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LAND USE COMMISSION
STATE OF HAWAI'I

HEARING AND ACTION	PAGE
DOCKET NO. A12-795 WEST MAUI LAND CO, INC.) KAHOMA RESIDENTIAL, LLC)	6
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TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing at Maui Arts & Cultural Center, Alexa Higashi Meeting Room, One Cannon Way, Kahului, Maui, Hawai'i, 96732, Hawai'i, commencing at 10:15 a.m. on September 6, 2012, pursuant to Notice.

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

A P P E A R A N C E S

COMMISSIONERS:

RONALD HELLER, VICE CHAIR
JAYE NAPUA MAKUA
CHAD McDONALD
SHELDON R. BIGA
THOMAS CONTRADES
LANCE M. INOUE
ERNEST MATSUMURA

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

Docket No. A12-795

For the Petitioner: JAMES GEIGER, ESQ.
HEIDI BIGELOW
RORY FRAMPTON, planner

For the County: JAMES A.Q. GIROUX, ESQ.
Deputy Corporation Counsel
KURT WOLLENHAUPT

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI
Office of Planning

Intervenor: MICHELE LINCOLN
Intervenor: ROUTH BOLOMET
Also Present: KAHU MICHAEL LEE

Docket No. A94-706 KA'ONO'ULU RANCH (Maui)

For the Movants: Maui Tomorrow Foundation, Inc.,
South Maui Citizens for Responsible Growth

Daniel Kanahale: TOM PIERCE, JR., ESQ.

For the County: MICHAEL HOPPER, ESQ.
Deputy Corporation Counsel
WILL SPENCE, Planning Drtr.
ANN CUA, Planner

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI
Office of Planning

Respondents: JOEL KAM, ESQ.
Honua'ula Partners, LLC
JONATHAN STEINER, ESQ.
Pi'ilani Promenade South, LLC
Pi'ilani Promenade North, LLC

I N D E X

PUBLIC TESTIMONY PAGE

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1 VICE CHAIR HELLER: (gavel) The Meeting is
2 called to order. The first order of business is
3 adoption of the minutes from August 23rd and 24th. I
4 had one minor typographical correction. On Page 2 on
5 the minutes for the 24th. You've got that? With
6 that, is there a motion to approve of the minutes?

7 COMMISSIONER McDONALD: So moved.

8 COMMISSIONER CONTRADES: Second.

9 VICE CHAIR HELLER: All in favor say aye.
10 (voting) "Aye". Any opposed? Okay. Minutes are
11 approved. Can you give us the update on the tentative
12 meeting schedule.

13 MR. ORODENKER: Yes, Mr. Chair.
14 September 12th, 13th, 14th is the Hawai'i conference
15 of the HCPO. On September 14th we'll be holding a
16 meeting in the Ihilani Lurline Room to handle the
17 Department of Environmental Services Waimanalo Gulch
18 remand and the HCDC Motion for Order Amending the
19 Decision and Order dated December 8, 1999.

20 October 4th and 5th the calendar is
21 currently open and it will be decided later.
22 October 18th and 19th tentatively we're back here on
23 Maui for Ka'ono'ulu Ranch Order to Show Cause.

24 xx

25 xx

1 VICE CHAIR HELLER: Thank you. The next
2 order of business is a continued hearing on Docket
3 A12-795 West Maui Land Company, Inc. Kahoma
4 Residential LLC to consider the reclassification of
5 approximately 16.7 acres of land from the Agricultural
6 District to the Urban District at Lahaina Maui,
7 Hawai'i for a residential subdivision to provide 68
8 single-family affordable housing units to families
9 earning less than 160 percent of the median family
10 income of families in Maui County, TMK No.
11 (2)4-5-10:005.

12 Will the parties please identify themselves
13 for the record.

14 MR. GEIGER: Good morning, Chair,
15 Commissioners. James Geiger appearing on behalf of
16 the Petitioner. With me is Heidi Bigelow the
17 Petitioner's representative and Rory Frampton a
18 planner. Thank you.

19 MR. GIROUX: James Giroux on behalf of the
20 County.

21 MR. YEE: Good morning. Deputy Attorney
22 General Bryan Yee on behalf of the Office of Planning.
23 With me is Rodney Funakoshi from the Office of
24 Planning.

25 MS. LINCOLN: Intervenor Michele Lincoln.

1 And once we get started, before we start I have a
2 couple questions.

3 VICE CHAIR HELLER: Okay. We'll come to
4 that in a minute.

5 MS. BOLOMET: Intervenor Routh Bolomet.

6 VICE CHAIR HELLER: Let me update the
7 record and then we'll get to the procedure for today.
8 On August 23rd, 2012 the Commission received written
9 correspondence from Clare Apana, and Michael Lee's
10 rebuttal to Rory Frampton's rebuttal testimony dated
11 August 9, 2012.

12 From August 24 through September 5, 2012
13 the Commission received written correspondence from
14 the Catagal Family, four generations, Ronald Balagso,
15 Annette Martin, Beatrice Blanta, Mark Balisco, Gloria
16 Ball, Clare Apana.

17 On August 29, 2012 the Commission mailed
18 the agenda notice for this meeting to the parties and
19 the State and the Maui mailing list.

20 On August 31st the Commission received
21 Petitioner's Rebuttal Exhibit List and Exhibit 39.

22 Let me briefly describe our procedure for
23 today on this docket. First, I will call for those
24 individuals desiring to provide public testimony to
25 identify themselves. All such individuals will be

1 called in turn to our witness box where they will be
2 sworn in prior to their testimony. The Commission
3 will then consider any additional exhibits that the
4 parties wish to offer into evidence.

5 After the admission of exhibits the
6 Commission will continue proceedings on Docket No.
7 A12-795 with the remainder of Petitioner's
8 presentation. And we will then hear from Maui County,
9 OP, Intervenor Lincoln and Intervenor Bolomet. We are
10 hopeful to get the evidence completed in this docket
11 by tomorrow afternoon. Okay. Any questions on
12 procedure for today?

13 MS. LINCOLN: I don't know if this is the
14 time to ask it, but it's come to my attention that
15 Elly Cochran's submitting her testimony on, for my
16 intervention on county letterhead could pose a problem
17 for her. So if there's -- I'll defer to Mr. Giroux to
18 work that out.

19 If it's something that I need to take her
20 out, she resubmitted it as an individual yesterday --
21 'cause I didn't know if she'd be able to be accepted.
22 And I don't want to cause any problem for her as being
23 the County Council person.

24 So I will defer to you guys to work that
25 out if she needs to be removed as my witness and just

1 accept her testimony that she e-mailed to you
2 yesterday that's fine with me.

3 VICE CHAIR HELLER: This is something new
4 that's not yet been admitted as an exhibit, correct?

5 MS. LINCOLN: Well, I thought all my stuff
6 was accepted except for two but I could be wrong on
7 that.

8 VICE CHAIR HELLER: Was this new document
9 part of your exhibits originally or was this something
10 new that she sent in?

11 MS. LINCOLN: Yeah. No, she was one of my
12 witnesses.

13 MR. YEE: Chair, my understanding is
14 Ms. Cochran's written testimony, I believe, was
15 admitted into evidence. The concern by the county was
16 that the document was submitted, I believe, on county
17 letterhead. I don't want to speak for the county.

18 And the question arose as to whether
19 Ms. Cochran, whether the parties would waive
20 cross-examination and simply allow Ms. Cochran's
21 written testimony to stand. So the county had a
22 concern about waiving cross-examination if they were
23 using the county letterhead.

24 So in lieu of -- I believe the intent was
25 in lieu of calling Ms. Cochran, new written testimony

1 would be submitted without the county letterhead. And
2 that would then be satisfactory, I believe to the
3 county. So I think that's the issue Ms. Lincoln is
4 raising.

5 VICE CHAIR HELLER: So if I understand
6 correctly this is a proposal to withdraw an exhibit
7 that has been admitted and substitute a different
8 version of the exhibit.

9 MR. YEE: Yes. I believe it would be with
10 stipulation by the parties.

11 VICE CHAIR HELLER: Okay. That was going
12 to be my next question. Is there any objection to
13 that?

14 MR. GEIGER: We've not seen what the
15 document is that was resubmitted. Obviously if it's
16 the same thing we would not object, but we haven't
17 seen it so I can't stipulate to it at this time.

18 MS. LINCOLN: Did you get a copy of it
19 yesterday? Cause she e-mailed it yesterday to you
20 guys' office. Did you get that yet?

21 MR. HAKODA: No.

22 MS. LINCOLN: She did change some things in
23 it so I think it would be good for you to read it
24 over.

25 VICE CHAIR HELLER: Ms. Lincoln, then let's

1 do this. Before you start the presentation of your
2 evidence, make sure that Mr. Geiger, in fact all the
3 parties, have a copy of the new version and that you
4 have a copy that you can show to us. And then we'll
5 deal with it as part of your case.

6 MS. LINCOLN: Okay. So I should bring
7 those tomorrow, like, so I have her e-mail? She said
8 she emailed it to me so I'll double check with that to
9 make sure that happened.

10 VICE CHAIR HELLER: Okay. And we'll just
11 take that when you put on the rest of --

12 MS. LINCOLN: Tomorrow. Okay. All right.

13 VICE CHAIR HELLER: -- your case.

14 MS. LINCOLN: I just want to make sure that
15 whatever we do doesn't get her in trouble. And then
16 my other thing is I submitted a DVD and I submitted a
17 CD and it was the wrong -- it didn't hold enough data
18 so I asked you to throw it out and I resubmitted the
19 DVD.

20 If that's accepted as introduced into
21 evidence, to expedite tomorrow I'd like to just not
22 have to show it but I will be referring to it. Is
23 that okay?

24 VICE CHAIR HELLER: Has that been provided
25 to all the parties?

1 MS. LINCOLN: Yes.

2 MR. GEIGER: It was. And if the
3 Commissioners will recall we objected to the music
4 that was attached to the DVD as not being relevant to
5 this particular proceeding. We didn't have any
6 objection to the actual photographs, but there was a
7 song that was attached so we didn't think any
8 relevance to this proceeding whatsoever.

9 So I think our offer was: You could play
10 it without the music.

11 MS. LINCOLN: But the Chair at that time
12 said that they were going to go ahead and allow it
13 with the song. He made that statement on the record.

14 VICE CHAIR HELLER: Right. I remember that
15 it was --

16 MS. LINCOLN: So all I'm asking is can we
17 just accept that, introduce that into evidence and I
18 don't have to show it tomorrow. 'Cause it's, like,
19 altogether it's like 15 minutes long. I just want to
20 try to get this thing done. And as long as I can
21 refer to it if you've all watched it --

22 VICE CHAIR HELLER: If it's been admitted
23 into evidence you may refer to --

24 MS. LINCOLN: It has.

25 VICE CHAIR HELLER: -- and you don't --

1 MS. LINCOLN: -- and I don't have to show
2 it again.

3 VICE CHAIR HELLER: You don't have to show
4 it.

5 MS. LINCOLN: I don't know how this works.
6 I'm just making sure.

7 MR. GEIGER: We again renew our objections
8 because it's cumulative of other testimony that's
9 already come in and also has irrelevant materials.

10 VICE CHAIR HELLER: So noted.

11 MS. LINCOLN: Thank you.

12 VICE CHAIR HELLER: Anything else before we
13 go to public testimony? Do we have anyone signed up
14 for public testimony?

15 MR. ORODENKER: Yes, Mr. Chair. We have
16 Clare Apana as the only one signed up this morning.

17 VICE CHAIR HELLER: Ms. Apana. While
18 you're coming up, let me remind you that prior
19 testimony has been transcribed and is already part of
20 the record. There's no need to repeat things that
21 have already been presented previously.

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

25 THE WITNESS: I do.

1 VICE CHAIR HELLER: Please state your name
2 and if you would for the record and gave us an address
3 again and then go ahead.

