

LAND USE COMMISSION

STATE OF HAWAII

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TRANSCRIPT OF PROCEEDINGS

Held at the Courtyard Marriott Kahului Airport, Haleakala Room, 532 Keolani Place, Kahului, Maui, Hawaii, commencing at 9:30 a.m., on Friday, July 20th, 2012.

REPORTED BY: CAMMIE GILLETT  
Registered Professional Reporter  
Hawaii Certified Shorthand Reporter #439

A P P E A R A N C E S

COMMISSIONERS PRESENT:

Kyle Chock, Chair  
Chad McDonald, Vice Chair  
Ronald Heller, Commissioner  
Thomas Contrades, Commissioner (Out at 11:30 a.m.)  
Nicholas Teves, Jr., Commissioner  
Lance Inouye, Commissioner  
Sheldon Biga, Commissioner (In at 9:45 a.m.)  
Ernest Matsumra, Commissioner

ALSO PRESENT:

CHIEF CLERK: Riley Hakoda  
STAFF PLANNER: Scott Derrickson  
EXECUTIVE OFFICER: Dan Orodénker  
DEPUTY ATTORNEY GENERAL: Sarah Hirakami, Esq.  
AUDIO TECHNICIAN: Walter Menching

DOCKET NO. SP70-85 Edwin DeLuz Trucking & Gravel LLC (Hawaii):

For the County: Bobbie Jean Leithead-Todd  
Planning Director  
County of Hawaii

For the State: Bryan Yee, Esq.  
Deputy Attorney General  
Office of Planning

DOCKET NO. A12-795 West Maui Land Company, Inc. - Kahoma  
Residential LLC (Maui):

For the Petitioner: James Geiger, Esq.

For the County: James Giroux, Esq.  
Deputy Corporation Counsel

For the State: Bryan Yee, Esq.  
Deputy Attorney General

## I N D E X

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FRIDAY, JULY 20, 2012

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CHAIR CHOCK: (Gavel). Good morning. This is an action meeting on SP70-85, DeLuz Trucking & Gravel, to consider granting a time extension until June 30, 2012, to comply with Condition No. 5, Tax Map Key: 6-8-002: portion of 050.

Will the parties please come forward and identify themselves for the record.

Good morning, BJ.

MS. LEITHEAD-TODD: Good morning. Bobbie Jean Leithead-Todd, Planning Director, County of Hawaii.

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

CHAIR CHOCK: Okay. And just for the record, I don't believe the Petitioner is present this morning.

On February 13th, 2012, the Commission received a copy of correspondence dated February 8th, 2012, from the County of Hawaii Department to the Petitioner regarding failure to submit the soils report required by Condition 5 of Special Permit No. 164, within the required time to comply with this condition and ordering the Petitioner to cease all quarry operations and instructing Petitioner to apply for an extension of time to comply with Condition No. 5.

On June 25th, 2012, the Commission received a complete record of the proceedings before the Commission from the County

1 of Hawaii Department of Planning regarding Petitioner's  
2 application to allow a time extension until June 30, 2012, to  
3 comply with Condition No. 5.

4 First, I'll call all those individuals desiring to  
5 provide public testimony to identify themselves. All such  
6 individuals will be called in turn to our witness box where  
7 they will be sworn in prior to their public testimony. After  
8 the completion of public testimony portion of the proceedings,  
9 as the Commission has previously received a favorable  
10 recommendation subject to specific amended conditions for  
11 approval, the Commission will conduct its deliberations.

12 Is there anyone in the audience who would like to come  
13 forward to provide public testimony on this matter? I don't  
14 believe there's anybody signed up.

15 Scott, do you have a presentation?

16 MR. DERRICKSON: If you want me to do a map  
17 orientation, I can.

18 CHAIR CHOCK: Sure, why don't you do that.

19 MR. DERRICKSON: On the wall, we have the USGS quad.  
20 The Puu Hinai quadrangle, which is H15. The Petition area site  
21 is right here. It's just off Waikoloa Road in South Kohala.  
22 Access to the site is via a road through the Waikoloa Village  
23 Golf Courses. This is a special permit request for a time  
24 extension.

25 CHAIR CHOCK: Thanks, Scott.

1           Okay. Petitioner is absent, so we have no remarks from  
2 the Petitioner.

3           County, do you have any comments?

4           MS. LEITHEAD-TODD: Just that we support their  
5 application.

6           CHAIR CHOCK: State?

7           MR. YEE: The Office of Planning has no objection.

8           CHAIR CHOCK: Commissioners, what is your pleasure on  
9 this matter?

10          COMMISSIONER CONTRADES: Chairman, I move we approve  
11 the request to extend the life of the permit, or SP70-85, Edwin  
12 DeLuz Trucking & Gravel LLC.

13          COMMISSIONER HELLER: Second.

14          CHAIR CHOCK: It's been moved and seconded.

15          Any discussion, Commissioners? Commissioner Heller.

16          COMMISSIONER HELLER: Just to clarify. I think you  
17 said extend the life of the permit. And as I understand the  
18 motion was to extend the time to comply with specific Condition  
19 No. 5.

20          COMMISSIONER CONTRADES: I stand corrected.

21          COMMISSIONER HELLER: And the one-year period, if I  
22 understand the County's recommendation is one year from the  
23 County Planning Commission's decision, which was May 17th,  
24 2012. So the extension would be to May 17th, 2013. Correct?

25          COMMISSIONER CONTRADES: Correct.

1 COMMISSIONER HELLER: Thank you.

2 CHAIR CHOCK: Okay. Any other questions or comments,  
3 Commissioners?

4 Dan, will you please poll the Commission.

5 MR. ORODENKER: The motion is to approve the request to  
6 extend the time to comply with Condition No. 5, to May 2013.

7 Commissioner Contrades?

8 COMMISSIONER CONTRADES: Yes.

9 MR. ORODENKER: Commissioner Teves?

10 COMMISSIONER TEVES: Yes.

11 MR. ORODENKER: Commissioner Matsumura?

12 COMMISSIONER MATSUMURA: Yes.

13 MR. ORODENKER: Commissioner Biga is absent.

14 Commissioner McDonald?

15 COMMISSIONER MCDONALD: Yes.

16 MR. ORODENKER: Commissioner Makua is absent.

17 Commissioner Heller?

18 COMMISSIONER HELLER: Yes.

19 MR. ORODENKER: Commissioner Inouye?

20 COMMISSIONER INOUE: Yes.

21 MR. ORODENKER: Chair Chock?

22 CHAIR CHOCK: Yes.

23 MR. ORODENKER: Chair, the motion passes unanimously.  
24 One, two, three, four, five, six, seven -- seven votes.

25 CHAIR CHOCK: Thank you.

1           BJ, thanks for coming for such a short efficient  
2 proceeding. Have a safe flight home.

3           MS. LEITHEAD-TODD: I think I'll just stick around to  
4 kind of watch you guys.

5           CHAIR CHOCK: We're going to take a brief recess and  
6 give the parties in the next matter an opportunity to come and  
7 set up, and we'll get started in a couple of minutes.

8           (Recess taken.)

9           CHAIR CHOCK: Okay. We're back on the record on Docket  
10 No. A12-795, West Maui Land Company.

11          Ms. Lincoln, your witness.

12          MS. LINCOLN: Chair, can I ask a question. I found out  
13 I made another mistake yesterday. I'm asking if -- and  
14 Mr. Geiger was not able to get back to me yet on it. But may I  
15 testify in lieu of an opening statement, as I don't have a  
16 lawyer to represent me. Would I be able to, instead of the  
17 opening statement, use that as my testimony? And Mr. Yee has  
18 agreed to it, Mr. Giroux has agreed to it, and Mr. Geiger would  
19 like to check with his client first.

20          MR. GEIGER: I've checked with my client, and we would  
21 have no objection to Ms. Lincoln proceeding in that fashion.

22          CHAIR CHOCK: Thank you for your cooperation,  
23 Mr. Geiger.

24          MS. LINCOLN: Thank you.

25          CHAIR CHOCK: Proceed.

1 MS. LINCOLN: Okay. One other thing is when yesterday  
2 you asked how many questions I had, I looked at my card and I  
3 said 12. That's how many cards I had. But on some of my  
4 cards, there's more than one question.

5 And one other thing. One of my questions, I'm going to  
6 ask later on if I'm allowed to, is I've learned yesterday that  
7 I can't say something unless something was produced into  
8 evidence. And so I have the facts that I sent to West Maui  
9 Land. Would I be able to enter that into evidence if the  
10 question does arise? I would be able to make copies available.

11 CHAIR CHOCK: What do you want to enter?

12 MS. LINCOLN: Do you want me to read it right now?

13 CHAIR CHOCK: Just summarize it.

14 MS. LINCOLN: I didn't have their e-mail, so I faxed a  
15 letter to West Maui Land on Sunday, November 13th, 2011,  
16 basically just pleading with them to keep it as open space and  
17 offering them an option. But I checked with the County that  
18 they may get higher density in other development if it was  
19 turned into a park for the community. I also mentioned that  
20 there would be other benefits to the Department of Land &  
21 Natural Resources --

22 CHAIR CHOCK: Ms. Lincoln, you'll be able to enter  
23 that.

24 MS. LINCOLN: Okay. All right. Can we start?

25 CHAIR CHOCK: Please proceed.

1 MS. LINCOLN: Okay.

2 MR. GEIGER: Chair, just for the record. I would note  
3 an objection because it was not produced in accordance with the  
4 prehearing. I presume that the objection is overruled, but I  
5 just note it for the record.

6 CHAIR CHOCK: So noted. Thank you.

7 MR. YEE: I'm sorry, Chair. Just for the record, for  
8 future matters, the Office of Planning would appreciate a copy  
9 of any exhibits to be introduced or provided to the parties  
10 before introduction.

11 MR. GIROUX: The County would ask the same.

12 MR. GEIGER: Join.

13 RORY FRAMPTON,  
14 having been previously duly sworn, testified as follows:

15 CONTINUED CROSS-EXAMINATION

16 BY MS. LINCOLN:

17 Q. Just to finish up where we had left off yesterday. I  
18 thought there was two things, Rory, that you were maybe going  
19 to look into; what the lot prices were going to be and how many  
20 were going to be lots and how many were going to be houses that  
21 were going to be built out.

22 And then the other one -- and I apologize for  
23 this -- when I was quoting that they meet two out of the three  
24 criteria for agricultural. That was Mr. Will Spence's  
25 testimony, so I will ask him that instead of Rory. Unless you



1 want to answer it.

2 MR. GEIGER: I'm going to object because there's two  
3 questions there. I'd like one question for the record, please.

4 MS. LINCOLN: Sorry.

5 Q. So the first question.

6 A. About the?

7 Q. What are the vacant lot prices?

8 A. The vacant lot prices?

9 Q. Yeah.

10 A. The vacant lot prices are established in the formula  
11 that we submitted, which breaks down the various number of lots  
12 or units per income group classification. And the formula for  
13 the lot-only prices is based on 50 percent of the sales price  
14 of a three-bedroom, house-and-lot package. It's in the formula  
15 that we provided. And if you want the dollar maximum limits  
16 per category, I could provide that.

17 Q. That would be great.

18 A. Is that what you're looking for?

19 Q. Yeah, thanks.

20 A. So for the category that's priced to people earning 100  
21 percent of the median income and below, the maximum price would  
22 be \$186,000. For the group that's 120 percent and below, the  
23 maximum price for a vacant lot would be \$223,000.

24 Q. Okay. And how many -- was that it?

25 A. There's two more categories. The 140 percent and



1 below, the maximum price would be \$260,800. And for the 160  
2 percent and below, what's called the gap group income bracket,  
3 it's \$298,000. And these are based on -- these prices will  
4 fluctuate over time based on the median income that's  
5 established every year by HUD. And it's also based on the  
6 prevailing interest rate at the time. So if interest rates go  
7 up or down, then these prices have the potential of going up or  
8 down as well.

9 Q. Okay. Thank you.

10 A. Well, I'm sorry. They can't go up. The County Council  
11 established a limit saying that these prices can be no higher  
12 than the ones today; although, they can go lower in the future,  
13 but they can't go higher.

14 Q. Thank you. Did we determine how many were going to be  
15 lots?

16 A. No, that's still flexible.

17 Q. Okay. And then regarding the agriculture question I  
18 asked yesterday, would you prefer I just ask that to  
19 Mr. Spence?

20 A. It's really up to you.

21 Q. The question was -- because I had been -- I was quoting  
22 two different things. The State statute for -- or mandate or  
23 whatever you call it for the ag is that you have to have it in  
24 active ag use two years prior to a date of filing a petition.

25 And then the next question was -- we answered that.

1 And then this one was the functional plan and recommendations  
2 come into consideration in light that it meets two of the three  
3 criteria, that was actually quoted by Mr. Will Spence in his  
4 testimony regarding Zoning Title 19 Maui County Code.

5 CHAIR CHOCK: Mr. Lincoln, why don't you save that  
6 question for Mr. Spence.

7 MS. LINCOLN: Okay, thanks.

8 Q. All right. On page 20, line 14 of your testimony,  
9 just -- the only thing I'm going to quote from that whole  
10 section is current shortage of affordable housing in West Maui.

11 My first question. Is there a critical shortage of  
12 affordable housing at Kapalua?

13 A. I'm not sure of that. Kapalua is more of a  
14 resort-planned community, very geared towards the high-end, not  
15 towards the workforce housing. What we're trying to do is  
16 address the workforce housing market for the local people who  
17 either we reside or work in West Maui.

18 Q. Okay. Is there a critical shortage of affordable  
19 housing at Launiupoko?

20 A. I would think Launiupoko would be in that market. It's  
21 kind of a borderline market between workforce housing and upper  
22 end.

23 Q. Okay. Is there a critical shortage of housing at  
24 Olowalu?

25 A. There is no real housing at Olowalu. So yes, I would

1 say -- is there a shortage? I guess you could say that, yes.

2 Q. Is it within the petitioner's purview to provide  
3 affordable housing at Olowalu?

4 A. No.

5 Q. So he doesn't have any land that he's going to be  
6 developing there that he could include affordable housing in?

7 A. The petitioner is West Maui Land Company, and they have  
8 some interest in properties in Olowalu -- well, they help  
9 manage land in Olowalu. There are not the actual land owners  
10 of land in Olowalu.

11 Q. Thank you. Is there say critical shortage of  
12 affordable housing in Puamana?

13 A. You know, the applicant actually applied to do  
14 affordable housing in the Puamana location a couple years  
15 ago -- or it's not the exact applicant. But the applicant, one  
16 of its affiliated companies applied. And that was at Puanoa,  
17 the Puanoa project. And it was geared towards providing  
18 affordable housing. They applied to the County of Maui. It  
19 was rejected. And one of the major reasons is they said it was  
20 too far out away from the core of Lahaina town, and go find  
21 something near the urban district if you want to do affordable  
22 housing.

23 So after that project failed, the applicant turned its  
24 energy and efforts more towards this project because the  
25 applicant feels it addresses the concerns that were brought up

1 at the time in terms of going to a place more closer to the  
2 urban district.

3 Q. Okay. Did the Puamana Homeowner's Association impact  
4 the decision at all?

5 A. I don't think so. But I have to say I was not involved  
6 in that project, so I can't speak firsthand.

7 Q. Okay. Now that they widened the road and kind of like  
8 extended -- they've done a lot of construction there, and kind  
9 of extended it and kind of pushed the Lahaina borders out.  
10 When they applied for that, it wasn't feasible. But could it  
11 be feasible today with how we've changed this, even in the last  
12 few years with how we've changed this and kind of widened the  
13 roads? Would it be feasible to put affordable housing at  
14 Puamana?

15 A. It would take a substantial amount of time to go  
16 through the entitlement process. It's not included in the  
17 Island Plan right now. You'd have to get community plan zoning  
18 and go through a process like this project has gone through.  
19 And it's taken this project about five or six years to get to  
20 this point. So it would take some time, I think, to resurrect  
21 that project and try to move it forward. It's certainly  
22 possible, but it's not in the position that this property is,  
23 where it has water next to, it has sewer next to it, there's  
24 very easy roadway connections to make to it, it's within  
25 walking distance to the shops and stores and everything.

1 I think this is really more the priority project in  
2 terms of the short-term. Certainly long-term, there's a  
3 potential to provide additional housing in that area.

4 Q. Okay, thank you. Page 21, line 8. I'm just going to  
5 quote. "The State Historic" -- you need time to get there?  
6 "State Historic Preservation District has stated on two  
7 separate occasions that no historic properties will be  
8 affected."

9 Why have an archeologist on-site, then?

10 A. In case anything -- basically, that statement says  
11 there's a significant amount of archeological work that has  
12 been done, they've found nothing on the surface of the  
13 property. But there is a remote chance -- or there is a chance  
14 that when you're doing subsurface excavation, you might  
15 encounter something. But that's why they would make that  
16 recommendation. But I'm not even sure -- well, anyway, that's  
17 why they would make that recommendation.

18 Q. How many years did the Hawaiians live in this area?

19 A. Hundreds.

20 Q. Hundreds, thanks.

21 A. If not longer.

22 Q. Okay. State Historic Preservation, page 17  
23 through -- well, I think page 17 -- uh-oh. No, page 7, line  
24 13. Sorry. "Importance of preservation of historic  
25 properties, records, artifacts and rural history."

1           Wouldn't 150 days of plantation days be considered  
2 rural history?

3           A. I'm sorry. I lost the page.

4           Q. I'm sorry. It's page 21, and I think it's -- could you  
5 look that up for me.

6           I'm sorry. It's page 21. I wrote page 2. It's line 7  
7 through 13. The State Historic Preservation. "The importance  
8 the preservation of historic properties, records and artifacts,  
9 rural histories." So my question was wouldn't 150 years of  
10 plantation days be considered rural history?

11          A. Yes.

12          Q. Thank you. Why wasn't that taken into consideration,  
13 then, as this like a district to save, then?

14          MR. GEIGER: Well, I'm going to object. The question  
15 is unclear. Are you asking him why the State Historic  
16 Preservation District didn't do it?

17          MS. LINCOLN: Yes.

18          MR. GEIGER: Well, then, I would object because that  
19 would call for speculation. He doesn't represent the State  
20 Historic Preservation District.

21          CHAIR CHOCK: Ms. Lincoln, please clarify your question  
22 as it pertains to this specific witness. He can't testify on  
23 behalf of what he thinks the State Historic Preservation might  
24 have been thinking.

25          MS. LINCOLN: Will the State Historic Preservation



1 print their own record of exempting this place, are they going  
2 to be on record, or be able to process --

3 CHAIR CHOCK: SHPD is represented by OP, State --

4 MS. LINCOLN: Okay, I can ask them?

5 MR. YEE: I'm sorry. To be clear, there is no  
6 representative from State Historic Preservation Division that  
7 will be appearing in this case.

8 MS. LINCOLN: Okay. Can I ask you a question, then how  
9 do we get that answer?

10 CHAIR CHOCK: You call SHPD.

11 MS. LINCOLN: And what's that?

12 CHAIR CHOCK: State Historic Preservation Division.

13 MR. YEE: For the record, the Office of Planning would  
14 object to the naming of additional witnesses at this late date.

15 MS. LINCOLN: Okay. So that's --

16 Q. Okay. Next question. Were you at the 2008  
17 neighborhood community meeting at -- no. Were you at the May  
18 2008 neighborhood community meeting at the senior center?

19 A. No.

20 Q. Okay. So I will ask this for Heidi Bigelow. She was  
21 at that.

22 MR. GEIGER: Is that a question of the witness?

23 MS. LINCOLN: No. Someone had to be there.

24 Q. Okay. At the informal neighborhood meeting at the  
25 (Unintelligible) home, do you recall saying, "It's the

1 developer's land, and he can do what he wants"?

2 A. Yeah, that meeting took place because I knew one the  
3 neighbors in the area as a personal friend -- or classmate from  
4 high school. And I offered to come talk story about the  
5 project because his wife was kind of concerned about it. And  
6 when I got there, the whole neighborhood was there. But it was  
7 a good chance to sit down and talk. And we did have a frank  
8 discussion. And basically, I said it is the land owner's  
9 property and he can choose what he wants to do with it.

