert and he's here to talk about that he referenced
19 it in testimony he should answer the question. If he
20 doesn't know, he doesn't know.

21 MR. GEIGER: That's fine. And I agree.
22 It's just the question was: Does anybody here know
23 this? I think the question should be directed --

24 CHAIRMAN CHOCK: Can you direct it at the
25 expert witness, please.

1 Q (By Ms. Lincoln): It was on Page 20 line
2 7. Can you explain or can you get us the information
3 by tomorrow what the historical -- I'm sorry, what the
4 state Agriculture Functional Plan policies and
5 recommendations? Can we find out what that is so we
6 know what we're answering to?

7 THE WITNESS: Yeah. It's a general
8 planning document that's available. We can provide --
9 if you'd like when we come in tomorrow we can talk a
10 little bit more about the details of that. But in
11 general it supports retaining lands of Agricultural
12 Importance for the state of Hawai'i and maintaining
13 those in active agricultural production.

14 And what we've said is this property does
15 not represent Important Agricultural Lands nor a
16 significant chunk of Important Agricultural Lands.
17 And the conversion of these agricultural lands to
18 urban use is not inconsistent with the Agriculture
19 Functional Plan.

20 That's what I say is -- that line that
21 you're referring to I say, "As agricultural use is not
22 present and is it not economically feasible, the State
23 Agriculture Functional Plan policies and
24 recommendations are not inconsistent with the change
25 in the land classification."

1 Q (By Ms. Lincoln) Okay. I guess the line
2 that I'm referring to for the state Agricultural
3 Functional Plans and Policies that I'm asking the
4 question on, this is quoted from that particular plan
5 is: "Lands in intensive agricultural use for two years
6 prior to a date of filing." There's different
7 considerations for that.

8 A That sounds to me like you're referring to
9 the Land Use Commission rules.

10 Q Yes.

11 A And these lands have not been in intensive
12 agricultural use since prior to 1990. So not only --
13 it far exceeds the two years. It's been over 20 years
14 that these lands have not been in intensive
15 agricultural use.

16 Q But that's because it's the Petitioner's
17 choice. Is that correct?

18 A And the previous landowner.

19 CHAIRMAN CHOCK: I think he's already
20 answered your question.

21 MS. LINCOLN: Okay. Do you want me to keep
22 going?

23 CHAIRMAN CHOCK: I think we're going to
24 need to adjourn and stop for the day. So,
25 Mr. Frampton, you'll be back up by the witness box

1 tomorrow. Ms. Lincoln, you have how many question
2 left?

3 MS. LINCOLN: I'm on question 4.

4 CHAIRMAN CHOCK: Of 7?

5 MS. LINCOLN: Of 12.

6 CHAIRMAN CHOCK: 12. Okay. Any questions,
7 parties, before we adjourn? County?

8 MR. GIROUX: No, no questions.

9 CHAIRMAN CHOCK: OP? Everybody okay?

10 MR. YEE: No questions.

11 CHAIRMAN CHOCK: Do I have a motion to
12 adjourn?

13 COMMISSIONER CONTRADES: So moved.

14 COMMISSIONER TEVES: Second.

15

16 (The proceedings were adjourned at 3:56 p.m.)

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C E R T I F I C A T E

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

That I was acting as court reporter in the
foregoing LUC matter on the 19th day of July 2012;

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

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

DATED: This_____ day of_____2012

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

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