4 THE WITNESS: My name's Clare Apana. Can
5 you hear me?

6 VICE CHAIR HELLER: Yes.

7 THE WITNESS: My name is Clare Apana. I'm
8 from Wailuku, Maui, 260 Halenani Drive.

9 VICE CHAIR HELLER: Go ahead.

10 THE WITNESS: Thank you. Good morning,
11 Commissioners. Good morning, Intervenors and
12 Petitioner. Thank you again for letting me come
13 today. I feel very heavy about what I must say today.
14 But there is so many times where the rights of the
15 Hawaiian people are absolutely stomped on.

16 And in your Commission a legal proceeding
17 over title rights, which is in our Second Circuit
18 Court on Maui on this property, can go on and then
19 this proceeding can go on. But by your mandate, I
20 know that's not your purview, you are to uphold my
21 rights to practice my culture and to protect my
22 culture.

23 You are mandated to protect the water
24 rights and I hope that you will do that because it's a
25 very confusing system when these things can keep going

1 on simultaneously with the Petitioner quiet titling
2 the kanaka families.

3 I'd like to start with the AIS, CIA. That
4 is probably the place where you get your information
5 about what are the cultural impacts. In the AIS,
6 which is not an AIS, excuse me -- it's an Archaeology
7 Assessment, they say they find nothing. But when we
8 were on the land we see what it is. And in previous
9 reports there are lo'i terraces. There is a wall in
10 Exhibit 5. And I want to talk about that first. This
11 is what I brought these pictures for. (off mic) How
12 should I allow you to see this?

13 VICE CHAIR HELLER: If you just hold it up
14 I think we can see it.

15 MR. MENCHING: Use the microphone.

16 THE WITNESS: This is the report Exhibit 5.
17 And here is the wall.

18 MR. GEIGER: I apologize. I'm going to
19 have to object. This was brought up as part of her
20 public testimony last time. Exhibit 5 was part of her
21 public testimony last time. So I would object as this
22 is cumulative.

23 MS. BOLOMET: But not the pictures. The
24 pictures weren't put in there.

25 MR. GEIGER: Again, it's cumulative and

1 it's not on this property so it's irrelevant.

2 MS. BOLOMET: It is on the property.

3 MR. GEIGER: We've already had testimony
4 that this particular report is not of matters that are
5 on this property.

6 VICE CHAIR HELLER: Your objection is
7 noted. Ms. Apana, I'll let you go on and explain what
8 the pictures are and tell us where you believe they're
9 taken, but I would like to remind you that we don't
10 need repetition of previous testimony. And we'd like
11 to try to keep things moving forward.

12 THE WITNESS: I didn't talk about this
13 particular exhibit.

14 VICE CHAIR HELLER: Go ahead right now.

15 THE WITNESS: I didn't talk about this. I
16 didn't talk about it.

17 VICE CHAIR HELLER: I'm just reminding you
18 that we want to move this process forward efficiently
19 and we don't need to repeat things. Go ahead.

20 THE WITNESS: I'm sorry. That's not a
21 repetition. All right. This is where this is on this
22 exhibit which I've not actually talked about with you
23 before. (off mic) And these are the pohaku
24 formations. I didn't bring you a picture. (on mic) I
25 didn't bring you these pictures last time, but I

1 thought it would be important for you to see these.

2 I spoke about finding a libation stone.

3 And here it is. You can see the swirls and the
4 markings on this stone. And here it is with the
5 smaller, the smaller hua stone inside. And this was
6 what I discovered.

7 And I want to show you the markings of the
8 tree where it was burnt but yet green on top, and the
9 trail of burn marks across what I see and feel is the
10 entrance to this particular place. And I can leave
11 this for you to see more of it.

12 When we look at it, when I look at it I see
13 something very significant here. And I know it is
14 because we were drawn to it. We were drawn to it and
15 as we were leaving, interestingly enough, the
16 property, we went by the neighborhood there.

17 And in the kitchen on the corner as we
18 walked by was a woman. She came out of her house.
19 And she said, "I knew you were coming." And we kind
20 of looked and said, "You did?" I actually have met
21 this woman before once.

22 She said, "Yes. On the night of the big
23 fire in the tree I knew you were coming. So I've been
24 waiting for you." And this woman happened to be one
25 of the descendants of the Kamehamehas. And she is

1 there -- she's there unofficially at the edge of this
2 property watching over it. So thank you for allowing
3 me to share my story with you.

4 I'll go back to the Archaeological
5 Assessment. I told you last time that the LCA numbers
6 do not match for this property and what is on the
7 Archaeological Assessment. That should be a big clue
8 that it's not adequate.

9 On Page 15 of the Archaeological Assessment
10 is a map of Makila and the Kaua'ula Stream. And I
11 know most of you are not from here. That's way far
12 away. Unless it was talking about connectivity of the
13 Kahoma River, the Kahoma Stream with the Kaua'ula
14 Stream and down to Makila area, which is not mentioned
15 in the Archaeological Assessment. I'm not sure why
16 it's in there because that's not from this property.

17 In Appendix A the data there in the -- is
18 mostly about Makila properties. So I don't know if
19 something happened and it got mixed up. But it is
20 totally inadequate.

21 And if you ask me as a practitioner, as a
22 person who really cares about the island I live on and
23 cares about my culture, I'm greatly damaged every time
24 a piece of work is put before a Commission as credible
25 to represent what is culturally there at present. And

1 that's wrong. That happens often. And this one is so
2 very wrong even in location. It is totally
3 unacceptable.

4 And if you go by the Napa'akai case you
5 would have to determine what are the, what is the
6 cultural damage and effects of allowing this to go on?
7 And I'm telling you right now there's a great, a great
8 damage to all of the Hawaiian people if you allow this
9 kind of reporting to be accepted.

10 As I listened to the Petitioner's people
11 they say that this land is not suitable for
12 agriculture. And yet in history this is a land rich
13 with kalo fields. In the CIA interviews the men talk
14 about having to go there to work in the lo'i as part
15 of school. And yet they say it's not suitable,
16 there's no water.

17 The Archaeological Assessment doesn't go
18 deep enough to go below the fill to find the lo'i
19 terraces. And now when you go to our own Maui County
20 Water Works, this is the map, and you're probably
21 wondering why I did this. But it really angers me
22 when you ask me to raise my hand and say, "Will you
23 tell the truth?" And I say "I will" and then the
24 Petitioner can put in and say whatever he wants to
25 even if it's not true.

1 And if you look at these maps, which were
2 obtained from the Public Works Department, there are
3 pipes. There are pipes and there's drainage. And
4 what does that say? That says there's water on the
5 property. There was sugarcane there.

6 The Kahoma Stream Flood Control project.

7 The rights of the kuleana on this Project
8 have been very violated. The stream has been taken
9 away with no replacement of water, no ability to
10 maintain lifestyle.

11 In the past a war was fought where the
12 water was diverted, where the water was not allowed to
13 go into places where the food was grown, where the
14 people lived. And the victor? The person who took
15 the water.

16 And this is exactly what's happening now.
17 They're going to lose -- the Petitioner's -- these
18 land development companies are allowed to come before
19 you with their petitions. But you can only go by what
20 is your mandate.

21 And you are mandated to uphold our water
22 rights. You are mandated to uphold the rights to
23 practice our culture, Article XII Section 7. I ask
24 you to please do this. This Archaeological Assessment
25 is totally inadequate. Thank you very much.

1 VICE CHAIR HELLER: Parties, questions?

2 MR. GEIGER: Certainly. Ms. Apana, I want
3 to make sure I understand your testimony here today.
4 You showed the Commissioners some photographs and you
5 referred to a diagram that's in the lower right corner
6 of the board, correct?

7 THE WITNESS: Yes.

8 MR. GEIGER: And that you said was, I
9 believe, Exhibit 5. Is that right, what you called
10 it?

11 THE WITNESS: I believe so.

12 MR. GEIGER: Actually, take a look at it.
13 I believe you'll find it's figure 7 if you go take a
14 look at the document that you have.

15 THE WITNESS: I don't have a --

16 MR. GEIGER: It's right there in front of
17 you, Ma'am. Go ahead and take a look at the board.
18 Doesn't it say at the bottom "figure 7"?

19 THE WITNESS: (off mic) I may be wrong, but
20 I think the figure 7 comes from the report.

21 MR. GEIGER: Doesn't the document that's in
22 front of you say "figure 7 site 1203 features F2H"?

23 THE WITNESS: Is this is a Xerox copy of
24 the report?

25 MR. GEIGER: That's not my question, ma'am.

1 My question is: Doesn't the document say "figure 7
2 site 1203 features F2H"?

3 THE WITNESS: (off mic) Figure 7.SPE 1203,
4 features F2H.

5 MR. GEIGER: Right. And that's page 24 of
6 a SHPD report No. M231, correct?

7 THE WITNESS: I can't read this here.

8 MR. GEIGER: Sure. Actually it's up to the
9 top left. Do you see the M231 at the top left?

10 THE WITNESS: I don't.

11 MR. GEIGER: Okay. You don't have your
12 glasses. Okay. Let me show you that you would agree
13 is says Archaeological Inventory Survey, Lahaina
14 Master -- you took it away from me so I couldn't read
15 it. Let me get to it -- Lahaina Master Plan Project
16 Site Land of Waihikuli, correct?

17 THE WITNESS: Yes.

18 MR. GEIGER: And did you read that entire
19 report before you attached a portion of it and
20 provided public testimony?

21 THE WITNESS: (off mic) I actually read
22 just about all the reports in the SHPD. I cannot tell
23 you verbatim what it is but I have --

24 MR. HAKODA: Speak into the mic, please.

25 THE WITNESS: Sorry. I have read those

1 reports from the SHPD that I could get.

2 MR. GEIGER: My only question, though, was
3 with regard to this report M231, about which you
4 provided testimony to the Commission, you did read
5 that report in full, correct?

6 THE WITNESS: I do believe I did, yes.

7 MR. GEIGER: And you understand that that
8 report covered a very large project area --

9 THE WITNESS: Yes.

10 MR. GEIGER: -- but did not touch the
11 Project Area or the Petition Area that we're talking
12 about. Do you understand that?

13 THE WITNESS: I don't think so. I think it
14 did.

15 MR. GEIGER: If you look -- do you have a
16 copy of the report with you, the full report?

17 THE WITNESS: I do not.

18 MR. GEIGER: May I?

19 VICE CHAIR HELLER: Yes.

20 MR. GEIGER: So that the record is clear,
21 I've handed the witness a full copy of the report
22 M231. If you would, Ma'am, could you please take a
23 look at Page 3 of the report. Are you on Page 3?

24 THE WITNESS: Oh, sorry. Okay.

25 MR. GEIGER: Page 3 of the report is a map

1 of the Project Area, correct?

2 THE WITNESS: Right.

3 MR. GEIGER: And Page 3 of the report also
4 identifies the various sites that the archaeologist
5 found in this particular Project, correct?

6 THE WITNESS: Correct.

7 MR. GEIGER: And it also shows where Kahoma
8 Stream, is correct?

9 THE WITNESS: Yes.

10 MR. GEIGER: It also shows where the
11 highway is, where Mala Wharf is, et cetera?

12 THE WITNESS: Yes.

13 MR. GEIGER: Okay. Now --

14 THE WITNESS: Mala.

15 MR. GEIGER: Yeah, Mala Wharf down there at
16 the bottom going into the ocean. Do you see that?

17 THE WITNESS: Yes.

18 MR. GEIGER: Find site 1203. That's the
19 site you were talking about. Can you find it on the
20 map?

21 THE WITNESS: Yes.

22 MR. GEIGER: And that exists in a position
23 that's above the confluence or the joinder of Kahoma
24 Stream and Kanaha Stream, correct?

25 THE WITNESS: Can you show me?

1 MR. GEIGER: Sure. If I may, I've got a
2 highlighted copy of the map that I've provided to the
3 witness for review. On the highlighted copy that I
4 provided to you the Project Area was outlined in red,
5 and Kahoma Stream and Kanaha Stream were outlined in
6 green. Do you see that? And Kanaha Stream. Do you
7 see Kanaha Stream?