10 I gave you guys three options, if you recall, of what  
11 the likely scenarios would be. One would be that the land  
12 owner does nothing with the property and leave it in its  
13 existent state. And that wasn't an action that the land owner  
14 wanted to take because the land is basically an attractive  
15 nuisance. There's a lot of people that walk on it. As you  
16 know, there's been dumbing, there's been all kinds of stuff.  
17 So he wants to do something with the property. His proposal  
18 was the second option I described, which was to provide  
19 affordable housing for the people in Lahaina because it was a  
20 real important need, and that's what his preferred route was.

21 The third that was we discussed, and we discussed it a  
22 bit, was really having the property go to park space. And I  
23 told you guys if you really wanted it to go to park space, the  
24 decision-making body for that is the County Council and that  
25 you'll have to make your case in front of the County Council



1 for purchasing of the land and improving it for park space, or  
2 somehow compensating the land owner for taking his property and  
3 using it for a public purpose. And you guys made that  
4 presentation to the County Council. We even offered a purchase  
5 price for the County Council to consider. And they, in the  
6 end, voted to do the affordable housing and not pursue the  
7 public park option.

8 Q. Okay. So we went to the County Council. But because  
9 it's not a land size that they can really make the ultimate  
10 decision. So basically I'm here now asking as the  
11 neighborhood, like you advised us to do -- I'm asking the State  
12 Land Use to keep in open space.

13 A. Well, the County Council could have rejected this  
14 application. They rejected applications before. They rejected  
15 the application that I talked about earlier twice. They  
16 rejected another application because they didn't have enough  
17 time because they were going on Christmas vacation.

18 So the County Council doesn't whimsically approve these  
19 things. Because they have the veto power to say no to these  
20 projects, and they have done it before. So the County Council  
21 voted 7 to 2 to approve it, and that was in December. And  
22 that's their final action on the matter.

23 Q. Okay. So the petitioner is providing testimony to the  
24 fact that they think this land should be condemned as  
25 agricultural use and be made available as workforce housing.

1 Is that correct?

2 MR. GEIGER: I'm going to object. Condemnation would  
3 be an improper term, and I think it's argumentative.

4 MS. LINCOLN: All right.

5 CHAIR CHOCK: Move on, please.

6 MS. LINCOLN: This is where the question has to do with  
7 this is an option.

8 CHAIR CHOCK: What is this?

9 MS. LINCOLN: The thing I asked you about when I first  
10 got here, would I be able to -- the letter that I faxed to  
11 them.

12 MR. GEIGER: If there is a letter, we have not seen it  
13 either. So I would ask that it be provided to all parties  
14 before questions.

15 CHAIR CHOCK: That would be more appropriate.

16 MS. LINCOLN: Okay. I can ask him later?

17 MR. YEE: I'm sorry. There is no later. This will be  
18 completed today. So perhaps we could hear the question and see  
19 whether or not the letter is necessary.

20 CHAIR CHOCK: Yeah. Ms. Lincoln, that letter needed to  
21 be submitted prior to this hearing so all the parties could  
22 have an opportunity to review it, be prepared to ask questions  
23 on the record. You'll have an opportunity when you do give  
24 your opening statements to maybe include some of those comments  
25 or concepts.

1 MS. LINCOLN: Okay, that's fine. Thank you.

2 Let's see. Okay. I think this is my final.

3 Q. Okay. So you just mentioned that it was offered to the  
4 county as a park. You guys gave them an offer of a price of  
5 \$3,340,000. Is that correct?

6 A. That sounds correct. Exact -- I can't recall the exact  
7 number, but that sounds correct.

8 Q. Okay. So why is the petitioner not paying higher  
9 property tax if it's worth that much?

10 A. I'm not familiar with -- I don't pay the properties  
11 taxes on that property. I'm not in charge of that.

12 Q. If the State Land Use denies the petition to be zoned,  
13 what will the petitioner do with the property?

14 A. That's a very good question? I don't -- like I said,  
15 the status quo is not something that's favorable. I'm not  
16 sure. It's not something we've explored.

17 MS. LINCOLN: That's it for my questions. Thank you,  
18 Rory.

19 THE WITNESS: Thank you.

20 CHAIR CHOCK: Thank you, Ms. Lincoln. Very nice job.  
21 Ms. Bolomet.

22 MS. BOLOMET: Good morning.

23 CHAIR CHOCK: Good morning.

24 MS. BOLOMET: Okay. So I just want -- I have a lot of  
25 questions. But I want to explain that because when I read this

1 petition, I could see something very different from what I was  
2 hearing the explanations to be. So I'm kind of breaking it  
3 down so I can fully understand the mindset of the petitioner so  
4 that I could better help him understand how to use this  
5 property.

6 CHAIR CHOCK: Before you proceed, just please keep in  
7 mind that he's an expert on planning. And so try to confine  
8 your questions to the realm of planning. You will hear from  
9 the petitioners -- the owner's representative from the  
10 proceeding as well. You'll have more than one bite at the  
11 apple here, so try to stay focused on planning, please.

12 MS. BOLOMET: Terrific.

13 CROSS-EXAMINATION

14 BY MS. BOLOMET:

15 Q. May I ask -- I notice when I was reading the petition,  
16 I kept seeing West Maui Land Company, Kahoma LLC, Kahoma  
17 Residential, Pioneer Mills Company. How do all of these  
18 companies fit together?

19 A. I'll just try to be very brief. Pioneer Mill was the  
20 owner of the property. Kahoma Land was an entity that was  
21 formed for the purchase of a large amount of acreage of the  
22 former Pioneer Mill property. So Kohoma purchased this  
23 property, along with a number of other acres up mauka, as one  
24 land purchase. Kahoma Residential basically was formed to do  
25 this project. And West Maui Land Company is going to be the

1 developer of the project, with Kahoma Residential, I believe,  
2 being the land owner.

3 And that can be confirmed by Heidi. In a nutshell,  
4 that's what it is.

5 MS. BOLOMET: I saw that look of confirmation, so  
6 that's why I was pausing.

7 Q. All right. So on page 3, line 17 of your testimony,  
8 you say you were engaged by West Maui Land Company in 2009, to  
9 manage and oversee the final environmental assessment for the  
10 project. Do we need time to go through that? Because I'm just  
11 pulling that excerpt out. Is that okay?

12 What does that job entail?

13 A. I helped oversee the revisions of the various  
14 subconsultant reports, I help respond to the various agency  
15 comments, and basically edited the draft environmental  
16 assessment by responding to the public comments and agency  
17 comments that came in. And then we basically packaged it up  
18 into the final environmental assessment. So I oversaw that  
19 process.

20 Q. So when you say you edited some of the comments --

21 A. I'm sorry. We didn't edit the comment. We edited the  
22 draft environmental assessment. What you're supposed to do is  
23 do a draft, you get comments from the public and the agencies,  
24 and you respond to those comments accordingly. You turn the  
25 draft EA into a final EA. So you have to edit the final

1 environmental assessment to make it acceptable to the accepting  
2 agencies.

3 Q. And so did you get recommendations from some of the  
4 people that you -- what do you call it -- interviewed?

5 A. There were a number of comments that came in from the  
6 various public agencies. There were also a few from -- at  
7 least one or two from the public that came in that was  
8 responded to and incorporated into the final environmental  
9 assessment.

10 Q. Yeah, because we got to speak to some of the people  
11 that said they sent you comments. And we didn't see their  
12 comments listed in the EA. So do you have the right to keep  
13 out information when you edit?

14 MR. GEIGER: I'm going to object because there's  
15 information that's not been provided. It's a question based  
16 upon facts that are not in evidence in any fashion. So I think  
17 it's an unfair question, I'm going to object.

18 CHAIR CHOCK: Ms. Bolomet, who are you referring to?

19 MS. BOLOMET: It will be somebody who will come back  
20 and do public testimony, so maybe we should ask then as well.

21 CHAIR CHOCK: If Mr. Frampton can answer the question.

22 Do you know who was omitted from the EA?

23 MS. BOLOMET: The person that -- I don't have the name.  
24 I can't remember the name.

25 Q. But go ahead.



1       A. I can tell you what's required by law is that there's a  
2 30-day comment period. And any comment that comes in, in  
3 writing during that 30-day comment period needs to be responded  
4 to. And the copy of the letter, as well as the response, is  
5 incorporated into the final environmental assessment. And  
6 that's what the laws and rules provide for.

7       Q. Okay. So as long as it came in during that period, it  
8 would be included? You didn't purposely exclude it?

9       A. I did not purposely exclude any letter, that's correct.

10      Q. Okay. And I don't even know if it was a letter or if  
11 it was testimony at one the meetings. That's why we asked this  
12 person to come back and testify again.

13      A. Unfortunately, neither do I. I don't know what you're  
14 talking about, sorry.

15      Q. Okay. We'll move on.

16            You mentioned, when Michele was just questioning, that  
17 you didn't like the land just laying there because people come  
18 and do dumping. So I was on the land two days ago, on  
19 Wednesday July 18th, and two city and county trucks came onto  
20 the property and was dumping. So I went to them and I asked  
21 them questions and asked them who gave them permission to do  
22 the dumping, and they said the owners. You made it sound like  
23 people are just coming there and dumping. But when I spoke to  
24 Rowenna yesterday from Public Works, once again it was  
25 confirmed that West Maui Land Company is allowing them to do

1 dumping.

2 So is this a normal practice to allow any kinds of  
3 dumping onto these special properties?

4 A. The county action involved, as I described yesterday,  
5 driving material from the sedimentation basin that's mauka.  
6 And when they need to excavate that material, it's actually  
7 suitable material for fill. And they've been placing it on the  
8 property, on the lower portion of the property. It's in close  
9 proximity to the detention basin. It's right on the access  
10 roadway. It makes sense for them. And the land owner is okay  
11 with that, selected type of dumping.

12 Now, when I do refer to dumping, if we do go up on a  
13 site visit, the Commission will see that the kind of dumping  
14 that I was referring to is like piles of old cement rubbish  
15 from a demolition job or piles of lumber or various other  
16 vehicles, and that type of stuff. They kind of unauthorized  
17 dumping of rubbish and stuff that's not really usable, it's  
18 something that the land owner is not really favorable towards.

19 Q. Okay. So if it's not from the sediment that's in that  
20 collection water basin, it's not anything that you're approving  
21 or the developer or West Maui Land Company?

22 CHAIR CHOCK: I think that may be a better question,  
23 Ms. Bolomet, for the owner's representative in terms of what  
24 they're permitting on their property, and not necessarily for  
25 the planner.



1 MS. BOLOMET: Okay. I got to write that down so I  
2 remember to ask him. Who is the other person that I'd be  
3 asking?

4 CHAIR CHOCK: The owner's rep is going to be who,  
5 petitioner?

6 MR. GEIGER: Heidi Bigelow.

7 MS. BOLOMET: Okay.

8 Q. So you gave some of your qualifications so oversee the  
9 environmental assessment yesterday. What are your  
10 qualifications to access the cultural impacts of this project?

11 A. I've been involved professionally with a number of  
12 projects either preparing cultural impact assessments or  
13 overseeing the preparation of cultural impact assessments and  
14 been involved in the land use planning profession on Maui since  
15 1990. I was actually raised on Maui. And my undergraduate  
16 degree is in cultural anthropology, so I do have a little bit  
17 of background and experience in preparing and overseeing  
18 cultural impact assessments. And I wouldn't qualify myself as  
19 an expert, but I'm very much involved in doing those types  
20 of -- looking at those assessments.

21 Q. So you've done it enough that you can spot something, a  
22 cultural significant item on the property when you're walking  
23 it?

24 A. Certainly if it's significant, yes.

25 Q. Can you tell me the significance of this stone? I got

1 this from the property.

2 A. I can't.

3 Q. Okay. What are your qualifications to assess the  
4 environmental impact of the project?

5 A. I have a master's degree in urban regional planning  
6 that focused on natural resource planning, and I've been  
7 involved in doing those types of assessments professionally for  
8 the last 20 years.

9 Q. So you would understand about the sewage dumping when  
10 you see reports that are being provided by the county or EPA?  
11 You would have an understanding of what those reports actually  
12 represent?

13 A. That question is kind of vague. I'm not really sure  
14 what you're asking me to comment on.

15 Q. Okay. So some reports that I saw when I was -- I'm  
16 just kind of researching the project was the Lahaina Wastewater  
17 Treatment center was saying that they were over capacity -- or  
18 saying they were at 80 percent capacity, but the other 20  
19 percent capacity for taking sewage was already obligated to  
20 other projects that were approved. And basically, the EPA  
21 would not allow more sewage to be part of that system.  
22 However, you're saying that's the system that you are going to  
23 be transferring the sewage from this project to. However,  
24 they're already in litigation with the EPA, which is saying  
25 they're already beyond their capacity.

1           So how can you include this in your EA -- that's what  
2 it's called, an EA, environmental assessment, saying that this  
3 is the source you're going to use to deal with sewage and  
4 wastewater.

5           MR. GIROUX: I just want to make an objection for the  
6 record. The cross-examiner is making assumptions to facts that  
7 have not been admitted as evidence. And I have a hard time  
8 forcing the planner to answer those questions when the facts  
9 have not been determined.

10          MS. BOLOMET: Actually, they have been submitted in  
11 Robin Knox's testimony. And she gave reference to the  
12 different reports and litigations and things in there. So if  
13 they read the reports, then he would be aware of it.

14          Yesterday he made the comment that there was -- he  
15 wouldn't change anything. And we gave lots of  
16 information -- he wouldn't change anything in the EA, you know,  
17 with all the new information we got. But we provided  
18 information to show that there were flaws in this system. And  
19 that's where my confusion is. Or in their plan.

20          CHAIR CHOCK: Why don't you try to clarify your  
21 question with a little more clarity and be a little more  
22 concise. Are you asking him about the adequacy of the sewage  
23 capacity, or what is your question?

24          MS. BOLOMET: Well, my question has to do with -- he's  
25 saying -- he provided an EA, environmental impact study. He's

1 saying he's an authority with environmental impact. He's given  
2 us his degrees. It looks like he should understand these basic  
3 things that me, as a layperson, that I am grasping that says  
4 no, you can't do certain things.

5 CHAIR CHOCK: Okay. So what is the question? Let's  
6 get to the question.

7 BY MS. BOLOMET:

8 Q. So my question is looking -- specifically, let's look  
9 at the sewage. In the sewage, the environmental impacts -- in  
10 their impact study, it's saying that they're going to be using  
11 Lahaina Wastewater Treatment Center. But in the paperwork that  
12 I submitted with Robin Knox, it said that facility is at  
13 capacity and -- or near capacity and the balance of the  
14 capacity has already been obligated to approved projects,  
15 building projects. Therefore, they're over capacity before  
16 this project gets in. And there is a litigation that is going  
17 on. The EPA is suing West Maui --

18 CHAIR CHOCK: Are you done stating the question? I  
19 think I kind of get it.

20 Mr. Geiger, do you have a comment?

21 MR. GEIGER: I have an objection because there's really  
22 isn't a question there. There's argument and testimony, but  
23 there's no question.

24 CHAIR CHOCK: I think what I hear you asking is, is the  
25 sewage treatment plan in Lahaina at capacity. Is that what

1 you're asking?

2 MS. BOLOMET: No. I know it's at capacity based on the  
3 study. I'm asking, yes -- okay. Let's start again.

4 MR. GIROUX: Again, Chair, our objections are standing.

5 CHAIR CHOCK: So noted.

6 BY MS. BOLOMET:

7 Q. Okay. So what I'm trying to ask is yesterday you said  
8 at the end of your presentation, there was no -- you didn't  
9 think that you would change your mind on anything in your  
10 environmental assessment. Is that --

11 Okay. Can I have my cousin ask this question?

12 MR. GEIGER: I would object to that. We have a party  
13 here who is appearing. She's chosen to appear. She can ask  
14 her own questions. I'm not objecting to having somebody sit  
15 with her, but I would object to having two different people  
16 asking questions.

17 MR. LEE: I'm not going to ask a question. What I'm  
18 going to do is clarify what she thinks. It's not a question.

19 MR. GEIGER: I still object. That would be the same  
20 thing.

21 CHAIR CHOCK: We're going to have to try to keep some  
22 sensibility to this procedure here.

23 MS. BOLOMET: Okay. This is why I wanted to have  
24 somebody here with me because due to the brain injury that I  
25 got, I have a hard time making things concise.

1 MR. GIROUX: I would note, County would not object for  
2 us taking a five-minute or a less-minute break for them to  
3 confer with each other to clarify the question.

4 MS. BOLOMET: I just want to let him say the question,  
5 and then --

6 CHAIR CHOCK: Let's take a short recess. Why don't you  
7 guys huddle up. Write the question down.

8 (Recess taken.)

9 CHAIR CHOCK: Okay. We're back up on the record.

10 Mr. Frampton, you ready to go?

11 MR. GEIGER: I'm sorry, Chair. My  
12 client/representative is out of the room. Can I go grab her,  
13 please?

14 CHAIR CHOCK: Yeah, please.

15 MR. GEIGER: We can go ahead and start. Thank you,  
16 Chair.

17 CHAIR CHOCK: Go ahead, Ms. Bolomet.

18 MS. BOLOMET: Okay. I think I got it this time.

19 Q. Okay. So yesterday. Mr. Geiger asked you if any  
20 evidence had been introduced -- or any new evidence had been  
21 introduced that would change your mind on anything you said in  
22 your EA. Is that correct?

23 A. I don't think that was the question. As I recall the  
24 question, he asked me -- I had gone over my testimony. And I  
25 believe he said is there anything -- since you signed your



1 testimony, is there anything new that would cause you to change  
2 your testimony or amend your testimony, and my answer was no.

3 Q. Okay. Then we're going in the same direction.

4 Okay. So on July 3rd, I submitted Robin Knox's amended  
5 testimony, written testimony. And that's new evidence. And it  
6 specifically gave information about how the County was saying  
7 that the sewage system was over-taxed. Would you still -- with  
8 this information, would you still say -- have the same answer  
9 as you had yesterday?

10 MR. GEIGER: Chair, I'm sorry. I'm going to object to  
11 the characterization of the testimony as coming to a certain  
12 conclusion. I think that's up for the Commission to decide.  
13 If she wants to ask just a basic question, "Did the testimony  
14 of Robin Knox change your testimony," that would be fine.

15 MS. BOLOMET: Okay.

16 Q. Did it?

17 MR. GIROUX: Chair, my original objection still stands.

18 CHAIR CHOCK: Thank you. These proceedings we're -- we  
19 have a lot of witnesses and parties to get through here. And  
20 so if everybody continues to object on questions, we're going  
21 to be here for a long, long time. And I understand what the  
22 concerns are. But if you can try to be as concise and clear as  
23 possible for the witness. I'd like to exhaust the witness  
24 without having to recall this individual later. So if we could  
25 move this along, I'd really appreciate that.

1 MS. BOLOMET: Okay.

2 Q. But is your answer still the same as question?

3 A. To the question of whether I would change my testimony  
4 and in light of what Robin Knox submitted? I don't think your  
5 characterization of what Robin said -- and I don't actually  
6 believe that what Robin said is necessarily accurate. And I  
7 would defer to the County of Maui wastewater personnel or  
8 someone very familiar with it, like their director or former  
9 director, who I believe is on the witness list. And they can  
10 describe more accurately the characterization of the plant --  
11 our understanding is the plant has capacity. If it doesn't  
12 have capacity at the time we hook up for some reason or  
13 another, there's a condition on the County Council resolution  
14 that says that we're responsible for contributing our pro-rata  
15 share, or the developer is responsible for contributing the  
16 pro-rata share to increase the capacity so that it will have  
17 capacity.

18 Now -- so would I change my testimony based on the  
19 information that Robin Knox submitted? No.

20 Q. Okay. I can move on, then.

21 Do you have any qualification -- wait. Are you  
22 qualified -- are you a qualified environmental professional as  
23 defined by the International Professional Environmental  
24 Practice, PEP.

25 A. I don't think so.



1 Q. Okay. Do you hold any environmental practice  
2 registrations or certificates? And if you do, which ones?

3 A. No, I do not. I don't do that type of environmental  
4 investigation, I think the type that you're referring to.

5 Q. So how is it that you're qualified to put together this  
6 EA?

7 A. Through my degree, as well as my work experience, both  
8 at the State and County, as well as in the private sector.

9 Q. But nationally -- the national standards, you don't  
10 meet any of the national standards?

11 A. There's no standards established in Hawaii, that I'm  
12 aware of, or for a professional to prepare environmental  
13 assessments. So there's no set standard or criteria in terms  
14 of degrees or certifications.

15 Q. Okay. So as far as the Hawaiian cultural standards,  
16 how are you -- when you -- how do you think that -- what makes  
17 you qualified to look at the reports that you were given for  
18 archeology and for the cultural assessments and to not -- to  
19 ask questions or not ask questions of deficiencies that may  
20 have been found in these reports?

21 A. Well, I'm certainly familiar with the methodologies  
22 that are required and the steps that you have to take when  
23 assessing impacts, either or archeological or cultural  
24 resources. And so there's a certain methodology that you need  
25 to take. And I'm familiar with those steps. And I look at the

1 reports to make sure the work's been done adequately, properly  
2 and thoroughly. And I also go out to the site myself and kick  
3 the dirt around, you know, to make sure there's nothing that's  
4 been overlooked.

5 Q. So you didn't find it odd that there was no cultural  
6 findings or anything significant on this property? Because  
7 what we read was there was nothing --

8 CHAIR CHOCK: Ms. Bolomet, there's going to be a  
9 cultural expert coming forward on behalf of the petitioner.  
10 And that's a question better reserved for that individual.

11 MS. BOLOMET: But my question is he put together the  
12 environmental impact assessment. And if you're putting  
13 something together and you're bringing in all the reports and  
14 you're an authority, somewhat, wouldn't you question --

15 CHAIR CHOCK: Yeah, he needs to rely on the expertise  
16 of the subconsultants; in this case, a cultural expert, who  
17 will be coming forward later in the procedures who is better  
18 equipped to answer that question.

19 MS. BOLOMET: Okay.

20 THE WITNESS: I can just provide a quick response. I  
21 certainly wasn't surprised at all. One of the things I like to  
22 do is go back and look at the history of the aerial photos to  
23 see what use the land was in. It was completely in sugar cane  
24 operations. And then when they did the construction for the  
25 Lahaina flood control, it was also extensively altered through

1 physical machinery and excavations and reshaping of the land.

2 It was basically right in between the old stream and the

3 existing stream.

4 And so was I surprised or was I concerned that there  
5 was nothing that came up in the archeology? No, I was not,  
6 given the extensive disturbance to the property that's occurred  
7 over the last 100 years.

8 BY MS. BOLOMET:

9 Q. So you were involved when all of the changes were being  
10 made to the property?

11 A. No, I looked back at the evidence that we submitted and  
12 looked at the history of the property, as well as when I read  
13 the -- was given a map, as well as what was in the reports, I  
14 didn't find anything odd about there being no surface sites  
15 discovered.

16 Q. Okay. And when you look at your reports, you said -- I  
17 think Michele was asking you, you went back 150 years -- or how  
18 far back do you go when you're looking for cultural significant  
19 sites or historical --

20 CHAIR CHOCK: You know, again, he's not the cultural  
21 expert to answer that question.

22 MS. BOLOMET: All right. I'll move on. I'm able to  
23 move on past through some of these answers, so if I can have  
24 just a minute.

25 Q. Okay. So you've been before the Burial Council on some

1 of your projects. Correct?

2 A. Yes, I have.

3 Q. When you go to the Burial Council, do you go before or  
4 after or -- I think it's an AIS, archeological impact study?

5 A. Well, I don't prepare archeological inventory surveys.  
6 But typically, if you're in front of the Burial Council -- or  
7 in my capacity before the Burial Council who is actually  
8 dealing with findings, where there were actually known burials,  
9 either known ahead of time, you know, by discovering it on a  
10 site where it was easily visible. Or I've also worked on some  
11 burial preservation plans where the remains were encountered  
12 during construction activities.

13 So basically, the Burial Council provides comments on  
14 burial treatment plans. And in my capacity, I was at the  
15 Burial Council in helping to process a number of different  
16 burial treatment plans.

17 Q. So over your 20 years -- did you say 20 years of  
18 experience doing this -- how many times have you encountered  
19 iwi and different findings on your projects?

20 A. I typically don't encounter them. But how many  
21 projects, are you saying, had inadvertent discoveries during  
22 construction activities?

23 Q. Yes.

24 A. I'd say probably maybe three.

25 Q. Three in 20 years?

1 A. Maybe three or four.

2 Q. In 20 years?

3 A. That I was personally involved with and had inadvertent  
4 discoveries, yes.

5 Q. Yeah. And how many projects have you done over the  
6 last 20 years?

7 A. I don't know, I'd say 40 or 50.

8 Q. And in those 40 or 50, are you aware of any other  
9 findings that would come up that would take you to Burial  
10 Council?

11 A. Well, the only thing that takes you to Burial Council  
12 is a finding of a burial. And on a number of those projects,  
13 there were known burials that existed that we knew about before  
14 construction activity occurred. So that's a different type of  
15 a finding. That's when you know in advance there's a sensitive  
16 site there. And it's basically a different kind of process  
17 that you go through versus finding it when the actual machines  
18 are out there doing the construction work. So the actual  
19 finding of something when you're doing construction work is  
20 what I was referring to is just a handful of occasions.

21 Q. Okay. But usually there's something on these projects,  
22 these 40 projects that you've done, whether it's a heiau, or  
23 anything significant on the archeologically significance? Let  
24 me rephrase that.

25 In your 40 projects, do you usually run across some

1 kind of archeological findings when you're planning or walking  
2 the property?

3 A. I would say it runs the gamut, and it really is a  
4 case-by-case situation. And there's projects where there  
5 hasn't been any, and there's been projects where we've dealt  
6 with very significant sites, whether they be archeological  
7 sites or cultural resources. As you know, there's a lot of  
8 significant cultural resources in Hawaii and there's a lot of  
9 government regulations. There's projects going forward. There  
10 are going to be situations where projects come up where there's  
11 cultural resources that you need to take into account, and you  
12 need to come up with either mitigation plans or avoidance  
13 plans, or what have you.

14 But it runs the gamut, like I said. Some projects have  
15 very little and some projects have a lot.

16 Q. Okay. All right. Do you know anything about the iwi  
17 that was taken from this property site that you're proposing to  
18 do your house on -- I mean, your houses?

19 A. They're not my houses. I'm not -- I would defer to the  
20 archeologist. I understand that when they were doing the flood  
21 control project, that there was some remains that were found.  
22 And I'm not familiar the exact location of where they were  
23 found and if that's related to where the project site is or  
24 not. But given the site and scope of that project and the  
25 history in this area, I'm not surprised.



1 Q. You're not surprised that they found iwi?

2 A. Yeah.

3 Q. Why aren't you surprised?

4 A. This whole area was populated for hundreds and hundreds  
5 of years. And the Native Hawaiians would traditionally bury --  
6 well, they had a lot of different places where they would bury  
7 their family remains, and a lot of times on their property.  
8 Some places -- I mean, all over the place. So given the  
9 history of the area, given the settlement patterns in general  
10 in Lahaina and a project of that size, I'm not surprised.

11 Q. So why wasn't this in your study, your environmental  
12 impact? Why wasn't that mentioned at all?

13 A. Why wasn't what mentioned?

14 Q. What you just said, that you weren't surprised there  
15 was a lot there because of the history, the people that lived  
16 there for past hundreds of years.

17 A. The report adequately, I feel, addresses the history of  
18 the area.

19 Q. But you just testified that you know something  
20 different than what the report said.

21 A. I didn't testify to that.

22 Q. You didn't just say that?

23 A. No.

24 Q. What did you say? I'm sorry, I thought that's what you  
25 said. Could you explain what you just said.



1       A. My understanding was that there were remains found  
2 during the excavation work involved with the flood control  
3 channel. If you look at the size and scope of that project  
4 from where it started up at the top, all the way down to the  
5 coastline, it transects. There's a transect that runs through  
6 the area that had a lot of activities. And given the size and  
7 scope of that project, if you were to tell me there were human  
8 remains found, I said I wouldn't be surprised.

9       Q. Okay. Because all of that area, there were -- I saw  
10 some maps. And they were saying something about there's lots  
11 of loi, and things that like that by the stream, the old Kahoma  
12 stream. Are you familiar with that?

13       A. I'm familiar with the location of the old Kahoma  
14 stream. Is that what you're asking?

15       Q. Yes, that's one of the things. So you're familiar with  
16 the old Kahoma stream. You're familiar with the history of the  
17 area. Are you familiar with the loi's that were coming off of  
18 and being grown --

19           CHAIR CHOCK: Ms. Bolomet, pardon me. But you're line  
20 of questioning isn't moving the case along. You're going to  
21 have an opportunity to cross-examine the petitioner's  
22 archeologist and cultural expert, and those are questions  
23 better left to those individuals. So let's move along, please.

24           MS. BOLOMET: Okay, thank you. Thanks for showing me  
25 how to do that. So should I be asking about where the iwi was

1 moved to, to the archeologist?

2 CHAIR CHOCK: Yes.

3 MS. BOLOMET: Okay.

4 Q. When you go to the county meetings -- you went to  
5 several county meetings and to meetings at your friend's house  
6 in the community. Is there usually a sign-in sheet of people  
7 that are testifying or talking to you about the projects and  
8 giving you ideas? Do they sign in?

9 A. So you're asking me about a couple different types of  
10 meetings. The formal community meetings where we advertise and  
11 we actually sent notices out to all the neighbors within 500  
12 feet, I recall there being sign-up sheets for those two  
13 meetings. At the informal meeting that I went to Chris -- to  
14 my friend's house, I didn't take detailed notes. We didn't  
15 have a sign-in sheet. That was very informal. And then at  
16 County Council meetings, the County keeps a record of people  
17 who testify, but I don't think they keep a record of  
18 attendance, who attends the meetings.

19 Q. So would West Maui Land Company and Kahoma Residential  
20 that was working on this project together -- is that the two?

21 A. Yes.

22 Q. Okay. When you attended these meetings, would you get  
23 a copy of the people that signed in and --

24 A. I believe the copies of those -- is included in the  
25 documentation of the environmental assessment.

1 Q. Okay. So you would have notes on what they testified  
2 about if they were for the project or against the project?

3 A. I would have access to that, the summary minutes. I  
4 believe they were included in the EA as well.

5 Q. Okay. Because there were some people that came forward  
6 and said they were descendants of the property. But there were  
7 never any kind of notices that were sent directly to these  
8 people that came and signed in to these meetings. Can you  
9 explain why you didn't --

10 Or I don't know if this is the appropriate person to  
11 ask.

12 CHAIR CHOCK: For what specific issue? For archeology  
13 and iwi, or for what, just to notice the meeting?

14 MS. BOLOMET: To notify families directly. Because I  
15 never got any kind of notices when anything was happening on  
16 this property. I was never contacted. And I get contacted  
17 through family members. So family members were never  
18 contacted. But I'm told they went to these meetings, they made  
19 objections, they announced that they were descendants, but  
20 nobody's been contacting us.

21 CHAIR CHOCK: Okay. Mr. Frampton, can you answer the  
22 question "yes" or "no," and then let's move on. Do you know?

23 MS. LINCOLN: Chair, can I ask something.

24 CHAIR CHOCK: No.

25 Answer the question, please. "Yes" or "no"?

1 THE WITNESS: The question being?

2 CHAIR CHOCK: Were people properly noticed?

3 THE WITNESS: Yes, everything was properly done. Those  
4 meetings weren't required, but we did do -- you know, nowadays  
5 you need to have effective community outreach. And we've had  
6 two meetings that, again, weren't required, but were strongly,  
7 let's say, encouraged. If you're going to go before the County  
8 Council and those kinds of things, they want to know if you  
9 went out and made attempts to meet with the community. And we  
10 did. We have followed all public notification requirements.

11 CHAIR CHOCK: Okay. Next questions, Ms. Bolomet.

12 BY MS. BOLOMET:

13 Q. Okay. So in your testimony, page 4, line 15, it says,  
14 "project will address the critical need for workforce housing  
15 in Lahaina and can be done with minimal impacts to the  
16 environment."

17 When I hear the word workforce, I'm thinking about the  
18 people that work in the -- in your presentation, you're saying  
19 the Cannery Mall and the industrial parks. The majority of the  
20 people are making between \$8 and \$12 an hour. You know, maybe  
21 the managers are making \$40,000, \$45,000 an hour [sic]. You're  
22 really only putting in ten houses that really might fit that  
23 kind of price range.

24 MR. YEE: Office of Planning would ask for a question.

25 ///

1 BY MS. BOLOMET:

2 Q. Why don't you have more than ten houses? If you're  
3 really concerned, why didn't you make this whole project all  
4 housing for workforce people so you'd really be of service to  
5 the community?

6 A. We're following the definition that's provided by the  
7 Maui County Code, the Maui County Council. When they address  
8 the issue of workforce housing, they adopt an ordinance. They  
9 talk about trying to meet a full spectrum of needs. And that's  
10 why you see in our breakdown, we've gone from 80 and below, to  
11 100 and below, to 120 percent and below of median income. And  
12 there's a wide spectrum provided in there. I think it makes  
13 for a good project, it makes for a good project mix, and we're  
14 consistent with the County codes.

15 In fact, we're beyond the County's code requirements.  
16 They ask for a project to have 25 percent of the units at 160  
17 percent and below. So we could have gotten by with a project  
18 that had only 25 percent of the units targeted at just the 160  
19 and below market range. This project does not do that. This  
20 project goes from the 80 and below, all the way up to the 100,  
21 120, 140 and 160. And all of the units -- not just 25 percent,  
22 but all of them are within that bracket established by the  
23 County's workforce housing ordinance.

24 Q. But still, the people that actually work there -- I  
25 don't have a degree in environmental studies. But when I see

1 there's planning going on, they're trying to make homes for the  
2 people that work right there so there's less road congestion,  
3 and that sort of thing. And I don't see -- even though you're  
4 saying 25 percent and 35 percent -- you know, all the numbers  
5 you just said. The fact of the matter is you paid very little  
6 for this property, if anything, and --

7 CHAIR CHOCK: Ms. Bolomet, your question, please.

8 BY MS. BOLOMET:

9 Q. And you can afford to make all of these houses cheaper.  
10 Why don't you make all of this like low-cost housing?

11 A. Number one, it's not my decision. I'm not the land  
12 owner. I'm not the developer. And so when you're  
13 characterizing me, why don't I do it because I have a lot of  
14 money, that's a representation you might want to check your  
15 facts a little bit more on.

16 But it's the decision of the petitioner to make a  
17 project that's financially viable. But if you've ever tried to  
18 do -- I don't think you have. But doing a development project  
19 in Hawaii, especially given the process that you have to go  
20 through, like these things where the time frame gets really  
21 drawn out and you have a lot of issues that you need to  
22 address, it's not always easy to make the numbers pencil out.

23 We're doing a project that we put forth that we think  
24 addresses the County Council's adopted policies towards  
25 workforce housing. And not only addresses it, but exceeds it.



1 And we think it's a good project with a good mix that has to be  
2 marketable, it has to be financial viable.

3 Q. Okay. And just for clarification, when I say "you,"  
4 I'm talking about West Maui Land Company. Because I don't live  
5 here, and I don't know your financial background.

6 A. I appreciate it. I just --

7 Q. I'm sorry if I said anything incorrectly.

8 All right. So I'm understanding there's some kind of  
9 credits that occur when you do these affordable housing  
10 projects. Can you explain how those credits work.

11 A. The workforce housing allows for getting credits if you  
12 go above and beyond the workforce housing requirements. We  
13 have, I think -- I don't know, like 40 or 50 over the amount.  
14 And we just -- we asked for ten. We didn't ask for the full  
15 amount. But it was something that was justified and that could  
16 help the project move forward.

17 Q. So what do you do with these credits?

18 A. They're available for the owner to apply towards other  
19 projects that may occur in the community plan region, the West  
20 Maui community plan region.

21 Q. Okay. I'm still not quite sure I understand. So are  
22 you saying that maybe these other plans, other communities that  
23 you would do wouldn't qualify, so you get credits to -- okay,  
24 wait. Let me speak in the terms that I understand.

25 So when you have greenhouse gases and pollutants and



1 you get credits for pollutants, one company can sell all their  
2 good deeds, which comes up in credit to another company. So  
3 when they're not doing the good deeds, they can have the  
4 credits to lower their liability. Is that kind of what happens  
5 with this?

6 A. Let me just explain -- I'll just real quickly read what  
7 the resolution says. And this is adopted by law.

8 It says that, "The West Maui Land Company shall be  
9 awarded ten affordable housing credits, subject to the  
10 following restrictions: The credits must be used in the West  
11 Maui community planned area. The credits may be applied  
12 towards a single-family or multi-family unit. The credits must  
13 be used for those households whose gross family income is more  
14 than 80 percent, but not more than 100 percent of the earned  
15 median income. The credits shall be given for a future  
16 development only after timely initiation and completion of  
17 subdivision improvements of this project. And the credits  
18 shall be used by West Maui Land Company or its affiliates and  
19 shall not be sold or transferred."

20 Q. But what are the credits for? That's what I'm not  
21 understanding.

22 A. So if you had a project where you had a requirement to  
23 comply with the workforce housing ordinance and they required  
24 to have, say, 20 workforce housing units in that project, you  
25 could take these ten and apply the credits and reduce your

1 requirement for that future project by ten.

2           So in that example I gave, if your requirement was 20  
3 for a project that was somewhere off-site, West Maui Land or  
4 one if its affiliates could use these ten credits and say we're  
5 going to reduce our workforce housing requirement by ten.

6           Q. Ten houses or --

7           A. Ten units.

8           Q. Okay.

9           A. Ten units could mean multi-family units or a  
10 single-family units.

11          Q. So you can have more high-end projects versus low-end  
12 projects somewhere else? You could reduce your need to do  
13 that?

14          A. It could be applied toward any project in the West Maui  
15 area that has an affordable -- or a workforce housing credit as  
16 established by the Maui County Code's Workforce Housing Policy.  
17 These credits are allowed for this in that code. And that's  
18 what governs the issuance of those credits and the use of those  
19 credits, as well as the specific additional limitations that  
20 were placed on by the Council on the resolution.

21          Q. Okay. Thank you for explaining that, because I didn't  
22 understand it.

23           CHAIR CHOCK: Ms. Bolomet, are you almost done?

24           MS. BOLOMET: I think so.

25           CHAIR CHOCK: Let's wrap this up.

1 BY MS. BOLOMET:

2 Q. Is this project expected to be completed by 2015?

3 A. Is it expected -- I don't think -- no, that doesn't  
4 sound correct when you say completed. And I'm not sure how you  
5 define "complete."

6 Q. Well, didn't you have to complete all the  
7 infrastructure before you do the houses?

8 A. The infrastructure. I believe the Council's time frame  
9 is the infrastructure has to start within three years and has  
10 to finish within seven years. So there are time frames imposed  
11 by the Council resolution.

12 Q. So if it starts in three years. So that would be -- so  
13 it has to start by 2015?

14 A. It says that, "The subdivision improvements shall begin  
15 within three years, and shall be completed within seven years  
16 of the adoption of this resolution."

17 This resolution was adopted in December of 2011. So it  
18 has to start by the end of 2014. And it has to be finished by  
19 the end of 2018, if my math is correct.

20 Q. Okay.

21 A. Those are the subdivision improvements.

22 Q. That's the roads and getting everything ready for  
23 people to buy lots?

24 A. Correct.

25 Q. Okay. And what is a design flood for the channel along

1 the project area?

2 A. I'm not sure what design they use. A lot of times when  
3 they do the actual design and the engineering, they sometimes  
4 exceed what the normal standards are. I can't speak to what  
5 the actual flood standard was or the engineering design  
6 parameters were.