8 THE WITNESS: Where's Kanaha Stream? Okay.

9 MR. GEIGER: And then you would agree with
10 me, wouldn't you, that site 1203 is on Kahoma Stream
11 but above where Kanaha Stream and Kahoma Stream join,
12 correct? And you'd agree with me that site 1203 --

13 VICE CHAIR HELLER: I'm sorry, we can't
14 hear the witness.

15 MR. GEIGER: Oh, sorry.

16 THE WITNESS: I do agree with that.

17 MR. GEIGER: Okay. And you would agree
18 with me that the site 1203 that's shown on the map is
19 approximately at the same elevation as the Lahainaluna
20 School complex, wouldn't you?

21 THE WITNESS: No.

22 MR. GEIGER: Let me show you the
23 Lahainaluna School complex. You see where it says
24 Lahainaluna High School? Right there. It says
25 Lahainaluna High School. Do you see that?

1 THE WITNESS: I don't.

2 MR. GEIGER: You can't see it. That's
3 fine. You said you read the report. Did you
4 understand that in addition to the Project site they
5 also did an archaeological survey on a phase of the
6 Lahaina Bypass?

7 THE WITNESS: I do.

8 MR. GEIGER: And that's what it said in the
9 report. And if you look at the map you see what looks
10 like a little leg coming down that goes through where
11 site 1203 is. Do you see that?

12 THE WITNESS: Yes.

13 MR. GEIGER: Highlighted in red.

14 THE WITNESS: (off mic) Yes.

15 MR. GEIGER: You would agree with me,
16 wouldn't you, Ma'am, that that site 1203 that you've
17 identified as being on the property in fact is where
18 the Lahaina Bypass runs, isn't it?

19 THE WITNESS: No. I would have to read
20 this entire thing. I wouldn't have put it down there
21 if I thought it was up there.

22 MR. GEIGER: Do you have any information to
23 provide the Commission that the map that you've seen
24 which is part of the report upon which you rely is
25 inaccurate in any fashion?

1 THE WITNESS: I will come back and bring my
2 testimony to you.

3 MR. GEIGER: Well, obviously right now
4 we're asking the questions. So in response, you have
5 no information that that map --

6 VICE CHAIR HELLER: I think that's already
7 been asked and answered. Let's move on.

8 MR. GEIGER: Fine. I'll move on. Nothing
9 further.

10 VICE CHAIR HELLER: County? Any
11 questions?

12 MR. GIROUX: No questions.

13 MR. YEE: No questions.

14 VICE CHAIR HELLER: Ms. Lincoln?

15 MS. LINCOLN: No questions.

16 VICE CHAIR HELLER: Ms. Bolomet?

17 MS. BOLOMET: Yes, please.

18 VICE CHAIR HELLER: Go ahead.

19 MR. BOLOMET: The complex system that
20 Mr. Geiger was referring to came out of the report,
21 the PHR Report archaeological Inventory Lahaina Master
22 Plan. It was your Exhibit 5, is that correct?

23 MR. GEIGER: I'm going to object because I
24 didn't ask about that. I asked about the document
25 that's sitting on the chart which came out of M231 as

1 was indicated in her prior testimony and as she
2 admitted. So I would object. I didn't ask that.

3 VICE CHAIR HELLER: So noted. I'm going to
4 let you finish stating the question and then we'll
5 decide if it's relevant.

6 MS. BOLOMET: Okay. So this is from M231.
7 It's called the Archaeological Inventory Survey,
8 Lahaina Master Plan Project site. That's what is your
9 Exhibit 5, is that correct?

10 THE WITNESS: This one. Yes, it's from
11 that.

12 MS. BOLOMET: It's from that. And did you
13 put this in to corroborate with your Exhibit No. 1 to
14 show additional proof of what Exhibit No. 1 was
15 saying?

16 MR. GEIGER: I'm going to object. I think
17 a question could be asked as opposed to the questioner
18 testifying.

19 VICE CHAIR HELLER: Ms. Bolomet, try to
20 proceed by way of questions as opposed to statements,
21 but I'm going to allow this.

22 MR. BOLOMET: Okay. Can we please go to
23 your Exhibit 1 and below the map area there is -- it
24 has a description. Could you please read what the
25 description says? I think it's figure 2?

1 MR. GEIGER: You know, Chair, I apologize
2 but the record is going to be very unclear because I
3 don't know what Exhibit 1 is. I don't have an
4 Exhibit 1. And there's been no Exhibit 1 with regard
5 to her testimony today. So I would object.

6 VICE CHAIR HELLER: Ms. Bolomet, Exhibit 1
7 has not been addressed yet. Do you have any questions
8 that relate to what she testified about today?

9 MS. BOLOMET: Yes. We actually got it
10 stamped. And I believe Ms. Apana sent it by e-mail to
11 Mr. Geiger last week or the week before. It was the
12 stamped additional copies that were last -- at the
13 last hearing they were accidentally left on the chair
14 instead of included with her testimony.

15 So I took 'em in yesterday to make sure it
16 was included in her testimony. And prior to that
17 Ms. Apana sent out in an e-mail these missing
18 documents.

19 MR. GEIGER: I'm going to object because
20 there's no question there. There's just statements
21 from the questioner.

22 VICE CHAIR HELLER: So noted. Did we
23 receive an exhibit yesterday, Exhibit 1?

24 MR. HAKODA: Yes. It's been circulated,
25 included in your packet.

1 MR. GEIGER: Then I would advise that I did
2 not get an Exhibit 1 yesterday. So I'm not sure what
3 it is that's being referenced. (Document handed to
4 counsel).

5 MR. YEE: Chair, just for the record the
6 Office of Planning has not received any additional
7 exhibits to Ms. Apana. I assume it was submitted as
8 public testimony to the Commission, but the parties
9 apparently, at least the Office of Planning has it
10 (document handed to counsel) only just now. (audience
11 laughter)

12 MR. GEIGER: For the record I join with
13 Office of Planning. We were first handed this moments
14 ago.

15 VICE CHAIR HELLER: So noted. Ms. Bolomet,
16 I'm going to allow you to ask a question but please
17 put it in the form of a question and let's try to move
18 this along.

19 MS. BOLOMET: Okay. Could you please read
20 what I believe figure 2, read what it says next to
21 figure 2?

22 MR. GEIGER: Chair, again I apologize. But
23 if this has been submitted as part of the record in
24 public testimony, then it's cumulative for her to
25 continue to read.

1 VICE CHAIR HELLER: Right. Just asking her
2 to read what's in the document is not useful.

3 MS. BOLOMET: I'm trying to address the
4 fact that Mr. Geiger is saying that this is not in the
5 area, that it's in another area. And this refers to
6 where it is exactly along the Kahoma River. So that
7 we can show that this map and her testimony is
8 relevant to this site.

9 VICE CHAIR HELLER: I understand that. I'm
10 just asking you if you can ask a question other than
11 simply telling the witness to read a document.

12 MR. GEIGER: And I would note the Exhibit 1
13 that's referenced was not one that was testified about
14 today. The one that was testified about today was
15 report 231. This is report M79.

16 VICE CHAIR HELLER: Understood. I'm giving
17 her some latitude at this point.

18 MS. BOLOMET: If you go to -- at the top of
19 the report on your Exhibit 1 it says "Page 5" in the
20 upper corner.

21 THE WITNESS: Okay.

22 MS. BOLOMET: Does this -- under figure 2
23 does it say that it is located next to a railroad
24 bridge?

25 MR. GEIGER: Again, I'd object because this

1 is already in the record. So why are we having her
2 read something that's in the record?

3 THE WITNESS: I believe --

4 VICE CHAIR HELLER: Wait. Ms. Bolomet --

5 THE WITNESS: Sorry.

6 VICE CHAIR HELLER: -- if you have a
7 question other than what the document says, please ask
8 your question. If not we're going to stop here
9 because you're just asking her to read documents that
10 have already been submitted.

11 MS. BOLOMET: Okay. Is No. 16 the he'iau?
12 I don't know how else to ask this. Is this the
13 location that you're pointing to as being the he'iau?

14 THE WITNESS: Number 16?

15 MS. BOLOMET: On the map it's called
16 Page 5.

17 THE WITNESS: Can you show me. I can't
18 read the numbers.

19 MS. BOLOMET: Oh, that's right.
20 (approaching witness) You don't have your glasses.
21 Where it's circled here. This is No. 16.

22 THE WITNESS: (of mic) Yes. This is a
23 smaller schematic of the he'iau. I knew that -- I put
24 that in there and I believe that -- I believe that
25 the -- I don't know how, this really goes back to my

1 point that the reports are sometimes inaccurate; that
2 it must be in this particular map which I would find
3 very hard to read.

4 It's up at the confluences. But in this
5 one and this one it is where the railroad tracks are
6 and they're still there and just above it which would
7 put it down farther in the property which is exactly
8 where we found it.

9 And it's amazing that of all the sugarcane
10 growing and the fill that that's still there. There
11 must be a reason why it's still there. And I'm sorry
12 for the confusion. But I'm sure that this would have
13 been something that would be very hard for me to read.
14 I'm very sorry, Mr. Geiger.

15 VICE CHAIR HELLER: Any further questions?

16 MS. BOLOMET: Yes, I have another question.
17 On the third row of your picture board behind you, on
18 the third row of your picture board behind you, the
19 fourth picture in -- the fourth, yes. In the
20 background it shows buildings. What are those --
21 where are those buildings located compared to this
22 property?

23 THE WITNESS: (off mic) This is --

24 MS. BOLOMET: You need to use the
25 microphone.

1 THE WITNESS: That's the little area right
2 next to the Kahoma Flood Control Project. And you
3 look straight across from this place and you can see
4 those buildings that are there. If you look exactly
5 the other way you would see the neighborhood.

6 MS. BOLOMET: So you're standing on the
7 he'iau. Is that the Project site area?

8 THE WITNESS: Yes. Yes. That's between
9 that thing that was built, the concrete thing that was
10 built.

11 MS. BOLOMET: The channel. Are you
12 referring to the channel?

13 THE WITNESS: Yes. Probably just where the
14 stream used to be in that area.

15 MS. BOLOMET: And are you referring to the
16 industrial park or industrial buildings that runs
17 parallel to this Project site?

18 THE WITNESS: That would be the -- I think
19 that's the street right next door. You can drive in
20 on that side to this Project site.

21 MS. BOLOMET: Is that Keawe Street?

22 THE WITNESS: I don't know the name of it.

23 MR. BOLOMET: Can we now look at your
24 Public Works maps please? And can you go to
25 Exhibit 2, C-2. Can you?

1 THE WITNESS: All right.

2 MS. BOLOMET: I'm going to point you to the
3 upper left where it says "existing 4-inch waterline is
4 not part of county water supply system and is
5 abandoned." If you were to -- if you were to follow
6 the line down, diagonally down in that area, is that
7 area that you believe there's a spring that exists
8 under the fill that you're referring to?

9 MR. GEIGER: You know, Chair, I don't
10 recall there was any testimony this time about a
11 spring. This seems to be pulling up testimony from
12 the last time and asking further questions. So I
13 would object.

14 MR. GIROUX: Chair, the County would object
15 as speculation.

16 VICE CHAIR HELLER: Ms. Bolomet, this
17 should be following up on the testimony that she
18 presented today. Do you have questions on that topic?

19 MS. BOLOMET: Yes. Why did you put this
20 map in? What was the purpose of putting this map in?

21 THE WITNESS: Because of the waterline
22 supply shows me that there's water there. And I would
23 have to agree with you, James, (indicating Mr. Giroux)
24 that it would be speculation because I'm not an
25 expert. But I know that waterlines carry water in

1 them and they're not in the county system.

2 MR. BOLOMET: So can you tell me if the
3 Kahoma Stream was noted as being a seasonal or
4 intermittent stream?

5 THE WITNESS: At some point the Kahoma
6 Stream changed from being perennial to sometimes
7 there. And I myself have witnessed that in one day
8 that that channel is filled with water and then the
9 next couple days there's hardly anything there.

10 I don't know how it could change that
11 quickly. And I would have to say, as I've always
12 felt, and this is a speculation, that there's springs
13 there 'cause you can see by the way the pohaku are and
14 where the stream beds are that it was probably
15 something that went like this. (indicating) There's
16 got to be streams there.

17 And I know that Mr. Frampton said there's
18 not, but I can see the evidence of it. And I wonder
19 what this line is and how could that be. What is it
20 for? Only water goes in water pipes.