7 I do know that the project site is in an area that's  
8 deemed to have minimal flooding. And Zone X, which is the most  
9 favorable zone you can be in. And I do know that FEMA came  
10 around Maui and looked specifically at all the  
11 waterways -- well, they concluded their study in 2009. And  
12 they amended their maps in a lot of areas. They amended their  
13 maps over in Iao, based on deficiencies that they saw in that  
14 flood control project. But for this flood control project and  
15 the map that they concluded in 2009, the property remains in  
16 Zone X.

17 Q. So what happens -- I notice your houses were like right  
18 up against the flood, and then the other houses were sitting on  
19 the old streambed. And I understand -- on the maps, I saw the  
20 old streambed. It's your maps. I think it was Number 15,  
21 Exhibit 15. It points out the old streambed. And it looks  
22 like you have houses sitting on the old streambed, and then  
23 houses right up against -- or real close to the flood planes.  
24 Is that correct?

25 A. Well, the houses on the one side you characterize on

1 the side where the flood control channel is, you said it's  
2 right on the channel or not. Well, there's -- from the edge of  
3 the channel, the county's property goes in at least another 20,  
4 and in some places another 40 feet. Because they have their  
5 access road and then they have additional space. And then the  
6 private property starts.

7           So the houses are at least anywhere from -- well, plus  
8 the ten-yard setback. The closest they can be would be 30 to  
9 50 feet away, depending on the property line and it's proximity  
10 to the channel. So I wouldn't characterize it as being right  
11 on top of the channel.

12       Q. Yesterday when I saw the slides, it looked very close.  
13 And that's one of the clarifications I was getting. Because  
14 one of the concerns that I have is, you know, we always have --

15           CHAIR CHOCK: Your question.

16 BY MS. BOLOMET:

17       Q. So what is -- what will happen when the flows get  
18 greater than the design flow plan, flood plan?

19       A. In the vicinity of this project -- I mean, you're  
20 asking me to kind of speculate. But I do know there's a lot of  
21 free board on the side of those walls. In other words, the  
22 shape of the channel is this big, the design flood is about --  
23 you know, a portion of the way up. There's a significant  
24 amount of free board in this section, which is above the base  
25 flood -- I mean, the flows. And you can tell that if you go

1 and you look at where the bridge is, and you see the bridge is  
2 substantially lower than the actual walls of the structure. So  
3 the first thing it would do is hit that lower bridge, I would  
4 imagine, and then spill over into the properties below our  
5 property if it somehow exceeded the design flow. But I don't  
6 think -- there would be problems downstream first before there  
7 would be problems upstream.

8 MS. BOLOMET: Okay. Last section.

9 CHAIR CHOCK: Ms. Bolomet, I'm going to give you one  
10 more question, then we need to move on. Please wrap it up.

11 MS. BOLOMET: Okay.

12 Q. Why wasn't the karst on the property ever mentioned in  
13 your cultural assessment?

14 A. I'm sorry?

15 Q. Why wasn't the karst mentioned in the cultural  
16 assessment? Do you know what a karst is?

17 A. No.

18 Q. A karst is like a lava tube, and water passes through  
19 it.

20 CHAIR CHOCK: Ms. Bolomet, maybe that's a great  
21 question for the archeologist, not the planner.

22 MS. BOLOMET: Okay. All right. Thank you.

23 CHAIR CHOCK: Thank you very much. Petitioner, any  
24 redirect?

25 MR. GEIGER: Just one.



1 REDIRECT EXAMINATION

2 BY MR. GEIGER:

3 Q. Rory, you were asked a question as to the triggering  
4 feature on the environmental assessment. What was the  
5 triggering feature?

6 A. The trigger was the connection to the local roadway,  
7 the County-owned property.

8 MR. GEIGER: Thank you. Nothing further.

9 CHAIR CHOCK: Commissioners, any questions of this  
10 witness?

11 Commissioner Heller.

12 COMMISSIONER HELLER: Just a quick question following  
13 up on the width between the drainage channel and the actual  
14 lots. You said that's between 20 and 40 feet?

15 THE WITNESS: Yes, that's my recollection. It's at  
16 least a 20-foot space between the -- you have the edge -- the  
17 physical edge of the channel. And then beyond that is the  
18 access road that's still on County property. And then  
19 there's -- it varies between -- I'm approximating between 20  
20 and 40 feet from the edge of the channel is where the private  
21 property starts. So from that private property boundary, then  
22 the homes with set back another -- at least another ten feet.

23 COMMISSIONER HELLER: And mentioned yesterday there's  
24 some plan to put some kind of greenway or path along that strip  
25 as well.



1           THE WITNESS: It's within the 20 to 40 feet that I  
2 talked about. Between the County-controlled section between  
3 the physical edge of the channel and their property line,  
4 there's enough room for an access way, as well as a walkway.  
5 So that's why we're working with the County. They've agreed on  
6 allowing us to make some improvements in there to provide a  
7 greenway, you know, a walkway so people could walk up to the  
8 channel and connect on either side. Or at the park, too. You  
9 could start from the park and walk up and down the channel and  
10 make like a loop or walking path to the project. So it was  
11 part of the plans to help create more walkable communities, and  
12 that type of stuff.

13           COMMISSIONER HELLER: Is the plan specific at this  
14 point as to the width of that walkway?

15           THE WITNESS: Again, it varies because of the  
16 right-of-way -- the available right-of-way varies. The width  
17 itself would be of the improved portion. But the minimum would  
18 be, I would say, six to eight feet for a good walking path like  
19 that.

20           COMMISSIONER HELLER: And that would be the on the side  
21 adjacent to the private property of the lots.

22           THE WITNESS: Yes. It would be adjacent too, but not  
23 part of the private property. It would be in the actual  
24 County-controlled property.

25           COMMISSIONER HELLER: Thank you.

1 CHAIR CHOCK: Commissioners, any other questions?

2 Thank you, Mr. Framton.

3 Next witness.

4 MR. GEIGER: Could we have just a couple of minutes to  
5 take down the computer stuff. Thank you.

6 CHAIR CHOCK: Yes.

7 MS. BOLOMET: Can we take a short break?

8 CHAIR CHOCK: We're not going to recess. Let's get to  
9 the next witness. Let's go ahead and proceed.

10 How long is the direct on this witness?

11 MR. GEIGER: My directs on all of these witnesses will  
12 be very short.

13 CHAIR CHOCK: Very good. Proceed.

14 I need to swear you in, please. Do you swear to tell  
15 the truth?

16 MR. PAYNE: Yes.

17 CHAIR CHOCK: Can you state your name and address for  
18 the record.

19 MR. PAYNE: My name is Dylan Payne. And my address 37  
20 Wai Kulu Place, Lahaina.

21 DIRECT EXAMINATION

22 BY MR. GEIGER:

23 Q. Okay. Thank you. Dylan, did you prepare written  
24 testimony or have written testimony in this matter?

25 A. I did.

1 Q. And if you look in the book in front of you, your  
2 written testimony should be in -- direct testimony is right  
3 there?

4 A. Yes, it's there.

5 Q. And that's written testimony that you provided.  
6 Correct?

7 A. Yes.

8 Q. And it's true and accurate. Correct?

9 A. Yes.

10 Q. Are there any corrections that you wish to make to the  
11 written testimony you provided?

12 A. No.

13 Q. Okay. Has there been anything that's occurred since  
14 you signed your written testimony on June 27th, 2012, that you  
15 need to update or change in your written testimony?

16 A. No.

17 MR. GEIGER: Okay. We'd offer the written testimony.  
18 Thank you.

19 Q. Dylan, obviously, we don't need you to read it and we  
20 don't want to you read it. But if you have one or two points  
21 you want to highlight for the Commissioners, please do so.

22 A. Okay. When I first learned of this project, I was  
23 really excited about it. I graduated from Lahainaluna High  
24 School, which is just up the road from there, in 2003, and went  
25 off to college; graduated, got married, came back. Was lucky

1 enough to move back here. And since then, it's just hard to  
2 find housing for people that are just starting out. They're  
3 kind of in the same situation as myself. I have a lot of  
4 classmates and friends that are living on the mainland or  
5 elsewhere that would really love to come back and live on Maui  
6 in Lahaina. But because of lack of housing opportunities  
7 within affordable price ranges, it's just not possible.

8       So I'm really looking forward to this project becoming  
9 a reality and hopefully being able to purchase a home one day.

10       MR. GEIGER: Thank you. Pass the witness.

11       CHAIR CHOCK: County?

12       MR. GIROUX: Real short.

13                       FOLLOW-UP EXAMINATION

14 BY MR. GIROUX:

15       Q. If you can, Dylan, do you know -- have you looked at  
16 the affordable housing criteria as far as the county's  
17 concerned, with that the median income thing?

18       A. Vaguely, yeah.

19       Q. Do you know where you fall in there?

20       A. Not exactly, probably right in the middle.

21       Q. Oh, okay. You don't have to answer this question. But  
22 if you're comfortable -- just between you and your wife, what  
23 salary group do you think you fall into?

24       A. Between the two of us, it's probably somewhere between  
25 \$60,000 to \$90,000 range.

1 Q. Okay. And you don't know where that puts you as far as  
2 the median income on this scale?

3 A. No, I don't. Sorry.

4 Q. That's okay. That's fine, because I have trouble with  
5 it, too.

6 No further questions.

7 CHAIR CHOCK: State?

8 MR. YEE: No questions.

9 CHAIR CHOCK: Before we get to the intervenors, please  
10 keep in mind to limit your questions specifically and stay on  
11 topic. Otherwise, we're going to have to move you guys along  
12 here. We're on day two of this case, and we're only on our  
13 second witness. They've got a dozen or so witnesses. And  
14 we're going to really prolong this case if we start getting  
15 into a lot of unnecessary detail or redundancy. So if you can  
16 be brief, please try to do that.

17 Ms. Lincoln, go ahead.

18 CROSS-EXAMINATION

19 BY MS. LINCOLN:

20 Q. Dylan, you stated in your testimony that you found  
21 properties in the area from \$175,000 to \$300,000. Is that  
22 correct?

23 A. When my wife and I we're looking about a year ago, yes.

24 Q. If you're looking for houses in the \$175,000 to  
25 \$300,000 range, are you on the habitat for potential occupants?

1 A. No, but I like to try and get a good deal if I can.

2 Q. Okay. Well, just so you're aware that the least  
3 expensive house, a three-bedroom would be \$372,000. So that's  
4 not quite in the price range that you're looking for. But in  
5 the price range you guys make, you would be able to qualify for  
6 that.

7 A. Right, and -- can I answer?

8 Q. Uh-huh.

9 A. Yes, that is more than the \$178,000. But that  
10 \$373,000, that you said, that's a screaming deal for a  
11 single-family home in Lahaina that you can move into.

12 Q. I agree. That's why I'm saying you guys qualify for  
13 that, that's awesome.

14 As an employee of West Maui Land, would West Maui Land  
15 employees get like first -- like they were talking about  
16 putting together a list of potential occupants. Do West Maui  
17 Land people -- employees, that would be a great incentive to be  
18 able to get one of these properties?

19 A. I would think so. I'm not sure. I don't know.

20 Q. Okay. On page 2, line 21, you basically refer to the  
21 houses that you looked at in the Lahainaluna area as being  
22 tear-down houses. Do you think a person can live within their  
23 means and renovate as they can afford it?

24 A. I've -- that question is kind of unclear. It depends  
25 on the situation.

1 Q. Okay. If you could afford \$175,000 house and it was  
2 available to you, but it's not in great condition, could you  
3 not buy it, move into it, and go, okay, we need to change the  
4 wiring first because that's the most important, and just make  
5 improvements as you can afford it?

6 A. It depends on what that \$175,000 -- like what the state  
7 of that house is. I'm sure they're all different.

8 Q. But someone could do that?

9 A. It's possible.

10 Q. Okay.

11 A. Maybe to clarify the testimony a little bit. What I  
12 meant was, yeah, there's houses available in the \$175,000  
13 range. But in order to make them livable and just comfortable,  
14 you're going to have to put in a whole bunch of extra money on  
15 top of that to just bring it up to livable standards, I would  
16 think.

17 Q. Okay.

18 A. That's what I meant.

19 Q. All right. On page 3, lines one through 6, you were  
20 mentioning that you're -- in addition to properties for sale  
21 through a Realtor, that you're following foreclosures, short  
22 sales. And in the price range you're looking, you're finding  
23 four to ten properties at a time. Is that correct?

24 A. It was when we were looking, yes.

25 Q. Okay.



1 A. I'm not sure what the current --

2 Q. That doesn't seem like a shortage of affordable  
3 housing. But you're saying they're not desirable to you, so  
4 you feel entitled to something better or newer in the housing  
5 market?

6 A. Yeah.

7 Q. Okay. On page 3, lines 12 through 13, you said you  
8 have a degree urban planning. So did you learn about  
9 greenways, open space, and parks within an urbanized area, like  
10 Central Park in New York City?

11 A. Yes.

12 Q. And that's not important in a community, to have  
13 greenways and open spaces?

14 A. I didn't say that.

15 Q. Okay. What would you say? Because you said you  
16 thought this was an good infill project with housing there.  
17 Based on your statement --

18 A. Well, it's my understanding that this project provides  
19 ample open space and greenways. It provides a park, which is  
20 awesome. A lot of residential areas that I know of on Maui  
21 aren't very close to parks. So this is definitely a few  
22 notches above what we already have. And the testimony of the  
23 previous witness just said that they're going to put in a  
24 greenway, or a walkway on -- close to the drainage.

25 Q. Okay. Maybe I need to ask someone else. But since you

1 did bring that up, when they talk about a greenway and it's  
2 going to be a gravel county road, where is the green exactly?  
3 Does the greenway not indicate that there's something natural  
4 growing there?

5 A. I'm not sure.

6 Q. Okay. I'll ask someone else. Sorry about that.

7 A. Sorry.

8 Q. On page 4, lines 3 to 10, you state, "I grew up in this  
9 area." Where exactly do your parents live?

10 A. My parents live in Lahaina.

11 Q. Where at?

12 A. In Launiupoko.

13 Q. Launiupoko. And what size acreage are they on  
14 approximately?

15 A. It's about an acre and a half.

16 Q. Acre and a half. Okay. And you mention the park in  
17 your statement, "There's a large park only a short distance  
18 uphill from this property."

19 A. Uh-huh.

20 Q. Do you know the square footage of the park?

21 A. I don't.

22 Q. It's about three and a half acres, just so you know.

23 And you feel that's an adequate-size park for the entire

24 Lahainaluna -- you, obviously, drove up to the school every

25 day, so you see how many houses are over there. You feel like

1 that's an adequate-size park for our community?

2 A. Yes.

3 Q. Okay. What was your -- did you ever play in that park?

4 A. Nope.

5 Q. Okay. If I wanted to live at Launiupoko in a beautiful  
6 house with a view and I would not be able to afford it, so do  
7 you think that West Maui Land and the County should provide  
8 affordable housing there for me?

9 A. I'm not sure I understand your question.

10 Q. I can't afford to live at Launiupoko.

11 A. Neither can I.

12 Q. Okay. Do you think it's the County and West  
13 Maui -- because West Maui and whoever -- I'll just say West  
14 Maui. Whoever the project people were out there, whoever set  
15 up that community and the County, do you think they should have  
16 provided affordable workforce housing project for me out there?

17 A. No.

18 Q. But you think they should do it in my neighborhood?

19 A. I don't really understand that line of questioning.

20 Q. Okay. Hopefully, someone does.

21 I'm finished.

22 CHAIR CHOCK: Ms. Bolomet, do you have any questions?

23 MS. BOLOMET: I do.

24 ///

25 ///

## CROSS-EXAMINATION

BY MS. BOLOMET:

Q. How did you learn about this project?

A. How did I learn of it?

Q. Uh-huh.

A. I work in the office of where this project is being planned. I'm an employee of West Maui Land Company.

Q. Oh, okay. So were you promised a house if you came to testify to today?

A. No. I wish.

Q. You'd have to pay for it, obviously. But I'm sure there's going to be a list. This is a project where there's few houses for low prices. So there's probably going to be a list. And I've seen when there's projects like this, sometimes there's lotteries, where you have to -- it's by luck of the draw.

So were you promised if there's a lottery or a big list, were you promised if you came here today, to have a house.

A. No, I was not. But just the fact that there are lotteries for affordable income housing, I think, illustrates the need and the demand for affordable income housing. And that's just another reason why we should have it.

Q. Do they have lotteries here in Lahaina? Because I'm not from here.

1 A. I don't think so. I don't know. I'm not sure.

2 MS. BOLOMET: Okay. That's it.

3 CHAIR CHOCK: Petitioner, any redirect?

4 MR. GEIGER: No.

5 CHAIR CHOCK: Commissioners, any questions of this  
6 witness?

7 Okay. Thank you very much.

8 Court reporter, do we need a break? We okay?

9 Commissioners, how you guys doing?

10 We have maybe 45 minutes until lunch, so let's proceed  
11 with your witness.

12 MR. GEIGER: Sherri Dodson.

13 CHAIR CHOCK: Let me swear you in. Do you swear to  
14 tell the truth?

15 MS. DODSON: I do.

16 CHAIR CHOCK: State your name and address for the  
17 record, please.

18 MS. DODSON: My name is Sherri Dodson. I'm the  
19 executive director for Habitat for Humanity. And my address is  
20 617 Kaiola Street in Kihei.

21 CHAIR CHOCK: Proceed.

22 MR. GEIGER: Okay. Thank you.

23 DIRECT EXAMINATION

24 BY MR. GEIGER:

25 Q. Ms. Dodson, did you provide written and direct

1 testimony in this matter?

2 A. Yes, I did.

3 Q. And in the notebook in front of you, is that your  
4 written direct testimony, if you go to the correct page?

5 A. Yes, it is.

6 Q. And you signed that after you reviewed it. Correct?

7 A. Yes, I did.

8 Q. And is the information contained in there true and  
9 accurate?

10 A. To the best of my knowledge, yes.

11 Q. Is there anything in the written direct testimony that  
12 you signed that you need to correct?

13 A. No, sir.

14 Q. Okay. Has anything happened since you signed your  
15 written direct testimony that would cause you to supplement it  
16 or modify it?

17 A. No, I don't think so.

18 MR. GEIGER: Okay. And we would offer the written  
19 direct testimony of Sherri Dodson.

20 CHAIR CHOCK: Admitted.

21 MR. GEIGER: Thank you.

22 Q. Ms. Dodson, again, please don't read it because we do  
23 have some time frame -- time pressures. But could you please  
24 summarize one or two points that you would like the  
25 Commissioners to take from your written direct testimony.



1       A. Habitat for humanity, obviously, is a nonprofit  
2 organization. And we provide affordable housing to the  
3 residents of Maui. We are an affiliate of international,  
4 although we run completely separately. We're celebrating our  
5 15th year. And we have helped 75 families here in Hawaii, on  
6 Maui. Unfortunately, we've only been able to assist one family  
7 in Lahaina because we haven't had the opportunity to get land  
8 out there. So we were very excited when West Maui Land  
9 approached us with partnering on this project. It will provide  
10 an opportunity for us to provide housing for ten very low  
11 income families, hard working families in Lahaina. So we're  
12 very excited about it.

13       MR. GEIGER: Thank you. We have no further questions.

14       CHAIR CHOCK: County?

15       MR. GIROUX: No questions.

16       CHAIR CHOCK: State?

17       MR. YEE: No questions.

18       MS. LINCOLN: I just have a few questions.

19       CHAIR CHOCK: Proceed.

20                   CROSS-EXAMINATION

21 BY MS. LINCOLN:

22       Q. How many qualified homeowners do you have for this  
23 project? Like if this were to come to fruition, how many do  
24 you have qualified that want to move or are ready to move in?

25       A. We don't maintain waiting lists. We don't do that

1 because we hope that our families continue to work towards home  
2 ownership even though a project may not be ready. This project  
3 is pretty far out for us. We have some other projects we're  
4 working on right now, so we're not taking names. It's Habitats  
5 philosophy that we don't keep waiting lists, so I can't give  
6 you that information.

7 Q. Okay. At the County Council meeting, I thought there  
8 was like -- just giving them an idea, you had said that you  
9 thought you would have maybe one or two, and that they gave you  
10 a longer period -- aren't you given an extension for a longer  
11 period to fill up the homes?

12 A. Yes, we are.

13 Q. And what's that time period? How long do you have  
14 before they have to be filled?

15 A. I don't recall, honestly. I know the reason why, but I  
16 don't know the length of time.

17 Q. Does some from Council? No?

18 A. I know it was part of the amendment when they were  
19 talking about they wanted people on the lot within 36 months,  
20 or whatever it was, for Habitat. Because we do our building  
21 with volunteer labor. And because many times it takes -- a lot  
22 of times to get our families ready for home ownership with  
23 homeowner education and debt counseling, and that kind of  
24 stuff, we asked for a longer periods of time. And I don't  
25 remember what it was.

1 Q. Will I be able to get that answer from somebody else  
2 during this?

3 MR. GIROUX: It's in the resolution.

4 THE WITNESS: It's part of public record.

5 CHAIR CHOCK: I believe that's already been submitted  
6 as evidence.

7 MS. LINCOLN: Okay, so I'll find it.

8 Q. So on page 5, line 16 and 17, you say we applied West  
9 Maui Land for stepping up to the plate to put a small dent in  
10 this large problem based in our community.

11 How do you weigh the loss of open space to a community  
12 for the addition of ten habitat houses?

13 A. If I could put one family in housing, pull them off of  
14 a beach or pull them out of substandard housing, it's a  
15 no-brainer for me. I'm sorry.

16 Q. Okay. So it doesn't matter the negative impact to the  
17 existing community?

18 A. I personally don't see it as a negative impact.

19 Q. Okay. I can't afford to live at Launiupoko or Kapalua.  
20 Don't you find that there are just some places that people like  
21 me and low income can't afford to live?

22 A. I'm sorry. Can repeat that.

23 Q. I can't afford to live at Launiupoko or Kapalua. Don't  
24 you find that there are some places that people like me and low  
25 income cannot afford to live?

1 A. I can't afford to live in Wailea either, so I guess I  
2 agree with that.

3 Q. Okay. Just to clarify. In your statement, you said it  
4 was providing (Unintelligible) affordable houses. Are you  
5 aware that besides Habitat, less than eight others are at  
6 the -- HUD guidelines, starting at \$372,000, which a person  
7 would have to make \$76,000 to qualify?

8 A. Under the median income for Maui right now for a family  
9 of four is \$77,000. So that's still pretty affordable.

10 Q. But as far as like Habitat's standpoint, are they like  
11 for really affordable housing, there's not really 70?

12 A. Well, Habitat services 80 percent and below median  
13 income.

14 Q. Okay. So there's ten. What past housing projects has  
15 West Maui Land done with Habitat for Humanity?

16 A. None.

17 Q. Would you guys be willing to be part of like a future  
18 project?

19 A. Absolutely.

20 Q. Like at Olowalu?

21 A. Any developer who wants to talk to us, we're willing to  
22 talk.

23 Q. Okay. But they've never in all their other  
24 developments included Habitat for Humanity?

25 A. The truth is in the last couple years we -- and I think

1 somebody testified earlier, there was another nonprofit  
2 involved in this who pulled Habitat in. And when this project  
3 started back in 2004, 2005, Habitat was relatively small in  
4 getting started in our building. We're now to the point we're  
5 about to start a 16-unit condominium project. We've come along  
6 way with our staff and our ability to build. We just got  
7 approved to be a licensed contractor. So we weren't really  
8 looked at by developers in the past. So we're really excited  
9 that developers are paying attention to us.

10 Q. Well, West Maui Land has a lot of land. So hopefully,  
11 you'll get more. Thank you.

12 CHAIR CHOCK: Are you done?

13 MS. LINCOLN: Oh, yes. That's why I said thank you.

14 CHAIR CHOCK: Thank you.

15 Ms. Bolomet?

16 CROSS-EXAMINATION

17 BY MS. BOLOMET:

18 Q. How much money does -- for the houses that are being  
19 proposed in this project, how much would somebody have to make  
20 in order to qualify for one of these ten houses?

21 A. Well, again, we serve 25 to 80 percent of median  
22 income. For a family of four, median income is about \$77,000.  
23 So the maximum that somebody could make at 80 percent is about  
24 \$75,000. The minimum is about \$18,000 a year.

25 Q. That's terrific.

1 A. I think so.

2 Q. Okay. And so you said you work with anybody that  
3 really wants to do a project with you. Would you be interested  
4 in doing some farm housing for farmers that I would be working  
5 with?

6 MR. YEE: I'm going to object on the grounds of  
7 relevance. It's not relevant to this particular petitionary,  
8 or the reclassification of this petitionary.

9 CHAIR CHOCK: Let's stay on topic if we can.

10 Ms. Bolomet.

11 MS. BOLOMET: Okay. I'm done.

12 CHAIR CHOCK: Redirect?

13 MR. GEIGER: Yes, very brief.

14 REDIRECT EXAMINATION

15 BY MR. GEIGER:

16 Q. If you could look at Exhibit 11. It's in one the  
17 books. Probably that one there.

18 A. No, that's 1 through 10.

19 Q. Okay. And Exhibit 11, I believe, is the resolution.  
20 And I direct your attention to --

21 A. The exemptions?

22 Q. Modification, Exhibit 1.

23 A. Yes.

24 Q. And the second page, I believe, Item 6. And the  
25 question was whether Habitat had a time frame on which you had



1 to complete your construction. Correct?

2 A. Yes.

3 Q. Okay. And does this refresh your recollection?

4 A. It does now, yes. "All ten Habitat for Humanity lots  
5 shall be exempt from the modification." So I guess we don't  
6 have a time limit.

7 MR. GEIGER: Nothing further.

8 CHAIR CHOCK: Commissioners, any questions?

9 Ms. Dodson. You mentioned that Habitat just received  
10 approval to become a contractor. Can you elaborate.

11 THE WITNESS: Yes. As I said, we've helped 75 families  
12 here, but we've done it with owner/builders, where the owner  
13 comes to us with land, or we partner with DHHL and the owner  
14 pulls the permit. But we've just been approved to get our  
15 contractor's license and we're getting our surety bond and all  
16 that kind of stuff together. And we'll be a full-fledged  
17 contractor, which really helped in our 16-unit condominium  
18 project.

19 CHAIR CHOCK: So your Habitat will be a general  
20 contractor license? What category of license will you have?

21 THE WITNESS: Just a general contractor.

22 CHAIR CHOCK: Are you the responsible managing  
23 employee?

24 THE WITNESS: No, I'm just the CEO.

25 CHAIR CHOCK: Who is your RME?

1 THE WITNESS: You met him yesterday, Mike Gary.

2 CHAIR CHOCK: How do you folks go about training your  
3 volunteers to build homes? Do they go through some kind of  
4 training program? Or how do you -- how does Habitat do that?

5 THE WITNESS: On every project that we build, we have  
6 project managers. They're basically volunteers, skilled  
7 volunteers, retired contractors, people that just want to give  
8 back to the community. They supervise our volunteers. They  
9 teach them the skills. So not only are we building a home and  
10 involving the community, but we're also teaching skills to  
11 people. These project managers are on-site every time  
12 volunteers are on site. And we have different project  
13 managers, some that are really good at framing, some that are  
14 good at roofing.

15 Again, it's mainly for safety, but it's also to teach  
16 unskilled volunteers. We have a group of high school students  
17 in right now from the East Coast.

18 CHAIR CHOCK: Do you folks warranty the homes that you  
19 sell?

20 THE WITNESS: Yes, we have a standard contractor's  
21 warranty. We've had that all along.

22 CHAIR CHOCK: So how long is that warranty good for?

23 THE WITNESS: It's a one-year warranty.

24 CHAIR CHOCK: One-year warranty.

25 THE WITNESS: For some things. Other things, like

1 roofing and all that kind of stuff, there's a 20-year warranty.  
2 There's different warranties.

3 CHAIR CHOCK: Okay. Thank you.

4 Commissioners, any other questions for this witness?

5 Thank you for your testimony.

6 Petitioner.

7 MR. GEIGER: We've gone much quicker on these  
8 witnesses. Our next witness is not here, so I don't have  
9 anybody here right now. We have someone scheduled to be here  
10 at 1:00.

11 CHAIR CHOCK: 1:00, okay. Why don't we, then, maybe  
12 break for an early lunch. Well, it's 11:30. We don't need an  
13 hour and a half for lunch. Can he or she be here --

14 MR. GEIGER: I will try to get someone here by 12:30.

15 CHAIR CHOCK: I'd appreciate that. We are going to  
16 probably go today no later than 2:00. We have planes to catch.

17 MR. GEIGER: Okay. For purposes of the parties, then,  
18 I know Keith Niiya is flying in from Honolulu. He's a traffic  
19 engineer. So he's supposed to be here right around 1:00. We  
20 may have to take him out of order if you folks are going to  
21 leave at 2:00.

22 CHAIR CHOCK: Are any of the other parties ready to go,  
23 County, with any witness that we might be able to substitute?

24 MR. GIROUX: I've got Mr. Spence here. He looks really  
25 ready to go. He's ready to rock. If you need to, we can put

1 Mr. Spence on. And, again, the County -- I believe we only  
2 have four witnesses.

3 CHAIR CHOCK: And how long would your direct be of  
4 Mr. Spence?

5 MR. GIROUX: Probably as fast as Ms. Dodson's direct.  
6 He has written testimony.

7 CHAIR CHOCK: Parties, are you guys okay with moving  
8 some of these witnesses out of order?

9 MR. GEIGER: That's fine, for petitioner.

10 CHAIR CHOCK: I think it might be more effective use of  
11 our time if we can go with Mr. Spence at 12:30, in one hour,  
12 and then accommodate Mr. Niiya at 1:00. And then go until 2:00  
13 today. Is that acceptable with everybody?

14 MR. GEIGER: Okay. Thank you.

15 CHAIR CHOCK: Commissioners, you guys okay with that?  
16 So we're going to recess for one hour to 12:30. Thank  
17 you.

18 (Lunch recess taken from 11:30 a.m.  
19 to 12:30 p.m.)

20 CHAIR CHOCK: (Gavel.) Okay. We are back on the  
21 record. Again, we will be adjourning at 2:00 p.m. today, to  
22 allow staff and Commissioners to take return flights back home.  
23 I think everybody is doing a great job trying to move these  
24 proceedings along. I appreciate everyone's cooperation. I  
25 know for the intervenors, it's a whole brave new world. So I

1 appreciate you guys hanging in there and showing everybody  
2 aloha and respect.

3 So with that, why don't we move along. I know we we're  
4 going to try to go with the --

5 MR. GEIGER: Chair, if we could. We have our witness  
6 here. We're ready to go with Kimokeo Kapahulehua. So we would  
7 like to call him.

8 CHAIR CHOCK: Are you guys okay with that?

9 MR. GIROUX: We talked about it, and we're okay with  
10 going with that.

11 MR. YEE: No objection.

12 CHAIR CHOCK: Everybody okay?

13 MS. BOLOMET: I'm okay, but I would like Michael to do  
14 the questioning for me.

15 CHAIR CHOCK: Okay. So long as he's going to be the  
16 sole person questioning all the way through for this witness.

17 MS. BOLOMET: Yeah.

18 CHAIR CHOCK: Okay. Proceed.

19 MR. GEIGER: Okay.

20 CHAIR CHOCK: I'd like to swear you in.

21 Do you swear to tell the truth?

22 MR. KAPAHULEHUA: Yes, I do.

23 CHAIR CHOCK: Name and address for the record?

24 THE WITNESS: My name is Leonard Kimokeo Kapahulehua.  
25 I'm located at Kihei Villages on South Kihei Road.

## DIRECT EXAMINATION

BY MR. GEIGER:

Q. Thank you. Kimokeo, did you prepare written direct testimony in this matter?

A. Yes, I did.

Q. And if you look at the book in front of you, is that your written direct testimony?

A. Yes.

Q. And you may have to talk up so everybody can hear you, if you would, please. Is the information contained in the written direct testimony true and accurate?

A. Yes, it is. With my reading, there's some changes on (Unintelligible). There's a misspelling of ahupua`a. And then on page 5, the flood control project is not 1980, it's 1990 to date.

Q. Okay. So with those two changes, is your written and direct testimony correct?

A. That's correct.

Q. And have you learned anything since you signed your written direct testimony that would cause you to make a changes to your written direct testimony?

A. No changes.

Q. Now, are your qualifications contained in your written direct testimony so far as your cultural experience?

A. Yes, it is.



1           MR. GEIGER: We would offer Mr. Kapahulehua as a  
2 cultural expert.

3           CHAIR CHOCK: Go ahead.

4           MR. GEIGER: And also we would offer his written direct  
5 testimony.

6           CHAIR CHOCK: Admitted.

7           MR. GEIGER: Thank you.

8           Q. Kimokeo, we don't need you to read your written direct  
9 testimony but could you please just provide highlights of your  
10 written direct testimony to the Commission.

11          A. Commissioners, you have my testimony. And it shows  
12 that in our cultural report, that we collect historical data  
13 from the reference that we have here and also from historical  
14 data. We also include -- talk to go the elders, or kupuna,  
15 within the area about this culture report. And it takes us  
16 back from precontract days all of way up to this present time.

17               In brief, it shows that prior to Kamehameha arriving  
18 and when Kamehameha arriving and what was done on his time.  
19 And also listed in the cultural report, talks about all the  
20 alii's that was within this area. So in summary, I want to  
21 just say that it took us back on precontact time to  
22 Kamehameha's time, and then to missionary and to the present  
23 day. So it's just a brief knowledge of a cultural impact  
24 assessment report, what requires by law. And not only requires  
25 by law, but what we find other than that.

1 Q. And Kimokeo, if you could, what was the ultimate  
2 conclusion that you folks reached?

3 A. It shows that on the report that there was -- in the  
4 present days, there was no impact on cultural significance or  
5 cultural practitioner work that's on property at the moment.

6 MR. GEIGER: Thank you. We'd pass the witness.

7 CHAIR CHOCK: County?

8 MR. GIROUX: We have no questions.

9 CHAIR CHOCK: State?

10 MR. YEE: No questions.

11 CHAIR CHOCK: Ms. Lincoln?

12 MS. LINCOLN: No questions.

13 CROSS-EXAMINATION

14 BY MR. LEE:

15 Q. Aloha, Kimo.

16 A. Aloha.

17 Q. Would it surprise you to learn that Opelu`haali`i was  
18 born on this property?

19 A. No, it would not surprise me.

20 Q. Okay. Would it surprise you to know that this stone  
21 matches up with a big stone on the property where we use awa to  
22 pour over on this property?

23 A. No, it would not surprise me about the uses of the  
24 pohaku.

25 Q. Can you explain to the Commissioners what akaku is

1 about.

2 A. Hakaku?

3 Q. Akaku.

4 A. Hakaku?

5 Q. No. Aka, a-k-a, ku. The standing vision.

6 A. I couldn't explain that. Only as a traditional student  
7 of lua, I can explain that.

8 Q. Mahalo. Mahalo, Kimo. Would it surprise you that  
9 there's a heiau dedicated to Opelu on that property?

10 A. No, it wouldn't surprise me.

11 Q. Okay. Would it also surprise you that there's a karst,  
12 or an underground cave system that goes from the mountain to  
13 the sea underneath that?

14 A. It wouldn't me about that. It states in our report  
15 about the fish pond that we have first on Maui called Lehoula  
16 and how mo`o kaiwahine can travel from one place to another.  
17 In ancient time and ancient belief, it is so.

18 Q. Very good. Would it surprise you that Opelu`haali`i is  
19 the petitioner Routh -- not the petitioner, but the intervenor  
20 Routh's 18th great grandfather?

21 A. In my report it shows that -- this is not a final  
22 report. It doesn't surprise me as we cultural assessors, doing  
23 a report that in later times, like now, we find new information  
24 that comes with the land.

25 Q. Now, in Hawaiian cultural practice, especially dealing

1 with konohiki, the konohiki system, does it deal with the  
2 mountain all the way to the sea and beyond the sea, it's all  
3 connected?

4 A. In Hawaiian culture, we're connected from what we call  
5 kalani ka honua ka moana, from the heavens to the earth to the  
6 sea.

7 Q. And in that connectivity, would it surprise you that if  
8 you drew a direct line from the mountain all the way down to  
9 the sea, that we find a hina stone at low tied, if you draw  
10 that line, right next to the outcrop where you put the ku  
11 stone?

12 A. If ancient time, we have a hina stone located, and we  
13 also have a kuula located within the area.

14 Q. Are you of Pele clan?

15 A. I am of Kamehameha clan.

16 Q. You are Pele clan?

17 A. Yes, I am.

18 Q. Mahalo.

19 I have no further questions. Thank you.

20 Mahalo, Kimo.

21 THE WITNESS: Mahalo nui loa.

22 CHAIR CHOCK: Petitioners, redirect?

23 REDIRECT EXAMINATION

24 BY MR. GEIGER:

25 Q. Just so I'm sure, Kimokeo, on your testimony. It

1 remains your testimony that there is no information that you  
2 have that the property presently is used for any cultural  
3 practices. Is that correct?

4 A. That's correct. I speaking in precontact, and I speak  
5 on what is known in Hawaiian as precontact and spiritual. But  
6 on the level that we have right now, what I have walked on  
7 recently, I don't see any of that. I'm not saying that this  
8 was not there. So our report reflects on precontact. Our  
9 report reflects on Kamehameha and reflects back on missionary  
10 and up to its present time.

11 Q. Okay. You just mentioned that you walked on the  
12 property recently. Is that correct?

13 A. Yes, I have.

14 Q. Okay. And did that make any difference to your report  
15 or to the findings that you had?

16 A. No, it does not.

17 MR. GEIGER: Okay. Thank you. Nothing further.

18 CHAIR CHOCK: Commissioners, questions?

19 Thank you for your testimony.

20 THE WITNESS: Thank you, Commissioners. And thank you,  
21 everyone. Mahalo.

22 CHAIR CHOCK: Okay. County, did you want to go --

23 MR. GEIGER: Well, we have another witness we can put  
24 on right now. It should be a short witness. And then,  
25 hopefully, Mr. Niiya will be here then.

1 CHAIR CHOCK: Okay. Who is your witness?

2 MR. GEIGER: Josh Guth. I mentioned he is here now.

3 CHAIR CHOCK: I need to swear you in. Do you wear to  
4 tell the truth?

5 MR. GUTH: I do.

6 CHAIR CHOCK: Name and address for the record, please.

7 MR. GUTH: Joshua Guth, 19 (Inaudible) Lahaina, Hawaii  
8 96761.

9 DIRECT EXAMINATION

10 BY MR. GEIGER:

11 Q. Okay. Josh, did you provide written direct testimony  
12 in this matter?

13 A. I did.

14 Q. Okay. If you look in the book in front of you, could  
15 you find your written direct testimony.

16 A. Sure.

17 Q. Okay. Josh, if you found your testimony, is the  
18 information -- first of all, you've signed that testimony. Is  
19 that correct?

20 A. Yes.

21 Q. And is the information contained in your testimony  
22 truthful and accurate?

23 A. Yes, with -- I should point out one thing.

24 Q. Okay.

25 A. When I said two houses for sale, I was referring to two



1 foreclosures.

2 Q. What page are you on and line, just so we're clear?

3 A. Page 2, towards the bottom.

4 Q. Which line? There's a line on the left --

5 A. It starts on line 21 and on line 23.

6 Q. Okay. So page 2, line 21, line 23, the reference to be  
7 two foreclosures instead of two houses. Correct?

8 A. Yes.

9 Q. Okay. With that modification, is the information  
10 contained in your written direct testimony truthful and  
11 accurate?