21 MS. BOLOMET: Okay. When you were speaking
22 about your water rights and your rights as kanaka
23 ma'oli, what makes you believe you have special rights
24 as a kanaka to have your water protected and to have
25 your cultural rights protected? Are there any laws

1 that do that?

2 THE WITNESS: I turned in laws from last
3 time Exhibit 8, allodial water rights.

4 VICE CHAIR HELLER: Ms. Bolomet, I think
5 we're going back to prior testimony. This is
6 cumulative of a previous hearing.

7 MS. BOLOMET: Okay. All right then. I
8 think I have everything covered.

9 VICE CHAIR HELLER: Any questions,
10 Commissioners? Okay.

11 COMMISSIONER INOUE: I do.

12 VICE CHAIR HELLER: Go ahead.

13 COMMISSIONER INOUE: I believe your
14 Exhibit 1 was taken from a report, I believe it's
15 Petitioner's Exhibit 39. I don't know if you have a
16 copy of that. But in that report this Exhibit 5 is
17 noted as a location on a figure 1 in that report. And
18 I wanted you to look at figure 1. I don't know if you
19 can get a copy of Exhibit 39.

20 MR. GEIGER: For the record I'll provide
21 the witness with a copy of looks to be Page 2 from
22 Exhibit 39 which has figure 1 Location Map of Kahoma
23 Stream Survey Area. If that's the map that the
24 Commissioner's referring to.

25 COMMISSIONER INOUE: Yes. If you could

1 look at that.

2 THE WITNESS: Okay.

3 COMMISSIONER INOUE: And I'm trying to
4 locate, I'm trying to help --

5 THE WITNESS: Okay.

6 COMMISSIONER INOUE: -- help us locate
7 what you're talking about in your figure 5 where it's
8 located. In figure 5 I believe it says site MAD5-7.

9 THE WITNESS: Yes.

10 COMMISSIONER INOUE: And if you'll refer
11 back to figure 1.

12 THE WITNESS: Okay.

13 COMMISSIONER INOUE: That location is
14 noted on the larger map. My question is is that
15 within the Project we're speaking about? Is that
16 located in the Project that we're speaking of?

17 THE WITNESS: I'm very poor with maps. Can
18 I come and you point it to me?

19 COMMISSIONER INOUE: Is that okay, Chair?

20 VICE CHAIR HELLER: Yes.

21 THE WITNESS: Sorry about that.

22 COMMISSIONER INOUE: On figure 1 I'm
23 pointing to Kahoma system MAD5-7 this area. I'm
24 referring back to your figure 2, the bigger and this
25 same site MAD5-7. This whole area is MAD5-7.

1 THE WITNESS: And this is on here?

2 COMMISSIONER INOUE: Yes, is on there.

3 VICE CHAIR HELLER: For the record when you
4 say "this is on here" it's unclear exactly what you're
5 talking about.

6 COMMISSIONER INOUE: Figure 2 is noted on
7 figure 1 as MAD5-7.

8 THE WITNESS: Okay. So you're asking if
9 this is in the Project.

10 COMMISSIONER INOUE: Yes.

11 THE WITNESS: (on mic) Thank you very
12 much. Okay. I have to look at this (returning to
13 witness table). I'm a little slow on directions and
14 maps. Excuse me. Where's the concrete channel? I
15 think it is but I wouldn't take my word for it 'cause
16 I'm not too ma'a on this one. I'm trying to figure
17 out with the streets where it is. But it appears to
18 me that it is.

19 COMMISSIONER INOUE: On figure 1, it
20 appears to be above the corner where the concrete
21 channel -- I'm sorry. I don't know what the other
22 line is so strike that question. Anyway, your answer
23 is that you think that this area is...

24 THE WITNESS: I'm going to have to say I'm,
25 I'm not sure where -- I think this is in the Project,

1 this area here. I'm not sure because I am not
2 familiar with this.

3 COMMISSIONER INOUE: Okay. But your
4 figure 5 that's part of your Exhibit 1, is the same
5 thing as this figure 2 in Petitioner's Exhibit 39?

6 THE WITNESS: In this figure 2 it refers to
7 the same area you mean?

8 COMMISSIONER INOUE: What I'm asking is in
9 your Exhibit 1 you took a portion of something that
10 looks like Exhibit -- Petitioner's Exhibit 39. Did
11 you -- is that where you got that map from?

12 THE WITNESS: This map came out of the
13 archaeology report or one of the reports, didn't it?
14 It may be to the same area.

15 COMMISSIONER INOUE: So you don't know if
16 you took it out of that report.

17 THE WITNESS: I don't think I took it out
18 of this.

19 COMMISSIONER INOUE: I'm sorry, out of the
20 Petitioner's Exhibit?

21 THE WITNESS: I think it came out of the --
22 out of the -- the one with that report that has the
23 pohakus marked off in circles like that.

24 COMMISSIONER INOUE: Okay. I'm just
25 trying to help ourselves locate what you're talking

1 about.

2 THE WITNESS: I know. I'm sorry. I cannot
3 transfer the maps.

4 COMMISSIONER INOUE: Okay. Thank you.

5 THE WITNESS: Thank you very much.

6 VICE CHAIR HELLER: Commissioners, any
7 other questions? Thank you, Ms. Apana.

8 THE WITNESS: Thank you very much.

9 MR. GEIGER: Just a second, ma'am. So that
10 the record is clear I handed the witness a document
11 that had the Project Area highlighted in. We probably
12 should include that as part of the record so that it's
13 clear. We would offer that as Petitioner's
14 Exhibit 40.

15 VICE CHAIR HELLER: Have all the other
16 parties had a chance to see that? Let's see if
17 there's any objections first.

18 MR. GIROUX: County has no objections.

19 MR. YEE: Could we just have a
20 representation of what the document is.

21 MR. GEIGER: Sure. It is page -- it is a
22 Page 3 from report M231 on file with the State
23 Historic Preservation Division styled Archaeology
24 Inventory Survey Lahaina Master Plan, the Project
25 Site, the Land of Waihikuli Lahaina District Island of

1 Maui dated October 1989 by Paul H. Rosendahl, PHRI.

2 It was referenced in Ms. Apana's public
3 testimony last time. And the Project Area has just
4 been highlighted in red and the Kahoma Stream and the
5 Kahana Stream Channels were just highlighted in green.

6 MR. YEE: OP has no objection to admission
7 of the exhibit.

8 VICE CHAIR HELLER: Ms. Lincoln?

9 MS. LINCOLN: No objection.

10 VICE CHAIR HELLER: Ms. Bolomet?

11 MS. BOLOMET: May I see it? And what is
12 the purpose of putting this in? To show that where
13 the river's....

14 MR. GEIGER: The purpose was because the
15 witness was asked questions about it. So that the
16 record is clear we need to know what the witness was
17 shown. And so that's why we are offering it so that
18 the record is clear.

19 MS. BOLOMET: Okay. No objections.

20 VICE CHAIR HELLER: In the absence of
21 objection Exhibit 40 is admitted.

22 MR. GEIGER: And for the staff's purpose
23 what I'll do is I will take the original with me, mark
24 it as Exhibit 40, provide sufficient copies to all
25 parties and to the staff so that it can be provided to

1 the Commissioners. Thank you.

2 VICE CHAIR HELLER: Okay. Thank you,
3 Ms. Apana.

4 THE WITNESS: Thank you.

5 VICE CHAIR HELLER: Is there anyone else
6 present who wishes to provide public testimony on this
7 docket? Hearing none --

8 MS. BOLOMET: Excuse me. We have some
9 farmers that would like to testify tomorrow, but
10 they're all working this morning. So they wanted to
11 make sure that there was going to be public testimony
12 tomorrow morning.

13 VICE CHAIR HELLER: We'll address that
14 tomorrow. Next item of business is any additional
15 exhibits. Mr. Geiger, do you have any additional
16 exhibits you're offering at this time beyond
17 Exhibit 40?

18 MR. GEIGER: No. I believe only
19 Exhibit 40, thank you.

20 VICE CHAIR HELLER: County?

21 MR. GIROUX: Not at this time.

22 VICE CHAIR HELLER: OP?

23 MR. YEE: OP has no exhibits although just
24 for the record was Exhibit 39 admitted? I think it
25 was submitted. It was the full archaeological report

1 that was referenced. And I remember you would offer
2 to submit it later.

3 MR. GEIGER: I believe I submitted it but
4 if I didn't offer it I'd offer it now just to make
5 clear because it was referenced in cross-examination
6 last time. So that's the purpose for that.

7 VICE CHAIR HELLER: Right. I believe it's
8 attached to Petitioner's Rebuttal Exhibit List filed
9 on August 31st?

10 MR. GEIGER: It is. But for the record we
11 would offer it in case it hasn't been formally
12 offered. Thank you, Counsel.

13 VICE CHAIR HELLER: Are there any
14 objections to Exhibit 39?

15 MR. GIROUX: No objections.

16 MR. YEE: No objections.

17 VICE CHAIR HELLER: Ms. Lincoln?

18 MS. LINCOLN: No.

19 MS. BOLOMET: No.

20 VICE CHAIR HELLER: Exhibit 39 is received
21 if it hasn't already been. OP, you said you had no
22 additional exhibits?

23 MR. YEE: No additional exhibits.

24 VICE CHAIR HELLER: Ms. Lincoln, any
25 additional exhibits?

1 MS. LINCOLN: No additional exhibits.

2 VICE CHAIR HELLER: Ms. Bolomet?

3 MS. BOLOMET: No additional exhibits.

4 MR. GEIGER: As a housekeeping matter,
5 Chair, I think you'll recall we had an issue with
6 Exhibit 11 last time that was offered in connection
7 with the amended testimony, I believe, of Michael Lee.
8 I indicated that I did not believe we had received it.
9 You asked me to go back and check.

10 We did receive it, but I would object on
11 the grounds that it's irrelevant. That particular
12 document was a 2-page letter concerning constitutional
13 rights for criminal trespass involving--

14 VICE CHAIR HELLER: Mr. Geiger, there's no
15 offer pending at the moment.

16 MR. GEIGER: Well, I believed it had been
17 offered last time. And my objection was that, first,
18 I hadn't received it. Now I have an objection that
19 it's irrelevant to this proceeding.

20 So if the Commission believes it has not
21 been accepted, and not been offered, then I'll hold
22 off until it is offered. I just want to make sure
23 that my objection is not waived.

24 VICE CHAIR HELLER: Understood. Are you
25 ready to proceed?

1 MR. GEIGER: We are. We'd call Heidi
2 Bigelow.

3 VICE CHAIR HELLER: Go ahead.

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

7 THE WITNESS: I do.

8 VICE CHAIR HELLER: Please proceed.

9 DIRECT EXAMINATION

10 BY MR. GEIGER:

11 Q Would you state your name, Ma'am?

12 A My name is Heidi Bigelow.

13 Q Ms. Bigelow, who do you represent?

14 A I represent Kahoma Residential, LLC and
15 West Maui Land Company.

16 Q And you are the Petitioner's representative
17 in this matter?

18 A Yes.

19 Q Did you provide written direct testimony in
20 this matter dated June 28, 2012?

21 A I did.

22 Q And do you have any corrections that you
23 wish to advise the Commission about the written
24 testimony?

25 A I do. Page 9 line 18 change "February" to

1 "March" 2008. Also Page 12 line 16 the word "process"
2 should be the word "prices". And that's it.

3 MR. GEIGER: Okay. With those corrections
4 we would offer the written direct testimony as
5 corrected as our next exhibit I guess.

6 VICE CHAIR HELLER: Any objections?

7 MR. GIROUX: County no objections.

8 MR. YEE: No objection.

9 MS. LINCOLN: No objections.

10 MS. BOLOMET: No objections.

11 VICE CHAIR HELLER: Proceed.

12 Q (By Mr. Geiger): As we've done in the
13 past, without reading your testimony could you please
14 just highlight your testimony to the Commissioners.