12 A. Yes.

13 MR. GEIGER: We would offer the written direct  
14 testimony of Josh Guth.

15 CHAIR CHOCK: So admitted.

16 BY MR. GEIGER:

17 Q. Josh, again, with the other witnesses, we don't want to  
18 you read it. But highlight, if you have one or two points, for  
19 the Commissioners, if you would.

20 A. Sure. Born and raised in Lahaina. Been home from  
21 college for the past three years now and been watching the  
22 market. It's just specifically, there hasn't been an  
23 opportunity to buy an affordable home that's in good condition  
24 that's really just move-in ready. My point is I've jumped to  
25 the next option, which is looking at short sales and

1 foreclosures.

2 From what I've found, foreclosures you're getting a  
3 better deal, but you're going to have to put in more work. So  
4 I'm currently in escrow. I'm not sure if I'm going to get it  
5 or not. It's a good deal. It needs a lot of work. And it's  
6 in a bit more of an affordable reach for me. The house needs  
7 to be gutted, needs holes patch, needs a new roof. But it has  
8 space and to help give you the option to rent out a room here  
9 and there to cover your mortgage and make it a lot more  
10 affordable.

11 Q. So if I understand what you're saying, your preference  
12 would be to find a new home in an affordable range as opposed  
13 to a foreclosure or short sale?

14 A. Absolutely.

15 MR. GEIGER: Okay. Thank you. Nothing further.

16 CHAIR CHOCK: County?

17 MR. GIROUX: No questions.

18 CHAIR CHOCK: State?

19 MR. YEE: No questions.

20 MS. LINCOLN: I have questions, but I just need to look  
21 through my notes.

22 CHAIR CHOCK: Take your time.

23 Ms. Lincoln, would you like us to come back?

24 MS. LINCOLN: No, no, no.

25 MS. BOLOMET: I don't have any questions.

1 CHAIR CHOCK: Okay.

2 MS. LINCOLN: I think I just have three. Look how many  
3 I got rid of.

4 CROSS-EXAMINATION

5 BY MS. LINCOLN:

6 Q. Okay. In your testimony on November 16th at the County  
7 Council meeting, you were quoted as saying, "Houses aren't  
8 there, neither are the jobs. And, I mean, I know the jobs  
9 aren't there." So why do we need more housing?

10 A. I think I have a reason -- I mean, you have a large  
11 population in Lahaina that -- I mean, you have guys who are 35,  
12 36, 37, that work in surf schools. I pull doubles three or  
13 four nights a week at the restaurants. So I know a lot of  
14 restaurant workers. You have guys in a restaurant that are 50,  
15 55, 56. And, I mean, they've rented their whole lives.

16 Then you have, you know, my generation, the next  
17 generation coming up, and a lot of them aren't coming home. A  
18 lot of them are -- you know, they stay in Washington, Oregon,  
19 California, all across the US. And it's much more affordable.  
20 You know, they are 23, 24, buying their first homes. You don't  
21 see that here. I think I'm fortunate because I'm 26 now and  
22 I'm attempting to buy my first home. But if I had the choice  
23 to start off from blank, buy a lot, buy a house -- I mean,  
24 buying a foreclosure house that I'm going to have to gut out,  
25 rebuild, restore, I don't -- I don't think that's the best

1 option. I think for that very reason, you need an option like  
2 this.

3 I mean, you have (Inaudible), but their not  
4 single-family dwellings. You know, they're townhouse styles.  
5 I went and looked at those. I mean, you see people pull their  
6 cars -- you don't get a garage for one car, you get a parking  
7 stall outside. I mean, people have to pull their mirrors in to  
8 get a car through. To me, it's a good option, but -- I mean,  
9 you see how quick they're selling out. I mean, the building is  
10 sold out before it's completed. So it shows that we need more  
11 units like that available in Lahaina.

12 Q. Okay. So part of the reason, though, that there's not  
13 like enough housing, according to you, is that it's not  
14 desirable housing due to they're not in the condition you would  
15 want to move into and that you don't want to live like in a  
16 townhouse or condo?

17 A. Yeah.

18 Q. Okay. But you do recognize we live on an island, and  
19 sometimes that is because of the amount of land that there is  
20 available and the value that it is because we are on an island,  
21 that's just sometimes the way it is?

22 A. Uh-huh.

23 Q. Okay. If there was brand new affordable housing at  
24 Launiupoko, Puamana, Lahainaluna, Kaanapali or Kapalua, where  
25 would you want to live? Just pick anywhere on the west side

1 where would you want to be.

2 A. I think they all sound great.

3 Q. Even Lahainaluna compared --

4 A. I would probably stay outside of Lahainaluna if I had  
5 an option. I'd love to live in Launiupoko.

6 Q. Me, too. Oh, in fact, that's my next question.

7 If I wanted to live at Launiupoko and I would not be  
8 able to afford to do it, would you agree there are just some  
9 places that you can't afford to buy a house?

10 A. Yeah.

11 Q. Yeah, okay.

12 Okay. That's it. Thank you.

13 CHAIR CHOCK: Thank you, Ms. Lincoln.

14 Ms. Bolomet, you don't have any questions for this  
15 witness?

16 MS. BOLOMET: No.

17 MR. GEIGER: No follow-up.

18 CHAIR CHOCK: Commissioners, questions for this  
19 witness?

20 Thank you for your testimony. Good luck with your  
21 foreclosure.

22 THE WITNESS: Thanks.

23 MR. GEIGER: Thank you. I think we will have to go  
24 with Mr. Spence because Mr. Niiya has not arrived yet. I  
25 presume we can interrupt Mr. Spence's testimony when Mr. Niiya

1 gets here.

2 CHAIR CHOCK: My preference would be to get through  
3 Mr. Spence.

4 MR. GEIGER: If it's possible, okay.

5 CHAIR CHOCK: You swear to tell the truth?

6 MR. SPENCE: I do.

7 CHAIR CHOCK: Name and address for the record?

8 MR. SPENCE: My name is William Spence. I live at  
9 1110-A Lower Kimo Drive in Kula.

10 CHAIR CHOCK: Go ahead, County.

11 MR. GIROUX: Thank you, Chair.

12 DIRECT EXAMINATION

13 BY MR. GIROUX:

14 Q. Mr. Spence, did you have written testimony?

15 A. Yes, I do.

16 Q. And did you sign it?

17 A. Yes, I did.

18 Q. And did you have an opportunity to look it over to make  
19 sure it's accurate?

20 A. Yes, I have.

21 Q. And do you have any changes that you need to make to  
22 that?

23 A. No, I do not.

24 MR. GIROUX: Okay. We'd like to submit Mr. Spence's  
25 statement into the record.

1 MR. GEIGER: Which exhibit?

2 MR. GIROUX: That's Exhibit Number 5. And I'm just  
3 going to ask Mr. Spence --

4 Q. Mr. Spence, did you do another statement called the  
5 rebuttal?

6 A. Yes, we did. The Planning Department, we wrote a  
7 rebuttal to the interventions.

8 Q. Okay. And did you -- same question. Did you get a  
9 chance to look that over, make sure it's accurate?

10 A. Yes, I've looked it over. It is accurate. I don't see  
11 any changes.

12 Q. Okay. You signed that rebuttal?

13 A. Yes, I did.

14 MR. GIROUX: Okay. So we'd just be asking to admit  
15 Exhibit 5 and 6 into the record.

16 CHAIR CHOCK: So admitted.

17 BY MR. GIROUX:

18 Q. Mr. Spence, could you summarize your testimony in a few  
19 words.

20 A. The Maui Planning Department and the current  
21 administration of the County is in favor of this project. We  
22 support it that it be changed from agricultural district to the  
23 urban district. Particularly the Lahaina area, the housing  
24 prices are extremely steep. We need be able to provide  
25 affordable housing for this area of the island.



1 Q. Mr. Spence, you submitted your resume into the record?

2 A. Yes, I did.

3 Q. And you had a chance to look over that?

4 A. Yes.

5 Q. And is that accurate?

6 A. Yes, it is.

7 MR. GIROUX: And that's Exhibit Number 1. We'd just  
8 like to submit that into the record and have Mr. Spence  
9 qualified as an expert and to be able to give his expert  
10 opinion in these proceedings.

11 Q. Mr. Spence, what is your opinion of that project?

12 A. I think it's a good project. I think, you know, over  
13 the course of having been involved with land use planning in  
14 Maui County for the last 20 years, you always weigh the -- what  
15 are the needs of the community in terms of open space or  
16 housing, or whatever. This is a constant thing you think about  
17 when you're a land use planner.

18 In this particular case, I believe that there is a  
19 greater need for affordable housing in this area than  
20 maintaining the property as open space.

21 MR. GIROUX: I have no further direct.

22 CHAIR CHOCK: Just to be clear. You're admitting  
23 Mr. Spence as an expert in planning?

24 MR. GIROUX: In planning, yes.

25 CHAIR CHOCK: Okay.

1           Petitioner?

2           MR. GEIGER: Just a few follow-ups.

3                           FOLLOW-UP EXAMINATION

4 BY MR. GEIGER:

5       Q. Planning has reviewed certain aspects of the project.  
6 Correct?

7       A. That's correct.

8       Q. And one of the aspects would be wastewater, for  
9 example?

10      A. That is correct.

11      Q. And, in fact, in your written testimony, you've defined  
12 that the Lahaina Wastewater Reclamation Facility is sufficient  
13 capacity for this project. Correct?

14      A. That's correct. And I would add that the reso --  
15 there's certain conditions on the reso that will take care of  
16 that at that time if for some reason there isn't --

17      Q. When you say "reso," you mean resolution. Correct?

18      A. Yes, the resolution by the County Council.

19      Q. And, in fact, it appears that the total capacity of the  
20 Lahaina Wastewater Reclamation Facility, per your testimony on  
21 page 4, is 9 million gallons and the current treatment is about  
22 5.4 million gallons a day. Would that be right?

23      A. That's correct.

24      Q. And with regard to water, what's the condition -- well,  
25 again, did the Planning Department review water when reviewing

1 this project?

2 A. We review water, but we also defer to the Department of  
3 Water Supply in cases like this. And I believe the County is  
4 going to call Dave Taylor as an expert.

5 Q. And you understand that, of course, the project,  
6 because it's deemed as affordable, would have a priority for  
7 water meters. Is that correct?

8 A. That is correct.

9 MR. GEIGER: Okay. I have nothing further. Thank you.

10 CHAIR CHOCK: State?

11 FOLLOW-UP EXAMINATION

12 BY MR. YEE:

13 Q. Just for clarification. The improvements the  
14 petitioner will be making to the old cane haul road, do you  
15 know whether that cane haul road is a private or county street?

16 A. I believe right now it's private. It would most likely  
17 be -- and I would defer to the applicant on this. But mostly  
18 it would be approved to County standards and dedicated to the  
19 County.

20 Q. If that occurs, would typically the County be reviewing  
21 plans to ensure that it meets County standards?

22 A. Yes.

23 Q. So whatever improvements they make, assuming they are  
24 intending to dedicate it to the County, would be a matter  
25 reviewed by Public Works?

1 A. That's correct. And I would note that they have not  
2 been given any kind of exemption as a part of the 201H project  
3 from any deviation from County standards.

4 Q. And just to sort of finish up this roadway question.  
5 The interior roadway that is planned to be built, do you know  
6 whether that is intended to be dedicated to the County?

7 A. I'm not sure if that's to remain private or not. But I  
8 do know that it's intended to be built to County standards.

9 Q. But if it's intended to be dedicated, that typically  
10 gets a review by the County before construction?

11 A. Yes. And the County generally does not accept private  
12 roadways if it does not meet their standards.

13 MR. YEE: No further questions. Thank you.

14 CHAIR CHOCK: Ms. Lincoln?

15 CROSS-EXAMINATION

16 BY MS. LINCOLN:

17 Q. My first question was the one I had for Rory the other  
18 day, so I'll start with that one.

19 Regarding Zoning Title 19, and it was in your -- I  
20 didn't see an exhibit number on it, but it said written witness  
21 testimonies, or something like that. But it was on page 20 and  
22 21. It talked about Zoning, Title 19 Maui County Code.

23 A. Go ahead and ask your question, I'll probably know it.

24 MR. YEE: I'm sorry. For the record, I believe that's  
25 County Exhibit 5.

1 BY MS. LINCOLN:

2 Q. Okay. Regarding Zoning Title 19 Maui County Code, you  
3 stated portions of the project site partially meet criteria one  
4 and two. So doesn't that mean, according to that chapter  
5 statute, it should be given the highest priority for retention  
6 in the agricultural district?

7 A. I believe -- I know there's -- I don't think I'm  
8 looking at the proper exhibit.

9 Q. On page 20 was the statute. And if you go to page 21  
10 after number 3, that's the beginning of the paragraph, "while  
11 portions of the project" -- that's the quote I'm referring to.

12 A. Okay. Portions of the project would meet these  
13 different criteria. Other portions of it, definitely would  
14 not.

15 Q. Oh, I understand that, but I'm asking, though -- but it  
16 should still be given priority -- the highest priority for  
17 retention. The statute doesn't say -- like qualify the amount.  
18 It just says if it meets criteria one and two, it should be  
19 given. Is that correct?

20 A. I think that would be correct.

21 Q. Okay.

22 A. I might add that part of the reason for the 201H  
23 projects was to get exemptions from zoning. The normal  
24 requirements for zoning were so many of these criteria are  
25 considered. And that's what the County Council did, it gave

1 exemptions for so many requirements for community plan  
2 amendments and the requirements to obtain zoning.

3 Q. Okay. Maybe I'm misunderstanding. But the County  
4 Council can't decide on something that's greater than 15 acres.  
5 Is that correct?

6 A. That's correct.

7 Q. So if --

8 A. Sorry.

9 Q. Go ahead.

10 A. No, the reason we're here today is because what you say  
11 is true. They can't decide on the State District.

12 Q. Okay. So I totally understand the amendments that were  
13 issued and the decisions made at that County Council meeting.  
14 Those are law. I mean, they're going to be upheld. But  
15 wouldn't that only be if it gets rezoned to urbanization?

16 A. Yes, and that's within the purview of this body.

17 Q. Right. So from what I understand is they have to look  
18 at the criteria. And if they deem that this property is best  
19 for urban use, then the County Council's amendments and  
20 exemptions would be taken into consideration?

21 A. I believe the -- and, you know, I don't want to speak  
22 for the Land Use Commission. But as we're referring to  
23 Title 19 and -- those are all County requirements. The State  
24 criteria is different. They can decide, you know, whether it's  
25 best to retain it as agricultural or not.

1 Q. Okay. I think that was the one I talked about  
2 yesterday, whether they have to have it in active agricultural  
3 or not. Thank you, that answers my question. The next one.

4 And, I'm sorry. I cut the page out before I realized I  
5 needed to reference it. But it's regarding public  
6 participation, the EA document. So it's somewhere in this, but  
7 I didn't realize we needed to reference that.

8 MR. YEE: For the record, I believe it's page 23 of  
9 County Exhibit 5.

10 MS. LINCOLN: Yes. Do you need to wait to get there?

11 THE WITNESS: Okay.

12 BY MS. LINCOLN:

13 Q. Okay. Why does the Chapter 343 HRS exist?

14 A. To examine potential impacts for various projects, the  
15 triggers of which are outlined in Chapter 343.

16 Q. And neighborhood input is included in that?

17 A. Yes, it is a public review process.

18 Q. Okay. Does the Charter mandate that full and complete  
19 knowledge is disclosed to the County or State agencies?

20 A. Yes.

21 Q. Okay. Is there any consequence for not giving full or  
22 complete disclosure?

23 A. The 343 process contains a challenge period versus -- a  
24 draft of the environmental assessment is circulated for review  
25 by the public. And then when everybody comments, whether it be



1 agencies or members of the public, the applicant is required to  
2 address those comments. Once the comments are addressed and a  
3 final document is issued, there's a challenge period in which  
4 members of the public or organizations or agencies may say this  
5 document does not address the comments or does not address  
6 certain impacts. But that comment period has come and gone.

7 Q. Okay. As a person who wasn't able to attend the  
8 meetings and doesn't feel like it was fully represented as  
9 State Land Use, how would a person like me have access to those  
10 records and how would I know that was available to me and that  
11 I had a time limit for challenge?

12 A. My understanding is that if the applicant held some  
13 meetings in the area, it probably would have been discussed at  
14 that time that an EA was being prepared. Normally, if somebody  
15 has issues with an EA, they would call -- say, they would call  
16 the Planning Department and say what do I do, how do I review  
17 this, or they would call the Office of Environmental Quality,  
18 OEQC and say what are the procedures, what are the rights, you  
19 know, do I need to retain an attorney, or whatever the case may  
20 be. But there are different government agencies that could  
21 advise you procedurally on what to do.

22 Q. What if you were a person who assumed -- and I know  
23 assumed is not the right word. But assumed that they were  
24 going to fully disclose, didn't know you had to exercise that  
25 option to challenge it, didn't even know how to call to find

1 out? Now that they did find out, is there any recourse for  
2 that?

3 A. I don't believe so under that particular law. But  
4 since there's so many steps in the process -- I mean, for  
5 instance, your participation with the County Council or even  
6 participation with this body constitutes that kind of  
7 involvement.

8 Q. My participation with the County Council was to attend  
9 the meetings and watch it on the Akaku TV, but it wasn't to  
10 have access to the records. It wasn't until I got the docket  
11 from West Maui Land that I realized that the full disclosure  
12 wasn't in there. How does that protect a person like me?

13 A. I can't advise you on that.

14 Q. Okay. And what if I can't afford a lawyer, which I  
15 can't, then basically the public's hands are tied?

16 A. Well, you're doing a pretty good job as a pro se  
17 intervenor.

18 Q. Okay. So what you're saying is I need to check with a  
19 lawyer regarding what I should follow up with on that  
20 particular thing?

21 A. Yeah.

22 Q. Okay. One more question on that. Would I be able  
23 to -- well, maybe it's not a question for you. Would I be able  
24 to question, for example, Heidi Bigelow on these issues, like  
25 as far as just bringing up the stuff I didn't think was

1 mentioned, and would they have to present the full testimony if  
2 I asked that question?

3 A. Well, I believe Ms. Bigelow is going to be a witness.  
4 So you could probably -- I don't know -- I'm sure she'd also  
5 discuss those, the EA stuff off the record.

6 Q. Okay. Here's my next one. On Exhibit 6, pages 1 and  
7 2, besides the County Council question by Councilmember Don  
8 Couch on November 2, 2011, what was the lengthy discussion as  
9 to the merits of open space?

10 A. There was a -- regarding the open space, I was just  
11 looking at that. I recall most of the discussion was by  
12 Ms. Cochran when Don asked, you know, can we retain this area  
13 as open space or not. And, you know, ultimately the -- and  
14 that's the overly brief summary by both councilmembers. Both  
15 of them ultimately -- well, Don voted for the project and  
16 Ms. Cochran did not.

17 Q. Okay. Not to be beat a dead horse, but in  
18 multiple -- like there's probably at least three different  
19 occasions I have highlighted that you said considerable or  
20 lengthy discussion. And we're talking just maybe a few pages  
21 of County Council dialog. Whereas, the Community Plan of 1996,  
22 which you referred to, had multiple pages of what their  
23 designation was of that. How do you compare that consideration  
24 versus maybe three pages of testimony at the County Council  
25 meeting? How does that work out to lengthy or considerable

1 discussion?

2 A. Lengthy is probably relative. I mean, the discussion  
3 in, you know -- what was it, '93?

4 Q. It was 1995.

5 A. Okay. The discussion in '95, when they were adopting  
6 the community plan and trying to decide whether this should be  
7 open space or park or should it be a -- what kind of  
8 recreational facilities should be on it or not, or if it should  
9 be left in a natural state, you know, that was an entirely  
10 different context when they're adopting a community plan.  
11 Ultimately, they decided to leave it within open space. And it  
12 has been open space for 15 years.

13 Q. Right. So what you're saying is they had the time to  
14 really look into it and go, this is the best plan for the  
15 community, because they had time to look over an entire  
16 community and think this is a good greenway area, and all that.  
17 But because of the 201H process where they had to fast track  
18 it, there was concerns from councilmembers at how quickly they  
19 had to push it through, and they couldn't really fully look at  
20 all the different options.

21 So do you think the 201H process possibly could have  
22 skewed their thing just because of a time restraint and having  
23 to make a decision on it?

24 A. I know a lot of councilmembers have a hard time with  
25 the 201H process, and understandably so. Because it

1 requires -- as soon as the project is transmitted to the County  
2 Council, they have 45 days to make a decision on it. So by  
3 nature, it can -- I won't say always. But it can limit the  
4 discussion and some of the things they need to do.

5         The alternative, however, is if they went in for a  
6 community plan amendment. Our process is typically for a  
7 community plan amendment to take two to five years. So the  
8 state legislature, through all the different iterations of  
9 Chapter 201, the -- you know, is trying to cut those time  
10 frames down, cut that decision time down. So the decisions are  
11 made, are we going -- is this a good place for a particular  
12 project or not, is this a good project or not. Come on, fish  
13 or cut bait. So while the County Council doesn't like the  
14 process, it cut, you know, between two and five years out of  
15 the approval process for this project.

16         Q. Because it is in such a historical area and, you know,  
17 it's an important -- basically, our urban sprawl is happening,  
18 and different pre-approved projects are happening. Under the  
19 context that they had to make a hasty decision and there is a  
20 current need, obviously, for affordable housing. But do you  
21 think that possibly down the road, we might look back on that  
22 and go, that probably wasn't a good idea?

23         Because all of the already pre-approved projects -- I  
24 mean, there's like 2,000 to 4,000 homes above and below the  
25 bypass between Lahaina and out by -- between here and

1 Kaanapali. There's Kaanapali 2020. There's Pulelehua. There  
2 are a lot of slated pre-approved projects that when they did  
3 the County Council minutes back in 1995, maybe they were  
4 looking at the open space, looking at the overall picture.

5 I'm not talking about today. I'm talking about 30  
6 years from now, 50 years from now, 100 years from now, will we  
7 look back and go, oh, thank God we got more affordable housing  
8 in Lahaina? Or will we look back and -- I mean, that's the  
9 whole point of State Land Use is to -- the life of the land is  
10 perpetuated in righteousness. It's to be good governments, to  
11 make sure that not just today's needs are being met, but that  
12 50 years from now, 100 years from now, their needs are being  
13 met.

14 A. I think that --

15 MR. GIROUX: I'm just going to object.

16 MS. LINCOLN: It wasn't a question.

17 MR. GIROUX: That wasn't a question.

18 CHAIR CHOCK: Can you sort of paraphrase your question.  
19 That was sort of a lengthy statement.

20 MS. LINCOLN: Okay.

21 Q. In view of already pre-approved projects and in  
22 long-term planning -- because you're a planner -- would you, as  
23 a planner, personally recommend -- if you were designing the  
24 plan, would you personally recommend filling in as many houses  
25 in this urban district as are being proposed here?



1       A. Okay. I think that the -- I do believe this is an  
2 infill project. Okay. We're already talking about in an  
3 urbanized area, and we're filling it in. It is a piece of open  
4 space along a streambed. Idealistically, as a planner, if I  
5 didn't have to consider private property rights and the cost of  
6 land or the cost to the taxpayers of maintaining a piece of  
7 open space, I would go, yes, I think this would be a great  
8 place to have an open space corridor, you know, mauka to makai.  
9 But at the same time, we -- you know, it is privately owned.  
10 The County has not expressed any desire to purchase the  
11 property to keep that. So we cannot tell a private property  
12 owner you can do nothing with your property. So the --

13       Q. Who can't do that?

14       A. The County. Or this body, actually. You can't say  
15 that you must maintain this property in open space in  
16 perpetuity.

17       Q. Why not? Don't they --

18       A. Because -- okay. There's a whole legal argument that  
19 enters into this. The short of it is that would be a taking.  
20 You are -- by telling a land owner you could never build  
21 anything on your property, you would be removing all value of  
22 that property.

23             It's like if your house burned down and I told you,  
24 you could never rebuild a house on your property, you would go,  
25 I have a problem with that. Well, in this case, the land owner



1 would probably also have a problem with that. And, you know,  
2 it's nice to make grand plans and say the perfect use for this  
3 property is to be an open space. But at some point, this  
4 property owner wants to use it.

5 Q. Can you give me the description of eminent domain,  
6 then.

7 A. Eminent domain would be where a government agency with  
8 that authority would go in and condemn a piece of property and  
9 purchase it for whatever public use, whether it's for. A  
10 school, for a park, or just to maintain an open space. For  
11 roadways. Those kinds of things. But it still involves paying  
12 that land owner for that property. And usually you end up in  
13 court because the county or the government agency says it's  
14 only worth this much, and the land owner says no, no, it's  
15 worth a whole lot more. So they bicker around in court for a  
16 long time until they reach an agreed-upon price.

17 Q. What the developer has proposed to the County was  
18 \$3,340,000. And with taxes, it's valued at about \$146,000. Do  
19 you think there could be some sort of a give-and-take there,  
20 and that could still be a possibility?

21 A. The County has already expressed they're not  
22 interested. I haven't heard anything that the County has  
23 changed their mind on that.

24 Q. But I think it's because of the price. And, I mean --  
25 I'm just saying, in their testimony, they're saying how

1 horrible the soil is and (Inaudible) and basically to condemn  
2 it as ag land; and therefore, it would make good urban use. So  
3 if you could condemn it for ag purposes, why can't you  
4 repurpose it as an open space?

5 Because that's part of the thing of eminent domain is  
6 that it has to be a condemned piece of property, which is what  
7 they're trying to show, that it's a condemned piece of ag land.  
8 Is that correct? That's kind of what they're showing us.

9 A. Not exactly condemned. They are stating it's not very  
10 valuable for agricultural, so it is more valuable for housing.

11 Q. Okay. I guess I'm misunderstanding. State Land Use  
12 decides if it's ag appropriate?

13 A. That's correct.

14 Q. Okay.

15 A. Well --

16 Q. Okay. So if they're saying it's condemned as ag  
17 land -- because the petitioner is saying it is not feasible to  
18 farm this thing; it doesn't have water, it has all these things  
19 that doesn't make it -- if they say, okay, I agree with you,  
20 that piece of property is not ag. They're agricultural.  
21 Wouldn't they then be able to say it is condemned as  
22 agriculture land?

23 A. I don't think they would use the term condemned. They  
24 would say it's probably not very valuable for agriculture.

25 Q. So not very valuable means it could be valuable?

1 There's some value in there for ag?

2 A. Well, there's some value to all land, whether it's  
3 conservation district, or whatever.

4 Q. Okay. I had some questions with for Jo-Ann Ridao  
5 regarding the infill. Would that be a better question to ask  
6 you about infill?

7 A. Well, I always like to punt to Jo-Ann.

8 Q. Would she be able to answer that question for me, is  
9 that within her scope? Or is it better for you to answer?

10 A. Specifically about infill, it's probably better for me.

11 Q. Okay. Can I grab my question for her, then, and ask it  
12 to you. May I do that?

13 Okay. That's Exhibit 8. And maybe it's just a  
14 clarification for me. But on Exhibit 8 of -- this is the  
15 exemption 1412-030, Number D, or letter D?

16 CHAIR CHOCK: Ms. Lincoln, is that County Exhibit 8  
17 you're referring to?

18 MS. LINCOLN: It says ordained by the County of Maui,  
19 but I don't know where I got it from. It just says exhibit --

20 THE WITNESS: Is this the reso or --

21 MR. YEE: I believe she's referring to a county  
22 exhibit.

23 MS. LINCOLN: I'll see who signed the document. Yeah,  
24 County of Maui.

25 THE WITNESS: Okay. And this is related to the

1 County water availability policy. I could only comment --

2 BY MS. LINCOLN:

3 Q. Oh, no, no, no.

4 A. No?

5 Q. It's at the very cover of Exhibit 8. It looks like  
6 that. It says Ordinance Number 3818, Exhibit Number 10,  
7 2011 -- does that look familiar?

8 A. Ordinance 3818?

9 MR. GIROUX: Yeah.

10 THE WITNESS: Okay. This is the County's water  
11 availability policy.

12 BY MS. LINCOLN:

13 Q. See, that's -- okay. Well, anyway. Letter D, like if  
14 we can go to that, then maybe I can ask the question on there,  
15 where it says infill developments. That the purpose of that  
16 chapter is defined as the development of ten residential  
17 dwellings or less on a contingent vacant parcel within the area  
18 developed consistent with applicable zoning designations and  
19 the General Plan as and within the service area of the  
20 Department Central Maui Water System. So there's a number of  
21 criteria.

22 How is this considered an infill project if infill is  
23 defined as ten residential dwellings or less on a contingent --  
24 contiguous, sorry, vacant parcel that's in an area that's being  
25 developed? There's 68. Right?

1 MR. GIROUX: I'm going to object on this. I don't  
2 think he's qualified to talk about an ordinance that is a water  
3 ordinance. And the definitions used in the different sections  
4 in the Maui County Code a lot of times are specific to the  
5 section that they're in. We use the terms interchangeably as  
6 lay people. But in reference to the County Code, definitions  
7 and terms are used specific for those sections.

8 CHAIR CHOCK: Okay. So noted, County.

9 Can you answer the question?

10 THE WITNESS: I can only answer in general as a planner  
11 on what infill development is versus its application to this  
12 ordinance, which the water director Dave Taylor could directly  
13 answer. This is a specific ordinance for infill. Infill is  
14 defined for this ordinance. I'm not qualified to answer that  
15 as it relates to this ordinance.

16 MS. LINCOLN: Is there someone that can answer that for  
17 me? Because it's an important issue.

18 CHAIR CHOCK: County, are you going to be bringing in a  
19 witness that can speak to that?

20 MR. GIROUX: I believe we will have Dave Taylor, who is  
21 with the Department of Water Supply -- Department of Water.

22 MS. LINCOLN: Okay. What was his name?

23 MR. GIROUX: Dave Taylor. He's in our exhibit list.

24 MS. LINCOLN: Oh, I know. I got questions for him.

25 Okay. We'll move on to the next thing. That's good. What did

1 I just finish. Oh, the lengthy discussion on open space, okay.

2 Q. Would the County Council have the ability to issue a  
3 variance for this 100 percent affordable project and eliminate  
4 the cul-de-sac?

5 A. Ask that again.

6 Q. There's a cul-de-sac at the top of the property. They  
7 don't have their diagram here, but I referenced it yesterday.  
8 And I asked --

9 A. Right.

10 Q. And they said that wasn't a question for Rory. So I'm  
11 asking you. Would the County Council have the ability to issue  
12 a variance for 100 percent affordable project and eliminate  
13 that cul-de-sac?

14 A. Well, the County Council can do a whole lot of  
15 different things. Ultimately -- and I'm not trying to avoid  
16 your question. I'm trying to answer it in the way that is  
17 probably most truthful.

18 Ultimately, as this project goes forward and, say,  
19 perhaps the applicant decided not to include the cul-de-sac,  
20 there's a provision in the resolution that says this project  
21 has to essentially be pretty consistent with the  
22 representations made to the Council. If there's a substantial  
23 deviation from that project, then it would have to go back to  
24 the Council. But to eliminate the cul-de-sac or not, that's  
25 going to be a Jo-Ann Ridao question they are charged with.



1 Q. Okay. So I should ask her. And if I need any more  
2 clarification, I should ask Jo-Ann this question?

3 A. Yes.

4 MS. LINCOLN: Okay. I'm just about done.

5 Q. I'm just going to highlight the goals. And then -- so  
6 I don't have the page numbers. Sorry, I did this before. I  
7 knew we had to reference it. The urban design goal states  
8 objectives -- I'll start over.

9 The urban design goal states objectives and policies to  
10 integrate stream channels and gulches into the region's open  
11 space for the purpose of safety, open space, greenways for  
12 public use, and greenway separation. So how does this project  
13 achieve that goal?

14 A. Well, I think that this is one of the things that was  
15 requested by the County Council is to not have to go get a  
16 community plan amendment or change in zoning. So by the  
17 Council granting those exemptions from the community plan, this  
18 would include exempting them from this requirement as well.

19 Q. But it's okay for State Land Use, since it's their  
20 jurisdiction, to be able to make a decision on this --

21 A. Yes.

22 Q. Because the County Council -- I mean, that's why we  
23 have these forums, to make sure we're making the right decision  
24 for this piece of land. So they could look at this and say  
25 urban design goal, the open space meets that need?



1 A. Uh-huh.

2 Q. Okay. My next question is -- this one I kept the page  
3 for. Page 19, regarding social infrastructure.

4 MR. GIROUX: What exhibit?

5 CHAIR CHOCK: What exhibit?

6 MS. LINCOLN: The same one we've been on the whole  
7 time.

8 MR. YEE: County Exhibit 5.

9 And for the record, I believe she was just referring to  
10 Urban Design Goals on page 18 of County Exhibit 5.

11 CHAIR CHOCK: Thank you, State, for clarifying, for  
12 intervening.

13 MS. LINCOLN: So do I need to read you the goals? Do  
14 you guys know what they are? To provide --

15 CHAIR CHOCK: You do not need to read them. Just ask  
16 the question.

17 BY MS. LINCOLN:

18 Q. Okay. How does taking away the last open space near a  
19 residential project provide for the infrastructure goal?

20 A. The social infrastructure goal is to develop and  
21 maintain an efficient and responsive system of public services  
22 which promotes a safe, healthy and enjoyable lifestyle and  
23 offers opportunities for self-improvement and community  
24 well-being.

25 It's a pretty broad goal. I would say that -- and it

1 could mean a lot of different things, depending on specific  
2 location. I would think that this project certainly  
3 offers -- in offering affordable housing, promotes a safe,  
4 healthy and enjoyable lifestyle. So, I mean, removing the open  
5 space, it would be, you know, attractive to some. But for  
6 others -- you know, for the overall community is providing  
7 opportunities for that beneficial lifestyle.

8 Q. I guess the part that I was wanting to address -- so I  
9 must have --

10 May I read it, just to make sure he understands the  
11 question? It's just short.

12 CHAIR CHOCK: Go ahead.

13 BY MS. LINCOLN:

14 Q. Provide adequate community oriented park facilities,  
15 including facilities for field and court games, children's  
16 play, and picnicking within or adjacent to existing and future  
17 residential areas of the following existing or planned park  
18 sites. And then -- that was open space. So that's what I'm  
19 asking.

20 How did -- how does taking away the last open space  
21 near this residential project provide for a social  
22 infrastructure goal? That's the goal I was referring to.

23 A. I think that -- it doesn't really provide for, you  
24 know, all of your court games and ball fields, et cetera. I  
25 know this project does provide a small park. It's not the same

1 thing. But at the same time, the County has said they do not  
2 want to purchase this property for those purposes.

3 Q. Okay. Going in that direction, then. Is the County  
4 the only one who can purchase the park?

5 A. I suppose the State could.

6 Q. Or Federal?

7 A. I suppose the Feds could. Probably this property does  
8 not meet any kind of Federal standards for parks.

9 Q. With regards to that, I have contacted, back in  
10 November, when I was desperately trying to say it at County  
11 Council -- like the Department of Land and Natural Resources  
12 legacy lands, and there's another one called Trust for Public  
13 Lands. I mean, that could be a viable thing, that we don't  
14 have to go to the County --

15 CHAIR CHOCK: Ms. Lincoln, could you get to a question  
16 and not be argumentative in terms of presenting the question.

17 MS. LINCOLN: Okay. I'm sorry. I'm trying to remember  
18 what the names were.

19 Q. So there are other options for funding the park. Just  
20 for example, New York City's park, they have a conservancy that  
21 raises money for it. But just to give you an example, there  
22 are parks that are not county, state, whatever. They have  
23 private funding that they raise money for.

24 A. Right. And the State of Hawaii does have a trust for  
25 open space. And I'm sure they would be happy to talk to you.

1 Q. Okay. They were, thank you.

2 This in the same document as before, page 14. The  
3 Countywide Policy Plan addresses, you know, all these different  
4 core principles. When I read through it, I see maybe five that  
5 support this decision to rezone. But there's a whole page full  
6 of them. So how does those five outweigh the balance of those?

7 A. You're talking on page 14, the top ten ones?

8 Q. Top ten, the bottom eleven. Basically, just meeting  
9 all those needs. I just went through and read each one, which  
10 addresses the need for affordable housing or the need for a  
11 healthy environment, and all the different things. Parks and  
12 public facilities.

13 So when I read through -- that's just my opinion. It  
14 seemed like there was five that was really strongly for your  
15 position. But it seemed like a lot of the other ones would  
16 stand up to an open space concept.

17 A. I don't see all these goals are mutually exclusive.

18 Q. Okay.

19 A. I don't know why the -- you know, the needs for  
20 social -- to meet social needs and housing opportunities are  
21 exclusive of, you know, just bettering the life of however many  
22 families, 68 families on the west side.

23 Q. Okay. Well, just some notes I made. Like the first  
24 one, the second one, the third one, the fourth one. Those all  
25 tied in. The fifth one would be Routh's thing. Sixth would be

1 Routh's thing. Wisdom and balance and decision-making. That  
2 applies. Number 8 applies. Ten definitely applies, nurtures  
3 the health and well-being of our community.

4 CHAIR CHOCK: Ms. Lincoln, the question, please.

5 MS. LINCOLN: Okay. I'll just leave it at that. It's  
6 just a difference of opinion.

7 Q. Okay. Does the Planning Department take into  
8 consideration the long-term effects of so much urbanization in  
9 an already congested area with sufficient greenways and open  
10 space? And what -- go ahead.

11 CHAIR CHOCK: Can you repeat that and slow down a  
12 little bit for our court reporter.

13 BY MS. LINCOLN:

14 Q. Sorry. Does the Planning Department take into  
15 consideration the long-term effects of so much urbanization in  
16 an already congested area with insufficient greenways and open  
17 space? What is the West Maui greenway master plan?

18 A. The -- yes, we do take into consideration anytime we  
19 make a recommendation on a project, or whatever. You know,  
20 when we went to the County Council regarding this -- and it was  
21 actually my deputy that was in front of the Council, there was  
22 discussion about what's the need, should we have open space, or  
23 whatever, or should we have housing. And ultimately, the  
24 Council voted for the housing.

25 So we brought up and we discussed the open space needs,

1 or the open space character. And it was really good. I saw  
2 the discussion from 1995 for the community plan, where the  
3 staff planner at that time was William Medeiros, discussed  
4 with -- the assistant advisory committee discussed it, et  
5 cetera.

6       Ultimately, you know, 15 years later, I believe that  
7 times and circumstances changed. Our community plans are not  
8 static, but they're supposed to be updated every ten years.  
9 And even now we're doing the Maui Island Plan, you know, this  
10 project is included in this. In the Maui Island Plan, it  
11 actually calls for more units than what is being proposed here.  
12 So the applicant has down-sized the project somewhat. But  
13 things change in 15 years. The needs of the community change.  
14 The circumstances of our economy changes.

15       And so in that consideration, our County Council, in  
16 looking at all the different factors, decided that at this  
17 particular time, the need was for affordable housing.

18       Q. Okay. Just to -- I'm going to come back to the  
19 greenways in just a minute. Because you mentioned the County  
20 Council again with making their deliberations, and whatever.  
21 Because they had a limited time frame and because they knew it  
22 had to go to State Land Use, it was very important for them to  
23 put their amendments in. That seemed like a priority to them,  
24 to get those amendments in for this project. So is there a  
25 chance that they -- and I know you can't speak for them.



1 But -- how can I word that?

2 In light of that, then, it could be said that it was  
3 more important to deliberate on if it's going to be affordable  
4 housing, this is what we want; and we'll leave it up to State  
5 Land Use what's the best use for this property?

6 A. I'm not sure that's a fair characterization.

7 Q. Okay. I guess it's just speculative on your part.

8 Back to greenways. Is there a West Maui greenway  
9 master plan?

10 A. I'm aware in the West Maui Community Plan, there are a  
11 number of greenways shown, open spaces shown. This is one of  
12 them. A lot of them are on the gulches and other drainage ways  
13 throughout the region. A specific West Maui greenways master  
14 plan, I'm not familiar with.