15 A Okay. Kahoma Residential is an infill
16 Project in West Maui that the developer has been
17 pursuing for over 8 years. The site selection for the
18 process came about after an unsuccessful attempt at a
19 50 percent affordable project located more towards
20 the south across from Puamana. That Project was
21 started in 2003-2004 -- or denied in 2003-2004.

22 The community felt that, although they
23 acknowledged the need for affordable housing in West
24 Maui, they felt, the site, former site, was not
25 appropriate because it wasn't close to Lahaina Town,

1 schools and jobs. So out of that we looked for a site
2 that was closer to schools and jobs and more of an
3 infill project.

4 And thus we found this 16.7-acre parcel.
5 The parcel is a long, linear parcel. It's surrounded
6 by urban uses. And it's not well suited for
7 commercial agriculture. But we felt it was
8 appropriate for a residential subdivision.

9 The initial site studies confirmed that the
10 residential subdivision made sense on the parcel not
11 only for the subdivision itself but also for adding
12 connectivity to the community.

13 After the initial site studies the
14 developer contacted potential partners with the goal
15 of offering a wider range of affordable housing
16 projects. Initially we had Habitat and Lokahi in the
17 Project. Unfortunately Lokahi had to pull out. They
18 pulled out of all their projects in 2010.

19 The site had to be reconfigured and Habitat
20 went from 4 units to 10. And the West Maui Land will
21 develop the remaining 58. I think that's about it.
22 Basically the Project, I believe it's a good Project
23 for the West Maui community offering 68 families with
24 a pretty wide income range the opportunity to own a
25 home. Thank you.

1 Q Heidi, I'm going to have some questions
2 because there were some questions that earlier
3 witnesses had directed to the developer's
4 representative and that's you. So we're going to try
5 to go through and answer some of these questions.

6 Let's first focus on the affordable because
7 I think there's been some questions on exactly how
8 that's gonna work so far as how long the marketing is,
9 who the people who are going to be sold to and how
10 people are going to qualify. So could you address
11 that, please.

12 A The Project is being offered -- Habitat
13 homes are those -- you received testimony in that,
14 below the 80 percent. So I'll just address the West
15 Maui Land component which is 80 percent to 160 percent
16 of HUD as defined by the Workforce Housing Ordinance
17 for the Maui County.

18 The marketing period in the county's
19 resolution for the Project they capped the sales
20 prices at the 2011 prices that are posted on the
21 Department of Housing and Human Concerns' prices or
22 the price at the time when we go to market, whichever
23 is lower.

24 And those prices are capped for a 10-year
25 period. We cannot market above that or to -- the

1 prices are capped for that 10-year period.

2 Q In other words, you can't sell it for
3 higher than that price, nor can you market it to
4 anyone who would not qualify under the HUD guidelines?

5 A That's correct.

6 Q Now, I think there were also some questions
7 about what sorts of, for lack of a better term, relief
8 that the developer might have received under the
9 affordable housing review.

10 Now, in the resolution could you explain to
11 the Commission what relief, if any, the developer
12 received because it was an affordable housing Project?

13 A The primary relief we had was the permit
14 fees for the Project. Everything else, the roadway is
15 all built to county standards. So we did not ask for
16 any additional relief other than park fees -- not park
17 fees -- permit fees.

18 Q There were also some questions about the
19 educational fee. So could you please explain to the
20 Commission, first of all, how the educational fee
21 works and secondly how buyers might be informed about
22 that?

23 A The developer has agreed to pay the State
24 Department of Education their assessment, their impact
25 fee in West Maui. Impact fee is \$5,778 per unit

1 that's built. The developer will pay for, the total
2 of that for the Project which is \$392,900.

3 We will pay that for any additional units
4 the lots that are permitted 'ohanas. At the time the
5 permit is pulled, the 'ohana, whoever is getting the
6 permit for the 'ohana will need to pay that additional
7 \$5,778 fee.

8 And the buyers will be Noticed in the sales
9 contract and it will also be a deed restriction
10 notifying any of the lots that have, allow 'ohanas.

11 Q There have been some questions about the
12 roadways both onsite, which would be the internal
13 roadway and the offsite improvements. First, on the
14 onsite could you tell us a little bit about the
15 roadways, what's going to happen with these?

16 A The onsite roadway exceeds the county's
17 standards. It's a 58-foot right-of-way. It has a
18 20-foot travelway with paved and striped bike lanes on
19 either side and on-street parking with intermittent
20 planters, pop-outs to add some relief and slow down
21 traffic. Then you have a 6-foot sidewalk on each
22 side. So it goes above and beyond the county
23 standards.

24 Q What about the offsite improvements?

25 A The offsite, which is Kahua Street or Mill

1 Street, the developer is putting down a 20-foot
2 travelway with 3 to 4-foot shoulders on either side.

3 Q There were some questions with regard to
4 the sustainability, what might be provided so far as
5 the sustainability for this Project. Could you
6 address that?

7 A As an affordable housing Project we are
8 somewhat -- we need to keep in mind the cost for the
9 Project, but we will be installing Energy Star
10 appliances, LED lighting, solar water heating and
11 insulation in the ceilings and walls.

12 Q What about photovoltaic? Anything for
13 that?

14 A We are looking at stubbing out for
15 photovoltaic because the grid doesn't always let
16 people connect, so it's not a given.

17 Q So that's something that will be reviewed
18 as the Project goes on.

19 A Yes. In addition we will be doing low-flow
20 water fixtures as well.

21 Q Okay. There were some questions about what
22 sorts of restrictions might be included in the CC&R's
23 the covenants, conditions and restrictions. Could you
24 address that, please.

25 A As far as drainage no lots will be allowed

1 to change or increase flows onto roadways or existing
2 lots. The construction will need to be completed in
3 18 months on the physical house except for Habitat.

4 Setbacks. We have increased the setbacks
5 15 foot -- front setbacks for house and 20 feet for
6 the garage to allow additional parking for two cars.
7 If an 'ohana is built, an additional stall will need
8 to be provided for the 'ohana within the physical
9 property.

10 For lots 32 through 54 that abut the
11 existing residential there's a 20-foot rear setback to
12 allow some separation between the existing lots and
13 these lots. And also down-shielding lights.

14 Q You mentioned "drainage". And at the last
15 session there were some questions of the engineer
16 concerning water quality and drainage. Has there been
17 any update with regard to the county's rules
18 concerning that matter?

19 A Yes. We received a copy of the draft rules
20 for the stormwater quality post-construction. And we
21 had the -- well, first, the county will be -- we were
22 noticed that county will likely be adopting them
23 within about 45 days to 60 days before the Project is
24 initiated.

25 And we had the engineer take a look at the

1 draft plans, or draft rules, to look at the impacts
2 and mitigation measures for our Project. They
3 reviewed our current drainage basin capacity and found
4 that it was adequate and met the requirements under
5 the new rules because the drainage basin essentially
6 will catch enough stormwater. And it will allow it to
7 drain, percolate, evaporate before it essentially for
8 all the smaller storm events and not allow any direct
9 flow into the flood control channel.

10 Q And these are the water quality rules that
11 are being adopted that are in addition to the existing
12 drainage rules, correct?

13 A Right.

14 Q Okay. Finally, I think there were some
15 questions about the relationship between Kahoma
16 Residential, Kahoma Land and West Maui Land. So you
17 might want to, if you could, address that for the
18 Commission.

19 A Kahoma Land, LLC was the original purchaser
20 in 2000 of this parcel and more mauka parcels. I
21 think they totaled about over 2,000 acres. The
22 subject parcel is a 16.7-acre portion of that. In
23 order to process this Project we, the Project was then
24 deeded to Kahoma Residential, LLC.

25 Then West Maui Land, upon receipt of

1 entitlements, will purchase the parcel and develop the
2 Project.

3 MR. GEIGER: Heidi, thank you. Is there
4 anything else you want to let the Commissioners know
5 before the rest of the people start asking questions?

6 THE WITNESS: No.

7 MR. GEIGER: We'd pass the witness.

8 VICE CHAIR HELLER: County?

9 MR. GIROUX: Thank you, Chair.

10 CROSS-EXAMINATION

11 BY MR. GIROUX:

12 Q Heidi, you were asked about the
13 modifications that were included in the resolution
14 that adopted the 201-H Project.

15 A Yes.

16 Q And you're aware of all of the
17 modifications that were included in that resolution?

18 A I am.

19 Q Would the developer have any objections of
20 including all of those as part of the conditions of
21 the Land Use Commission proceedings?

22 A No, we would not.

23 Q And the developer doesn't see any problems
24 as far as it being able to meet these conditions?

25 A At this point, no.

1 Q Just to highlight No. 7. The Lahaina Waste
2 Water Reclamation Facility talks about a fair-share
3 contribution. The developer is willing if necessary
4 to contribute to that.

5 A Yes. I believe that, Counsel, the
6 calculation was somewhere between 9,000 to 10,000 a
7 lot. If in the event that the fee is charged we will
8 pay it.

9 MR. GIROUX: County has no further
10 questions.

11 VICE CHAIR HELLER: OP?

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q Thank you, Ms. Bigelow. And I appreciate
15 many of the answers you gave today. I do have a few
16 general and a few specific questions. First of all,
17 you're familiar with the Final Environmental
18 Assessment for this Project, correct?

19 A Yes.

20 Q Can you tell the Commission that you'll be
21 implementing the mitigation recommendations of your
22 consultants or an equivalent mitigation or perhaps
23 even better mitigation, but one of those three would
24 be implemented for this Project?

25 A Yes.

1 Q And have you had an opportunity to review
2 the Office of Planning's testimony in this case?

3 A I have.

4 Q Have you seen the Office of Planning's
5 proposed conditions?

6 A I have.

7 Q Are there any of those proposed conditions
8 that you were in disagreement with?

9 A No.

10 Q Thank you for your testimony regarding
11 sustainability. I just want to go through them. One,
12 I think, as you said, there would be -- let me
13 backtrack a step.

14 Has there been any further clarification as
15 to how many homes or how you will decide how many
16 homes will be constructed by the company versus how
17 many lots would be sold?

18 A We're trying to allow as much flexibility
19 in the Project as we can. We will put, basically put
20 a notice in the newspaper. And when the applicants
21 come in they can let us know what their preference is,
22 if it's a 2-, 3-, 4-bedroom home or a vacant lot.

23 And then we'll provide a selection of lots
24 for them that would meet as close to as possible their
25 requirements.

1 As far as the numbers of vacant lots, there
2 have been no real projects in West Maui Land that
3 offer vacant lots. So we couldn't get a very tight
4 estimate, but we believe it will be a minority. The
5 majority of this market we believe would want turn-key
6 homes.

7 Q So it's your intention, then, assuming that
8 people do want the homes, to be constructing homes for
9 this Project?

10 A For the most part, yes. For the ones that
11 want homes, yes.

12 Q So for the ones who do want homes let me go
13 through the sustainability measures you referred to.
14 One was that there will be Energy Star appliances?

15 A Yes.

16 Q Another was that you would put in LED
17 lighting, is that right?

18 A Yes, low heat lighting, energy efficient
19 lighting.

20 Q You'd be using solar water heating.

21 A Yes.

22 Q Also you said they'd be stubbed out for
23 photovoltaic. Is that the same as the term "PV
24 ready"?

25 A Yes. PV ready.

1 Q You also mentioned insulation in the
2 ceilings and walls. Did you have a particular rating
3 you were intending to comply with?

4 A I don't know the direct number, but it will
5 be, you know, R-11 I think. I don't know the exact
6 number.

7 Q Would it be your understanding this would
8 be of a higher insulation rating or a better
9 insulation rating than would be otherwise required in
10 county ordinances?

11 A I don't know, but we will be insulating.

12 Q Do you have any plans for either dual pane
13 windows, in other words, that would reduce the heat
14 intake?

15 A We could look into either dual pane or
16 tinted.

17 Q Are you going to be looking into whether
18 things like fans or other means to avoid air
19 conditioning would be something to be reviewed?

20 A Yes, fans can be installed.

21 Q And that's a fairly low cost measure?

22 A Yes.

23 Q Is it your intention to dedicate the
24 internal roads?

25 A It is.

1 Q So the roads, then, will be built to, I
2 think as you said, to either meet or exceed county
3 standards.

4 A They'll be exceeding county standards.

5 Q Then you will be complying with the
6 proposed low-impact development drainage requirements
7 or standards that the county is currently proposing,
8 correct?