15 Q. Do you feel because of the crowded -- you know,  
16 Lahaina's kind of concentrated and you look up the hill and  
17 there's all those houses and the sprawl is going out. Do you  
18 feel that would be a priority for land use to consider that we  
19 have a limited amount and it is centrally located -- is it  
20 possible that we maybe need to consider a greenway master plan  
21 for West Maui as it is important in our culture, history,  
22 Lahaina significant?

23 A. Yes, I do think it would be important.

24 Q. Okay. And then just one question. How is a gravel  
25 road a greenway?



1 A. In specific reference to?

2 Q. Someone earlier said that there was -- they were going  
3 to provide for a greenway, and it was going to be from the edge  
4 of the flood stream to the edge of the county road. They were  
5 going to put in maybe -- there was like maybe 20 to 40 feet,  
6 and they were going to work with the County and make it a  
7 greenway. That was, I believe, Rory's testimony just a little  
8 bit ago. So I just want to know how is a gravel road a  
9 greenway?

10 A. I know it's a part of this project, they're putting in  
11 a path along the Kahoma drainage way. And I would just  
12 suspect -- I mean, that's an amenity of the residents -- of  
13 this project, but it's also going to ultimately connect up to  
14 other greenways or bike paths -- or I'm not exactly sure what  
15 the final finished surface is going to be.

16 Q. Okay. But that county road has to remain gravel,  
17 though. Right? Because vehicles need to be able to access is  
18 it. I mean, that's the whole point of the county access. It  
19 goes right along the flood channel and they need to be able to  
20 get up there. That's not going to turn into grass. It's when  
21 they talk about the county road, and they said a portion of it  
22 next to the road was going to be a greenway -- do you  
23 understand what I'm asking?

24 So it's the road that goes parallel to the property.  
25 And then they said there was going to be like a small -- you

1 know, 20 to 40 feet, they said of it, throughout the property.  
2 Wouldn't that have to remain a gravel road for county access?

3 A. I believe that's -- it's probably better directed to  
4 the applicant. But I know that the flood control channel needs  
5 a secure access. So there's going to remain a gravel roadway  
6 for that.

7 Q. Okay. And --

8 A. And I mean secure because you don't want kids going  
9 down to the drainage channel and playing.

10 Q. Right.

11 A. And West Maui has a history of flooding, et cetera.

12 Q. So just to clarify. Is a gravel road considered a  
13 greenway?

14 A. It could be.

15 Q. Okay.

16 A. I mean, we'd have to --

17 Q. Why do they call it a greenway, then?

18 A. It's an unbuilt area. You know, it could be used for  
19 any number of purposes.

20 Q. When they put the time frame on a project, can the  
21 developer get extensions?

22 A. I believe that's a provision in the resolution that  
23 they could go to the County Council again.

24 Q. Okay. So they can get extensions. So we don't know  
25 how long those extensions would be and how many extensions they

1 could get. Is that correct?

2 A. Correct.

3 Q. What are the consequences for noncompliance of County  
4 and State mandates?

5 A. The County Council could, I suppose -- if the applicant  
6 has just done nothing with this project for the next 36 months,  
7 I suppose the County Council could consider, you know,  
8 withdrawing their resolution. But I'm not sure that's  
9 ever -- anything like that has ever happened.

10 Q. I guess I'm more concerned about they get all the stuff  
11 in, the infrastructure, and they're not developing -- like the  
12 time frame. Because the whole thing is to get the housing  
13 right away. Like how do they monitor and enforce that they're  
14 doing it? Do we have something in place where they're held  
15 accountable? How do they enforce it?

16 A. I believe there's -- I have not reviewed the agreement  
17 with the Department of Housing and Human Concerns. But I'm  
18 sure there are provisions in that agreement to that effect.

19 Q. Should I ask Jo-Ann that question?

20 A. That would be a very fair question to ask her.

21 Q. And this is maybe another one for Jo-Ann about the  
22 vacant lots. Would you feel more comfortable for me asking her  
23 the questions about the vacant lots?

24 A. As far as?

25 Q. There's no time limit in the vacant lots that have to

1 be sold, and Habitat has no limit on their project. So what's  
2 the guarantee the developer to ensure we get these affordable  
3 homes?

4 A. That would be for Jo-Ann. And I believe Sherri might  
5 have answered some of those.

6 Q. And then my final question. Could the storm runoff  
7 from this project cause harm to the dive spot, the coral reef  
8 at Mala and Baby Beach?

9 A. I would have to defer that to their engineer.

10 Q. Oh, the engineer.

11 A. Yes. And I know I'll have Department of Public Works  
12 who also handles drainage issues.

13 MS. LINCOLN: Okay. Thank you very much. That's all.

14 CHAIR CHOCK: Ms. Bolomet?

15 CROSS-EXAMINATION

16 BY MR. LEE:

17 Q. Mahalo, Mr. Spence, for coming down here and  
18 enlightening us.

19 My first question is, are you aware on the petitioner's  
20 property that there's a sewer line running through it? They've  
21 been talking about this drainage. It's a drainage for the road  
22 runoff.

23 A. I'm not particularly aware of that. You're not talking  
24 about the sanitary sewer?

25 Q. No, it's just a -- it's a water runoff.

1 A. Yeah. I'm sure there's runoff from the property. And  
2 they will have to address that to county standards at the time  
3 of development.

4 Q. Do you know if that water drainage pipe they talk about  
5 through their property, was it built by the city?

6 A. I'm not sure.

7 Q. Okay. And -- let's cut it short. We'll do that.  
8 Thank you very much.

9 CHAIR CHOCK: County, any redirect?

10 MR. GIROUX: I'm going to try to keep this short.

11 REDIRECT EXAMINATION

12 BY MR. GIROUX:

13 Q. Mr. Spence, do you feel like you've adequately  
14 explained the 201H process to this Commission?

15 A. I don't know. Maybe that's a question for the  
16 Commissioners. I think I've explained it.

17 Q. Okay. And, again, just to clarify. The ultimate  
18 authority in Maui County for that process is?

19 A. Is the County Council.

20 Q. Okay. And the ultimate authority in zoning in Maui  
21 County is?

22 A. The County Council.

23 Q. And the ultimate authority in the Community Plan  
24 process is?

25 A. Is the County Council.

1 Q. And the ultimate authority in the General Plan process  
2 is?

3 A. The County Council.

4 Q. Okay. So it's the same body that reviews all of those  
5 land use changes?

6 A. Yes. They are the legislative body. Each one of the  
7 topics that have been mentioned -- I mean, with the exception  
8 of the resolution, each one of the topics for zoning and  
9 community plans, et cetera, are legislative actions. And  
10 ultimately, they are the deciding body.

11 Q. Okay. Is this the same body that receives land  
12 dedications in the County?

13 A. Yes, and those must be approved by the Council.

14 Q. And is it the same body that buys parks in this county?

15 A. Yes, those purchases must be approved. No matter how  
16 much we like them, they must be approved by the Council.

17 Q. And to your knowledge, in the last 15 years, has any  
18 money been set aside to buy this property?

19 A. Not this property. There is an open space fund.  
20 That's a pretty -- it's going to be a pretty competitive  
21 process. There's a lot of needs for purchasing open spaces;  
22 beach parks, landmarks, et cetera.

23 Q. And in your professional opinion, what is the objective  
24 of the County Council in granting the 201H?

25 A. So to help shorten the -- the purpose is to help

1 shorten the approval time. And maybe I'm not understanding  
2 you.

3 Q. Is it to get affordable housing into the community as  
4 fast as --

5 A. Yes, absolutely.

6 Q. Okay. There was another question regarding the 343  
7 process. What is the state agency that publishes these  
8 documents?

9 A. Oh, OEQC, Office of Environmental Quality Control.

10 Q. What is the purpose of them publishing these documents?

11 A. Public notification.

12 Q. Okay. And what is your understanding of the challenge  
13 period?

14 A. It's normally -- oh, boy. It might have changed. It's  
15 normally 30 days. But it seems fairly regular that that time  
16 allowed is extended.

17 Q. Okay. And what is the purpose of that challenge  
18 period?

19 A. It's to give members of the public time to review a  
20 final document and come up with substantive reasons why a  
21 document -- I mean, if they choose to go challenge it, to find  
22 substantive reasons why the document is inadequate and file  
23 those with the court.

24 Q. And are you aware if private citizens have taken  
25 advantage of those venues?



1 A. Yes, they do fairly regularly.

2 Q. And have you been involved in those lawsuits?

3 A. No, not over an EA quite as yet.

4 Q. Well, lucky man. Okay. Final question regarding  
5 takings. As a professional planner, do you often times have to  
6 analyze taking types of situations when you're doing general  
7 and community planning?

8 A. Yes, I do.

9 Q. Okay. And specifically, what is the end result of an  
10 analysis where property has been community planned or general  
11 planned and the use of that property has been basically taken  
12 away?

13 A. In the context of community planning or general plans,  
14 I usually advise the County Council that you are taking value  
15 from this person's property that they may wish to use for other  
16 purposes just other than maintaining an open space, and you may  
17 be subject to a challenge in court.

18 Q. And to your knowledge in the last 15 years while this  
19 property has been community planned park, have you seen or  
20 heard of any condemnation processes happening in order to  
21 change this property into a park?

22 A. No, I'm not aware -- I think it's open space, but I  
23 know there has been no actions by the County to acquire it or  
24 turn it into a park or anything.

25 MR. GIROUX: Okay. Thank you. I'm done with my

1 rebuttal.

2 CHAIR CHOCK: Commissioners, any questions?

3 Commissioner McDonald, go ahead.

4 COMMISSIONER MCDONALD: Thank you, Mr. Spence. Just  
5 curious. Where is the County at in regards to not being in IAL  
6 lands?

7 THE WITNESS: We are -- really what we're waiting for  
8 is for the legislature to fund the study. Probably that's  
9 going to be a long time coming. So we'll probably initiate  
10 something in a lot shorter term. We do maintain quite an  
11 extensive database of land. You know, we have many GIS layers  
12 that will provide us with at least a basis for starting to map  
13 IAL, but we haven't started that process yet. We'll probably  
14 finish our general plan first. That doesn't really give you a  
15 time line.

16 COMMISSIONER MCDONALD: No, I understand the issue in  
17 legislature. But as far as the short term, your short term  
18 goals, any idea on the County level what you folks have planned  
19 as far as timing, and what not?

20 THE WITNESS: I'm going to say within a year or two, we  
21 will probably be initiating our own -- and I'm not -- off the  
22 top of my head -- I'm sorry. I can't tell you the statutory  
23 limitations that are laid out in the Hawaii Revised Statutes.  
24 But I know it needs to be done.

25 I am very concerned that we start this process where

1 it's so swamped right now with our Maui Island Plan, and all  
2 that, we haven't been able to start. So it is a very important  
3 project that we need to undertake, however.

4 COMMISSIONER MCDONALD: I agree. Thank you.

5 THE WITNESS: Thank you.

6 CHAIR CHOCK: Commissioner Heller.

7 COMMISSIONER HELLER: Just first to quickly follow up  
8 on that. Given this particular parcel, the subject property in  
9 this case, considering the location and the size and the soil  
10 type and everything, is there any reason to believe that this  
11 parcel would be a candidate for designation as important  
12 agriculture land?

13 THE WITNESS: This property probably would not be a  
14 candidate. Just having walked the property, knowing that  
15 it's -- you know, one of the things IAL looks for is large  
16 contiguous tracts of land. It looks for soil quality,  
17 availability for transportation, and irrigation availability.  
18 And this particular property is pretty much sandwiched in an  
19 urban area. Because of the Kahoma stream, you know, that flood  
20 control project, this property was used pretty much as a --  
21 almost like a baseyard. A lot of the spoils came out of the  
22 flood control channel as that was being excavated. I'm not  
23 sure that it was entirely cleaned up from there. But it  
24 appears to me to have a lot of rocks.

25 It doesn't seem to be -- just from my observation, it

1 doesn't seem to be a good place for commercial farming. I  
2 mean, within the context -- I know people are going to argue  
3 with that. But within the context that you can grow a whole  
4 lot of things on a'a. But as far as meeting the criteria of  
5 State, probably not.

6 COMMISSIONER HELLER: And changing gears for a second,  
7 back to water. The petitioner asserts in the petition that  
8 this project, because it's 100 percent affordable under the  
9 definitions in the Code, is exempt from "Show Me the Water"  
10 policy.

11 THE WITNESS: That's correct.

12 COMMISSIONER HELLER: Does the County agree that it is  
13 exempt from "Show Me the Water" rule?

14 THE WITNESS: I will say I know that to be a fact. The  
15 details of that are better left for the water director.

16 COMMISSIONER HELLER: Thank you.

17 THE WITNESS: Thank you.

18 CHAIR CHOCK: Commissioner Biga.

19 COMMISSIONER BIGA: Mr. Spence, I had a question. And  
20 I guess you answered it with the question that the Commissioner  
21 had over here was that -- yeah, if you're talking about  
22 reference to a commercial kind of agricultural business. But  
23 what about a local kind of agricultural business, that people  
24 could use that area to grow their vegetables, or things like,  
25 in that sort?

1           THE WITNESS: It could -- the property could probably  
2 be used for those purposes. Again, I'm just trying to think  
3 of -- you know, I know for a IAL, the agricultural lands are  
4 important for the state of -- I'm going to screw that up.  
5 Important Agricultural Lands, the property is rated other. So  
6 it's the lowest rating as far as IAL goes. And that was when  
7 it was in cane cultivation.

8           Since -- what I mean in cane cultivation, it was a part  
9 of a very large tract of land that was in cultivation. Now, as  
10 the property -- as the Kahoma's flood control channel was  
11 built, you know, it isolated the sliver of land. But also, it  
12 furthered -- the properties on the other side of the Kahoma  
13 channel are also urbanized. So it's not a of part -- I guess  
14 what I'm trying to say is if it was to be rated IAL again, it  
15 probably wouldn't be rated at all because of its isolated  
16 location and because of the change in the soil in the  
17 excavation of the flood control channel. So as far as a state  
18 rating, it's not going to be very important.

19          What I do find remarkable is what some people can grow  
20 on very poor soils. Not so much commercial, but for sharing  
21 with others. I would think this soil would need a lot of  
22 improvement, need a lot of amendments. I'm not an expert on  
23 it, by any means.

24          COMMISSIONER BIGA: So what are you saying it's  
25 possible to have sustainability, ag being grown there?

1 THE WITNESS: Sure.

2 COMMISSIONER BIGA: My second question is how dedicated  
3 is that private road, the old mill road? Where is that at this  
4 time? Is it almost guaranteed that we'll have that as  
5 dedicated to the County?

6 THE WITNESS: I think that's probably a better question  
7 for the applicant or Public Works. They may be -- I mean, I'm  
8 sure the applicant knows if they have plans to dedicate it, and  
9 Public Works can tell you under what conditions that would take  
10 place.

11 COMMISSIONER BIGA: Okay, thank you. That's all I  
12 have.

13 CHAIR CHOCK: Commissioners, any other questions?  
14 Thank you for your testimony.

15 MR. SPENCE: Thank you Commissioners.

16 CHAIR CHOCK: We're at 2:00. Unfortunately, we're out  
17 of time for your last witness. So we're going to adjourn for  
18 the day.

19 And we'd like to encourage the parties to really work  
20 hard with staff, during the prehearing meetings that you guys  
21 have, to get on the same page with respect to some of the new  
22 deadlines now and get some -- get those exhibits and materials  
23 filed timely. And we'll see you guys back in a couple weeks.

24 Any questions before we wrap up?

25 MR. GEIGER: Do we have a date that we're reconvening?



1 MR. HAKODA: 23rd and 24th of August.

2 MR. GEIGER: Okay. It will be both days?

3 MR. HAKODA: We'll have to work on fine-tuning the  
4 agenda.

5 MR. GEIGER: Okay. I just wanted to know -- okay,  
6 thank you.

7 MS. BOLOMET: Of August?

8 CHAIR CHOCK: Yes.

9 MR. LINCOLN: Where will the meetings be?

10 MR. HAKODA: We're working on a site. We'll circulate  
11 and advise the parties. We're trying to get it on the West  
12 Maui side of the island.

13 MS. LINCOLN: Okay. And who do we check with to find  
14 out what's next on the agenda to know whether I need to get my  
15 presentations together?

16 MR. HAKODA: Plan on the 23rd and 24th of August.

17 MS. LINCOLN: Okay. Thank you.

18 MS. BOLOMET: Okay. So are we having a field trip on  
19 to the site the next time?

20 MR. HAKODA: August 2nd, we'll be back on the island to  
21 discuss a totally different matter that concerns Maui. That's  
22 not expected to take too long. So we have site visits. We're  
23 working on the Kahoma site, as well as another site on island  
24 in the afternoon portion of the day.

25 MS. BOLOMET: I just have a request that if you were



1 going to have a site visit, I would like to do our cultural  
2 testimony over there because we can show you and actually point  
3 out all the findings and the sites that we found, which doesn't  
4 require us moving any dirt or anything.

5 CHAIR CHOCK: Yeah, we don't take any testimony during  
6 the visits. It's purely informational, on-site, on the ground  
7 for the Commission to orient ourselves better than we could  
8 than just looking at the map, so we will not be taking any  
9 testimony.

10 MS. BOLOMET: Can we point out things to you so that --  
11 you can look at pictures. But when you look at the pictures,  
12 you can't -- you know, like when you're taking movies and that  
13 sort of thing, you can't even capture the scope of what you can  
14 see when you're actually standing on the site and we're  
15 pointing things out. It comes into a context that we can't  
16 demonstrate and film or photograph.

17 CHAIR CHOCK: Yeah, we generally don't take any of  
18 those kinds of things when we do the site visits. It's just to  
19 orient ourselves to the property and get a feel for the  
20 landscape. So that's what we'll be doing.

21 MS. BOLOMET: So are we supposed to come to those?

22 CHAIR CHOCK: Yes, it's open to the public.

23 MS. BOLOMET: On August 2nd?

24 CHAIR CHOCK: I believe so. I believe so. Staff is  
25 working on that right now.

1 MS. LINCOLN: I have another question. Okay, it was  
2 there a second ago.

3 One thing is for the notice that they put in the  
4 newspaper, that the petitioner puts in the newspaper. Would I  
5 be able to get an e-mail copy of that so I can put it in the  
6 Lahaina News? Is that acceptable?

7 MR. YEE: Just for the Commission's information, I  
8 don't believe there's any further publication. There was an  
9 original publication for this hearing, but there is not  
10 subsequent publications.

11 MS. LINCOLN: Okay. So if I want the dates of where  
12 the meetings are going to be, I can do that on my own?

13 CHAIR CHOCK: For future meetings.

14 MS. LINCOLN: Oh, the other question was when you do an  
15 on-site visit, do you also drive around like the existing  
16 neighborhoods and kind of the area they're addressing? Do you  
17 kind of drive around and take a look to get a feel for the  
18 whole -- I mean, because it's a traffic issue. So you can see  
19 the streets that don't have the sidewalks, and what not. Is  
20 that part of your --

21 CHAIR CHOCK: No. We generally just try to orient  
22 ourselves to the petitioned area when we do these site visits.

23 MS. LINCOLN: Okay.

24 CHAIR CHOCK: Any other questions, Commissions?

25 Motion to adjourn?

1 COMMISSIONER TEVES: Move.

2 COMMISSIONER BIGA: Second.

3 CHAIR CHOCK: See you folks in a couple of weeks.

4 (Proceedings adjourned 2:02 p.m.)

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C E R T I F I C A T I O N

I, CAMMIE GILLETT, a Registered Professional Reporter,  
Certified Shorthand Reporter for the State of Hawaii #438, do  
hereby that the foregoing pages comprise a full, true and  
correct transcript of the proceedings had in connection with  
the above-entitled matter.

Dated this 9th day of August 2012.



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Cammie Gillett  
Registered Professional Reporter  
Hawaii Certified Shorthand Reporter #438