9 A Yes.

10 Q And that's based upon the over-construction
11 or the large capacity of the retention basin.

12 A Right. The basin is over -- it's sized for
13 a 50-year, 1-hour storm. And the smaller storm events
14 it'll capture the majority of the water and retain it.

15 Q I'm sorry. I forgot one other issue about
16 streets. Regarding the Kahua Street improvements,
17 these improvements will be completed prior to
18 occupancy of the first unit, correct?

19 A Yes.

20 Q And, finally, with respect to the 10-year
21 requirement -- to offer the prices for 10 years.
22 That's 10 years from when? Do you know?

23 A I would have to look at the resolution.
24 (pause) According to the county resolution it will
25 commence at final subdivision approval.

1 Q In terms of process where would the final
2 subdivision approval occur? After what? After you
3 finish the construction? When would that occur?

4 A It could occur either as a bonded final
5 subdivision or when the streets and stuff are
6 completed.

7 Q So either when you've dedicated the money
8 or actually completed the infrastructure final
9 subdivision approval would occur.

10 A Yes.

11 MR. YEE: Thank you. I have no further
12 questions.

13 A Thank you.

14 VICE CHAIR HELLER: Ms. Lincoln.

15 CROSS-EXAMINATION

16 BY MS. LINCOLN:

17 Q First, I have some questions regarding your
18 statements that you just made now.

19 A Okay.

20 Q You said that the ones that you are going
21 to be building will be built to sustainability with
22 all the requirements. When you sell just a lot will
23 that be required of those people as well? Like, is
24 that going to be part of their....?

25 A No.

1 Q And you don't really have, like, a set,
2 like, you're estimating that you're going to be
3 building most of 'em, but you don't really have any
4 kind of thing in writing. So we don't know in reality
5 if you're gonna build eight and the rest of the 50 of
6 'em are gonna get built. And we don't know if they'll
7 be to the sustainability standards that you'll be
8 issuing?

9 A I believe my statement was that the
10 majority would be turn key homes based on the market
11 studies. And that the minority -- and again we
12 probably estimated between 5, 10 will be vacant lots.

13 Q Okay. But would there be a way to make the
14 vacant lots have to be sustainable, like when you sell
15 them just for energy efficient and the insulation and
16 all that? Could that be something that could be
17 included?

18 A At this point with the subdivision, no.

19 Q Okay. Regarding the retention basin. From
20 what I understand you had mentioned it, like, goes
21 into the retention basin. It percolates, sits there
22 and then eventually natural absorption takes it down,
23 is that correct?

24 A Yes.

25 Q Okay. During the rainy season would that

1 mean there could be standing water there for a while?
2 Could there be a mosquito risk? What would you do
3 for, to mitigate the mosquito situation that happens
4 when water sits?

5 A I'm not the Project engineer, but I know
6 there's several retention basins in West Maui and that
7 is not currently an issue.

8 Q Okay. Oh. And my other question was: You
9 mentioned about the subdivision that got put down at
10 Puamana, got denied there. Were the homes -- you said
11 partly there was, like, objection about its location
12 being about, what, 2 miles or a mile and-a-half from
13 the Lahaina Center.

14 Was the Puamana Homeowners Association or
15 any kind of organization like that also part of the
16 process for its denial? Would they be a mitigating
17 factor?

18 A The reference to Puamana, it was across the
19 street from the Puamana so it was just a location
20 reference. I believe the Puamana Homeowners
21 Association was not part of the process. They
22 objected to the building of the subdivision.

23 Q I'm sorry. They did or did not object to
24 it?

25 A They were against it.

1 Q They were against it. So I guess what I'm
2 asking was that part of the decision process to deny
3 them was because of...

4 A No. The primary reason for denying it was
5 the location.

6 Q Okay. All right. So now I'll start my
7 real questions. Those are my ones from that. Is the
8 proposed Kahoma Subdivision attempting to remove
9 16.7 acres of open space in the West Maui Community
10 Plan forever?

11 A It is proposing a residential subdivision.
12 And there will be just shy of an acre in park.

13 Q And in the 1995 County Council Planning
14 Committee they indicate that the tax map shows the
15 stream channel as county property. So how did it get
16 to the Petitioner in that 5-year period?

17 A Can you repeat that please.

18 Q In the 1995 County Council Planning
19 Committee -- I submitted the minutes -- on Page 25 it
20 states that the tax map shows the stream channel as
21 county property. When they were discussing this open
22 space they said that it was part of the county
23 property on the tax map.

24 So how did the Petitioner get it between
25 1995 and 2000? I'm just unclear of that.

1 A You're referring to the old stream?

2 Q The old stream where you're building this
3 property.

4 A There's a portion of the old stream that
5 runs along, between the residential lots when the
6 flood control channel, it diverted the stream. And I
7 don't know what the year was, but as part of the
8 exchange from Pioneer Mill with the flood control
9 channel with the county they did a land exchange. And
10 so the stream parcels were transferred.

11 Q So like a swap. I was just curious.

12 A There's still a portion of the old stream
13 that the county owns.

14 Q Okay. Yeah, because in that one it is said
15 it was part of the tax map for the county. So I was
16 just confused. Thank you. So you did, like, a land
17 swap for when you moved it?

18 A We did not. The prior owner did.

19 Q Okay. And they did that with the county.
20 Okay. Okay. So with the -- oh, the road that's on
21 the bottom, the one that's gonna be connecting onto
22 Keawe Street, I think they call it Mill Street or
23 Kahua Street, is that privately owned?

24 A Yes.

25 Q Okay. And are you buying it or how exactly

1 does that all work since it's privately owned?

2 A It would be an access easement.

3 Q Okay. So is there a way they can deny the
4 access easement? Is there a money transaction for it?
5 Like, what if you go through this whole thing. Could
6 the private landowner then go ahead and say, "Oh, I'm
7 not going to allow you to come through here?"

8 A The present landowner is Pioneer Mill
9 Company. And as part of the sale we have access
10 rights over that road. So no, he cannot deny it.

11 Q So forever and forever there's no chance
12 that that could get into any kind of litigation.

13 A No.

14 Q Okay. At the May 2008 community meeting
15 did anybody support this development proposal?

16 A Let me look at my notes. Okay. Most of
17 the people that showed up were concerned homeowners or
18 neighbors, residential lots. And a group of, I think
19 it's outside concerned neighbors in general. And
20 there was very little support for the Project.

21 Q Okay. So the first portion of the meeting
22 you would describe as the Hawaiian protestors? And
23 then they all got up and left. Then the remainder of
24 the meeting was the actual neighborhood. Do you
25 recall that?

1 A Yes. Initially a group of, as you call
2 them, Hawaiian protestors, came to the meeting,
3 claimed title rights, that there were iwi in the land.
4 They appeared at the 2008 meetings and none of them
5 have contacted us since.

6 Q And then the rest of the neighborhood for
7 the remainder of it complained about it. Can you show
8 one statement where one person said one positive thing
9 about wanting it to be there?

10 A I'm not sure which meeting.

11 Q The May 2008.

12 A Thus far we have had several, two community
13 meetings. And I know that some after hearing about
14 the Project there was support.

15 Q Okay. At that -- 'cause that's the only
16 one I could attend, so that's the only one I can speak
17 to. After listening to first the Hawaiians
18 protesting, then all the neighborhood, I made a
19 statement and that was not included in any of the
20 minutes given to the County Council or the State Land
21 Use.

22 Can you say why my statement was left out?
23 'Cause I did address the people running the meeting
24 and said, "You may want to make note of this."

25 A Did you provide written comments?

1 Q I did about the owl, but not about that.
2 What I did is I asked for a vote. "Is there anybody
3 here that's for this Project?" It was no. So I
4 turned to the developer and said, "You may want to
5 make note of that."

6 A Okay. I don't -- I trust you that that
7 happened, but I don't remember it. Our consultants
8 wrote the meeting minutes.

9 Q Oh, okay. Do they take complete minutes
10 like *she* does (indicating the court reporter) so we
11 actually could reference them?

12 A No.

13 Q Darn. Okay. That was my other thing. I
14 did verbalize or I believe I wrote, you have, like, a
15 comment sheet there. I wrote about the existence of
16 the endangered owl that was hunting and living out
17 there. Do you have that? I know I said it or I wrote
18 it about the owl.

19 A I don't have a written comment sheet.

20 Q There was a comment sheet there though?

21 A Right. But I don't have a copy of your
22 written comment sheet.

23 Q Okay. When the Petitioner had the soil
24 expert go out there and dig their trenches for testing
25 the soil, was an archaeologist present when that soil

1 testing was done? Because he said that would have
2 been the Petitioner's responsibility.

3 A The soil testing happened I believe in
4 2010. At that point the archaeological survey had
5 been accepted and there were no monitoring
6 requirements. So no.

7 Q Is there a reason why, if I want to build
8 an 'ohana on my property and dig anything, I have to
9 have an archaeologist? And just feet away you don't
10 have to have one?

11 A We completed an inventory survey. And it
12 was accepted by the State Historic Preservation
13 Division.

14 Q Okay. So it's not required. But any
15 building that goes on now they're going to require an
16 archaeologist to be on there.

17 A No.

18 Q Okay. That might have been OP's position
19 to have that. Okay. So there's not going to be --
20 when they're -- when they're building out there
21 they're not going to -- they don't have to have an
22 archaeologist on site when they're building just in
23 case they come across archaeological findings?

24 A For this Project an Archaeological
25 Assessment was completed. It was accepted by SHPD.

1 They have reviewed it both as a direct submittal and
2 also in the Environmental Assessment responded that
3 there's no monitoring requirements.

4 Q Okay. I'm confused. I know I read that
5 somewhere that they were going to require that. I
6 thought it was in Office of Planning. But, okay. I'm
7 sorry.

8 This is the question I asked the engineer.
9 And Mr. Geiger said I should ask you. On your
10 Exhibit 30, Petitioner's rebuttal exhibit, there is an
11 odd piece of land right abutting this property. Why
12 is that part of this, like, your rebuttal testimony?
13 Right at the top of the property there's that big
14 2.31 acres.

15 Why was that not, like, included in this
16 Petition? And why is it part of your exhibit?

17 A That goes back to the land ownership
18 question. The Exhibit 30 is the original deed for the
19 parcel back in 2008 to Kahoma Land Company. And
20 includes not only this parcel but all the parcels
21 mauka.

22 So if you go through all of the exhibits it
23 defines, describes all the parcels that were included
24 in the sale.

25 Q Okay. And that's owned by the same

1 Kahoma -- West Maui Land? I'm confused.

2 A Kahoma Land, LLC.

3 Q So they own that as well.

4 A They do, but it's not part of the Petition,
5 the Project Area.

6 Q Right. I'm just curious since they're
7 developers why haven't they developed that already?
8 Why are they trying to do the land before not even
9 developing the one they already have up there? 'Cause
10 it looks like it's zoned. There's a house up there
11 already so it looks like it's zoned for housing.

12 A That parcel is -- we looked at all the
13 parcels and the Project site was determined to be the
14 most feasible for the residential development.

15 The parcel that Ms. Lincoln is referring to
16 is mauka of the parcel right where, for those of you
17 that went on the site visit, right where the debris
18 basin, where the channel comes in, the debris basin is
19 there.

20 There is an LCA within that parcel 10 that
21 is owned by someone else. So, yes, there is a home
22 there but the surrounding land is zoned Agriculture.

23 Q Okay. So they can't build other homes. I
24 thought it was because of a house there that you guys
25 can put other houses, but you cannot?

1 A We do not own that house where the LCA, the
2 house is on.

3 Q I'm sorry. The other 2.301 acres that you
4 do own, is that zoned to be developed?

5 A It is zoned Agriculture and under the
6 agricultural ordinance, I believe, if it's two acres
7 there could be a house, farm dwelling built in
8 conjunction with farming.

9 Q Okay. Then the rest of the parcel of that
10 property 'cause that's just the one kinda, they call
11 it a construction easement, but there's quite a bit
12 more acreage that goes up along the flood channel?

13 A There are some parcels that go up along the
14 flood channel, some of which we have received title to
15 and others we have not. I don't know the acreage.
16 It's a bunch of small intermediate pieces.

17 Q Okay. So did you state that in August of
18 2000 Kahoma bought 1500 acres previously sugarcane
19 production and cattle? You wrote this in your written
20 testimony.

21 A Yes.

22 Q Okay. How much of that 1500 acres is in
23 active agriculture production today?

24 A We have Kahoma Land -- not the
25 Petitioner -- has some cattle and some gardens.

1 Q How many head of cattle?

2 A I do not know.

3 Q How much, like, when you're saying it's
4 1500 acres, would you estimate how many acres is
5 actually -- they bought 1500 so would you say half of
6 it?

7 A About 800 has been sold to other parties.
8 Of the 600 I don't know.

9 Q So you've developed ag communities in the
10 last 12 years or subdivisions. Is that what you're
11 saying? You sold parcels, like, for, I don't know if
12 you call 'em rural or ag communities. So like
13 Launiupoko, what would you call that?

14 A Launiupoko is an agricultural subdivision.

15 Q Okay. So you've developed those over the
16 last 12 years. But as far as just, like, trying to
17 do, like, active agriculture they're not real active
18 in trying to propagate crops or run head of cattle for
19 us to be sustainable food-wise.

20 A Are you asking in general?

21 Q Yes. The Petitioner in general because
22 this is a remnant piece. I just want to get a picture
23 of what is the Petitioner doing with all this ag land.
24 Are they developing it into ag subdivisions and
25 workforce housing?

1 Or are they trying to take this ag land
2 that they acquired, and are they trying to make us
3 sustainable by looking for viable commercial or
4 non-commercial, whatever works today for
5 sustainability for growing food?

6 A The Petitioner is West Maui Land Company.
7 West Maui Land Company does not own the lands that
8 you're referring to.

9 Q Okay. But Kahoma is -- Kahoma does.

10 A Kahoma Land, LLC owns the Kahoma parcels.

11 Q Well, you stated 1500 -- I'm just asking
12 about the 1500 acres.

13 A In my response I said we have approximately
14 600 acres. And there are cattle on the property. I
15 do not know what the head, how many head of cattle is.
16 I'm not doing the leasing. And we do have some
17 gardens up there. Again, I don't know the acreage.

18 Q So gardens. Okay. Your potential occupant
19 witnesses when given a choice prefer Launiupoko to
20 Lahaina for housing. Does the Petitioner have any
21 connections to that development or any nearby areas to
22 that development?

23 A Again, I referred to the Pu'unoa Project
24 which is right within what we call the Launiupoko
25 area. We attempted to do an affordable housing

1 project on that site and we were denied.

2 Q But my question is they do have land in
3 other areas that you could put this on? If it wasn't
4 denied you could have -- you have the Petitioner --

5 A If it wasn't denied we would have an
6 affordable housing project.

7 Q Okay. But you do have other land besides
8 that one. Just confirming that.

9 A West Maui Land or Kahoma Land does not have
10 any other land outside of this.

11 Q This is all they're going to have to be
12 able to develop? There's no other purview to do it
13 with any other, I don't know, Launiupoko, Olowalu,
14 whatever?

15 A We do -- West Maui Land does manage
16 properties for other entities, but we do not own the
17 land. We do have Olowalu Town which is or we don't --
18 that's a different developer, but there is some
19 affordable housing proposed there. And again, there's
20 no -- this Project is the most immediate and
21 potentially developable project in the near future.
22 The other projects would be years, years out.

23 Q I'm so confused on the West Maui Land and
24 the Kahoma thing. Are they by chance the same people?
25 It's just a different -- 'cause obviously behind an

1 LLC or behind a corporation or company are people.
2 Are they the same people, it's just different kinda
3 like...?

4 A Kahoma Land, LLC has about 20 different
5 members in that hui. And there are a few that overlap
6 in West Maui Land.

7 Q Okay. And you stated that West Maui Land
8 is confident it will meet the requirements imposed by
9 the lender. That was on Page 13. Did you say that?

10 A Yes.

11 Q Okay. What if they don't get funding or
12 for some reason are not able to financially finish the
13 Project?

14 A We will be -- we won't start the Project
15 without having assurance of funding.

16 Q Okay. And regarding the Habitat for
17 Humanity lots, is the Petitioner giving them to
18 Habitat or are they selling them to Habitat for
19 \$60,000 for four lots and then the rest would be at
20 \$120,000 as an estimate?

21 A The County Council adopted in their
22 resolution that the four Habitat lots would be sold
23 for 60,000 and the six would be sold for 120,000.

24 Q And you stated that that was, like, an
25 estimate based on the costs of what the lots are gonna

1 actually work out to be?

2 A Based on preliminary estimates which we
3 have now exceeded, those were the numbers.

4 Q Okay. And that's my point exactly. So
5 we've already exceeded and we haven't even started
6 this yet. So could the lots cost more if the
7 Petitioner has to pay for their fair-share of sewer
8 improvements and any other expenses related to this
9 property?

10 A No. We are bound by the county's
11 resolution to sell the lots for 60,000 and 120,000.

12 Q And then does Habitat have to pay the
13 \$5,778 school impact fee? Or is that covered in that
14 60 or 120 price?

15 A That is included in the price.

16 Q Okay. And then when does Habitat have to
17 pay you for those 10 lots?

18 A We can't transfer a lot until the
19 subdivision is complete.

20 Q But then Habitat will have to come up with
21 the money for all those 10 lots when the subdivision
22 goes through? Or do they collect when they sell the
23 lot?

24 A They will purchase the lots at subdivision.

25 Q Okay. And did we ever get any kind of a

1 thing from Habitat or is it part of your exhibit, I
2 don't remember seeing it, that Habitat has the
3 resources back up financially to their portion?

4 A Habitat is self-funded and they do have the
5 funds to complete this Project.

6 Q And that's in writing somewhere in these
7 documents?

8 A Um, I don't think so. I believe Sherry
9 Dodson in her testimony discussed Habitat and their
10 financial resources.

11 Q Okay. But yet they have no time limit on
12 them as far as to build the houses, because that's how
13 I understood it, that they had limited resources. So
14 they would only build them as they could afford them
15 and have...?

16 A Their building schedule is dependent on
17 having qualified buyers who are able to put in the
18 sweat equity and meet the requirements. So for them
19 they could immediately have 10 or they may lose one.
20 It's an unknown. So they requested relief from that
21 requirement.

22 Q So they could take up to 30 years to fill
23 up 10 houses if that's how long it takes them to find
24 the potential occupants and requirements?

25 A I would be surprised.

1 Q But --

2 A It's possible.

3 Q -- endless.

4 A Unlikely but possible.

5 Q The park lot you describe on Page 10 of
6 your statement, is that to service the entire
7 surrounding community?

8 A That's considered a neighborhood lot. We
9 did provide an access from the lower areas so that,
10 you know, people can come and use that park.

11 Q Okay. And can you please describe the park
12 features, like what's gonna be in the park?

13 A We had to evaluate that. The County Parks
14 Department would not take over the maintenance of the
15 park. And because this is an affordable housing
16 Project we kept the park improvements basically to
17 grass irrigation and some landscape features because
18 the affordable homes can't afford the maintenance or
19 insurance costs of any additional amenities.

20 Q Okay. Could you describe the park views?
21 Like what will it look like from there?

22 A It's abutting the channel so you could
23 conceivably look up and down the channel and see mauka
24 and makai.

25 Q But also it's surrounded by buildings and

1 industrial homes.

2 A The Project abuts the Kahoma Channel. And
3 across from the channel is an industrial park.

4 Q And that's where the park is located on the
5 property?

6 A The park is centrally located on the
7 property to service the neighborhood.

8 Q The neighborhood. Okay. Did the
9 Petitioner offer this land to the county for
10 \$3,340,000?

11 A Yes. A letter was written to the County
12 Council.

13 Q Okay. Why would this property be worth
14 \$3,340,000 when three comp sized properties sold at
15 Launiupoko for the 1 million, to the 1,400,000 range
16 in the last nine months?

17 A The cost of the park was established by
18 using the county's in lieu park fee. The Parks
19 Department can either tell a developer to build an
20 improved park or pay an in lieu fee. In West Maui the
21 in lieu fee for 500 square feet of improved park is
22 approximately 25,000. It's been as high as 27,000.
23 It's been lower in the last, about 24,000 in the last
24 three years.

25 So we use that number. And that number

1 comes to \$2.2 million an acre. And we used 10 percent
2 of that for land acquisition, and the 90 percent for
3 park improvements.

4 Q Okay. But you wouldn't be selling them a
5 park. You'd be selling them ag land.

6 A Exactly. That's why we only used
7 10 percent of the in lieu park fee.

8 Q So I just heard the figures. But wouldn't
9 you -- like, normally you can say, "My house is worth
10 this," but they normally look at comp sales when you
11 actually wanna -- I found that out trying to sell a
12 house. So even though you have a buyer who's willing
13 to pay that, it's still based on what the assessed
14 value is based on comp sales in that region?

15 A They would assess it based on area sales.

16 Q Okay. So the 1 million to 1,400,000 in the
17 last 9 months would be more in line with what that
18 sized parcel would sell for?

19 A I'm sorry?

20 Q So the 1 million to the 1,400,000 is more
21 of a realistic price of what comp sales for that sized
22 parcel of land 'cause there's three at Launiupoko that
23 sold that in the last 9 months. So that's what they
24 would look at as far as --

25 A No, they would look at other park sales to

1 the county.

2 Q Okay. Then you estimated the park cost as
3 much as \$16 million. But left as open space why would
4 it cost anything? Why would it cost that much?

5 A Again, I used the County's in lieu park
6 fees. And I also looked at the Kihei community park
7 that they built. I believe that's a 10-acre park in
8 Kihei. And the infrastructure was 13 -- I believe it
9 was 13 million when I checked what the contract was
10 for that park.

11 Q But if we left it just as open space that
12 wouldn't be a factor. We don't really -- that's
13 not -- like comparing apples and apples. We're not
14 comparing apples to apples by just leaving it open
15 space, is that correct?

16 A If it's open space it'll cost for
17 maintenance and insurance, and that sort of thing but
18 it will not be 16 million.

19 Q Right. Okay. And then who determined that
20 the county would have to purchase and maintain this
21 open space?

22 A There was a question that came up at the
23 council hearing what the developer would offer to sell
24 the county parcel for.

25 Q But at the community meeting that we had,

1 the informal one, it was stated that if the
2 neighborhood wanted it to be a park we had to go to
3 the county, but we don't have to go to the county. We
4 can go to anybody, is that correct? Doesn't have to
5 be county that funds the park?

6 A The county doesn't have to purchase the
7 parcel, no.

8 Q Okay. Thank you. My final question: If
9 the State Land Use Commission wants to uphold the
10 constitution of the state of Hawai'i's Article XI and
11 the West Maui Community Plans Open Space designation
12 and deny the Petition to the rezoned urban use, what
13 will the Petitioner do with this land?

14 A If this body finds that the parcel,
15 putting in a residential neighborhood in this parcel
16 is a matter of statewide concerns, we would look at it
17 and assess what the reason is behind the decision and
18 likely come back if it was something that we could
19 mitigate within a year.

20 Q I don't under -- what does "mitigate within
21 a year" mean? That means you can come back and do
22 this whole process again?

23 A Yes.

24 Q Okay. So that basically you're not
25 interested in the community having an open space and,

1 like, recreation area for the...

2 A Again, we believe that this is a benefit
3 for the West Maui community and the residents to own
4 their own homes. There are not many projects in the
5 near future on this. And that's essentially our
6 position.

7 Q Okay. I thought that was my last question.
8 So basically there was low income homes built in our
9 neighborhood. And I know three or four of those are
10 up for sale right now on the street below ours.

11 So it's new construction. It's been in the
12 last 10 years. So there has been, you know,
13 affordable housing put into our neighborhood, and the
14 townhouses below, the Weinberg property below that.

15 So if they don't process this and allow you
16 to, to build there, if they deny your Petition, then
17 what you're saying is unless the state declares
18 eminent domain you're not willing to work with anybody
19 to make it open space or park?

20 A I did not make that statement. I said we
21 believe the best use for this Project is a residential
22 unit. Of course if somebody came forward and offered
23 a reasonable fair price we would consider that if the
24 Project is not going forward.

25 MS. LINCOLN: Okay. Thank you. That's

1 all.

2 VICE CHAIR HELLER: Ms. Bolomet.

3 CROSS-EXAMINATION

4 BY MS. BOLOMET:

5 Q Ms. Bigelow, I'm still a little confused as
6 to what you do. You're the manager for West Maui
7 Land?

8 A I'm the Project Manager for West Maui Land.

9 Q So you know all aspects of the Project?

10 A Of this Project all aspects? I know enough
11 to, a little bit about each one, but generally I work
12 with the consultants and professionals.

13 Q West Maui Land is the management company.

14 A West Maui Land will acquire this property,
15 and be the developer.

16 Q But they don't currently own it.

17 A They don't currently own it. Kahoma
18 Residential, LLC owns the parcel.

19 Q So Kahoma, LLC is the company that owns
20 this land?

21 A Kahoma Residential.

22 Q Residential, who acquired it from Kahoma
23 Lands, is that correct?

24 A Yes.

25 Q So you -- I mean not "you" -- Kahoma

1 Residential paid money to Kahoma Lands for these
2 properties?

3 A Kahoma Residential, LLC is wholly owned by
4 Kahoma Land Company, LLC. The transfer was done for,
5 primarily for processing purposes so it would be
6 clearer that the Project is separate from the mauka
7 parcels. So it's a housekeeping measure.

8 Q Okay. And Kahoma Land you said bought
9 these properties as part of a bigger package.

10 A The 16-acre, 16.7-acre parcel was part of a
11 larger purchase.

12 Q Then why is it in Exhibit 12 that it's
13 showing that it was quiet titled? Because when you
14 quiet title, you're not buying, you're taking, is that
15 correct?

16 A You can quit claim or warrantee deed a
17 project. And whoever the buyer is can choose to
18 accept the quit claim deed. There's usually a lower
19 value associated with that. Or you can get a
20 warrantee deed if the Project has title.

21 The quit claim parcels in this -- the
22 16.7-acre piece is made up of -- there are several
23 Land Commission Awards within this Project. And two
24 of which did not have a, did not have a clear chain of
25 title.

1 So we did go through a quiet title process
2 on these two Land Commission Awards or one's a grant,
3 one's a Land Commission Award, within the 16.7-acre
4 parcel back in 2005, 2006.

5 Q And can you tell me which two parcels
6 you're talking about?

7 VICE CHAIR HELLER: Ms. Bolomet, before you
8 go too far down this road, I want to remind you at the
9 time you were allowed to intervene in this proceeding
10 we made it clear that this Commission is not
11 addressing issues regarding ownership of land.

12 MS. BOLOMET: What I'm trying to get to is
13 this Commission claims that West Maui Land and Kahoma
14 are the owners. And for that reason they can put in
15 the Petition. However, I keep hearing her saying that
16 they're not the owners.

17 So how can we have a Petition by non-owners
18 coming in, making a Petition? That's where I'm trying
19 to get the clarity. That's where my confusion is.

20 VICE CHAIR HELLER: I think the question
21 has been asked and answered as to who has title to the
22 land right now. If where you're going is a dispute
23 about who has title to the land right now, we're not
24 going into that. That's irrelevant.

25 MS. BOLOMET: I understand. But can I

1 continue to get clarity? Because if Kahoma Land is
2 the owners, why isn't Kahoma Land putting in this
3 Petition?

4 VICE CHAIR HELLER: I believe the question
5 has been asked and answered as to what entity holds
6 title to the land today.

7 MS. BOLOMET: Okay. So it's not
8 significant that they're claiming to have title to the
9 land or ownership, but these lands, some of these
10 lands in this parcel is currently in circuit court
11 being quiet titled? Which means --

12 VICE CHAIR HELLER: We are not going into
13 that. If you have questions on other topics go ahead
14 with your other topics.

15 MS. BOLOMET: All right. I guess we'll
16 move on.

17 Q So when I looked up who the, how West Maui
18 Land and Kahoma Residential and Kahoma Land were
19 connected, it said that the manager -- consistently it
20 said the manager was Peter Martin. So Peter Martin
21 runs this whole program, all these projects?

22 A He is the manager. He is the vice
23 president of West Maui Land Company. And he is one of
24 the managing members of Kahoma Lands and Kahoma
25 Residential.

1 Q Okay. All right. So you talked about the
2 EA, the Environmental Assessment. When you talked
3 about the Environmental Assessment was the assessment
4 done from the top of the property and how it would
5 affect all the way down to the sea? Or was it just
6 the 16.8 acres?

7 A The Assessment is project specific but also
8 looks at regional impacts.

9 Q In the EA, in the Cultural Assessment or
10 Impact Assessment, I did not see anything about how
11 the impacts of this Project would affect the cultural
12 practices of the people using the limu practices down
13 at the sea. Did I miss something in the EA?

14 A The Cultural Impact Assessment looks at the
15 immediate area. And as far as this Project and the
16 impacts on the limu, this Project is pretty far
17 inland. And I'm not sure if you could actually make a
18 complete determination on specifically this Project's
19 impact on the limu.

20 Q Okay.

21 VICE CHAIR HELLER: Ms. Bolomet, do you
22 have an estimate of how long this is going to take? I
23 just want to figure out how to schedule our lunch
24 break.

25 MS. BOLOMET: Hopefully 15 minutes.

1 Hopefully 15 minuses.

2 VICE CHAIR HELLER: Okay. Let's go ahead
3 and see if we can get it done.

4 Q (By Ms. Bolomet): Is West Maui Land,
5 Kahoma Residential and Kahoma Land, are you required
6 to follow the Hawai'i State Constitution Article XII
7 section 7 which is protecting Hawaiian cultural
8 rights?

9 A Yes, we are.

10 Q So if this property is shown to have an
11 effect on the limu practices down below, would you say
12 that there should have been or there should be a
13 continued study on those effects?

14 A Repeat the question.

15 Q If you are required to abide by Article XII
16 section 7, wouldn't it be true that your Environmental
17 Impact Study will have to show how your Project will
18 affect from the land to the sea, because it's all part
19 of an ahupua'a that goes from the mountain to the sea?

20 It's all interconnected by Hawaiian
21 cultural practices. It's not individual pieces. It's
22 all one in the same.

23 A Article XII section 7 I believe addresses
24 existing cultural practices and established cultural
25 practices. And as far to my knowledge there are no

1 existing or continued current cultural practice on the
2 Project site.

3 Q Would you be surprised that Mr. Lee here is
4 the practitioner, amongst many, that uses the limu for
5 medicinal purposes and for cultural practices?

6 A The limu is not on the Project site.

7 Q The limu is affected by the Project site.
8 How the runoff -- you have -- isn't it true that
9 you're going to have drained runoff?

10 A Currently the Project, the runoff from the
11 Project flows into the Kahoma Flood Channel or sheet
12 flows downstream. The Project will mitigate those
13 measures by installing a basin that captures up to
14 50-year, 1-hour storm and should mitigate any
15 downstream impacts on the limu.

16 Q Will that be a concretized basin? Or will
17 it be --

18 A No, it's an earthen basin so that the water
19 can percolate.

20 Q Okay. And the Water Commission Rules
21 174C-101 which, again, pertains to protecting Hawaiian
22 cultural rights for water, how is this Project
23 protecting the cultural practitioners to having access
24 to water for their practices?

25 MR. GEIGER: To the extent that this

1 question would involve Water Commission rules and
2 enforcement under the Water Commission we would
3 object.

4 To the extent that the question is being
5 directed to the witness with regard to Land Commission
6 and the things that the Land Commission has to review
7 obviously we'd let the witness answer.

8 So I just want to be clear that we have an
9 objection if this is being addressed for Water
10 Commission rule purposes as opposed to something else.

11 VICE CHAIR HELLER: So noted. If you can
12 answer the question go ahead.

13 THE WITNESS: The Kahoma flood control
14 channel diverted any stream flows from the Kahoma
15 Stream, the old Kahoma Stream, offsite onto this
16 Project. So we do not see any impacts onto waterways
17 within our Project.

18 Q (By Ms. Bolomet) Are you aware it's illegal
19 to divert water from the stream away from an area
20 where there is an old stream?

21 MR. GEIGER: Again, I'm going to object
22 because I believe that the statute that's being
23 referenced is specifically within the Water Code and
24 the Water Commission Resources' jurisdiction. It
25 wouldn't be within this Commission's jurisdiction.

1 VICE CHAIR HELLER: The objection is noted.
2 If you can answer the question go ahead.

3 THE WITNESS: The Kahoma Flood project was
4 done by the Army Corps of Engineers. We did not
5 divert -- the Petitioner did not divert the stream.

6 Q (By Ms. Bolomet): On this property there
7 is a he'iau. The he'iau goes from one end of the
8 property across from where the industrial park is, if
9 you look straight across, all the way to the road
10 there's corner stones to show where the he'iau is.

11 That is going right through your
12 subdivision. How will you be protecting this he'iau
13 under Article XII section 7 and still be able to put
14 up your subdivision?

15 MR. GEIGER: Okay. I'm going to object to
16 the extent that it assumes that it's been proven that
17 a he'iau exists. That's not consistent with the
18 testimony that's been received so far. To the extent
19 the witness can answer she can go ahead and answer.

20 MR. GIROUX: The County joins in that.
21 There's been no facts to that.

22 VICE CHAIR HELLER: We're not making any
23 ruling right now on whether or not anything's been
24 proved. I'm just for now allowing the witness to
25 answer the question.

1 THE WITNESS: According to our
2 archaeologist and our cultural -- and also individuals
3 who walked the site, there is no existing he'iau on
4 the Project.

5 Ms. Apana's testimony and the area she was
6 pointing to is up more mauka of the Project where the
7 two, Kahoma Stream and Kanaha Stream divert was up in
8 that area which is pretty far inland from the Project
9 Area.

10 Our archaeologist has been in touch with
11 Clare Apana and is trying to have them show them where
12 the site is, and has been unsuccessful so far in being
13 able to find the he'iau.

14 Q Is Clare Apana the lineal descendant of the
15 he'iau?

16 A Clare Apana provided testimony.

17 Q Okay.

18 A Regarding the site.

19 Q So in Hawaiian protocol are you aware that
20 it would not be proper to contact Clare Apana to show
21 him the site, but rather the kahu which she said who
22 it was in her testimony? Are you aware of that?

23 A No. But we're just trying to locate where
24 this potential site is, if it's on our Project or not.
25 We don't believe it's on our Project and we are

1 attempting to confirm that.

2 Q Are you aware that Michael Dega has
3 contacted me and that we are going to be meeting so
4 that I can show him where the he'iau is?

5 A Yes.

6 Q Okay. You talked about the water drain,
7 the drain-off, the wastewater and that you have
8 permits to, permits to, I guess, to not -- to go ahead
9 and put wastewater into the current Lahaina Waste
10 Management system, is that correct? You've been given
11 permits for that?

12 A Can you repeat that. You mixed "use" and
13 "drainage" and "wastewater".

14 Q Okay. So let's start with the wastewater.
15 Do you have permits that will allow you to, from this
16 Project, use the current Lahaina Wastewater Plant?

17 A We do not have permits to use the use of
18 the wastewater facility, but we do have assurance that
19 there is currently capacity in the Lahaina Wastewater
20 Facility.

21 If at the time the Project goes forward the
22 County Council has included in the resolution that we
23 would pay our fair-share contribution for each lot
24 that connects to the wastewater system.

25 Q Can you tell me how much the amortized

1 share for each lot would be?

2 A If there is a fee it would be, they
3 calculated just real quickly on the council floor
4 that it's between 9 and 10,000 a lot.

5 Q Are you aware that currently there's an EPA
6 enforcement action and pending Clean Water Act
7 litigation regarding the NPDES permit that allows
8 effluent pollutant loadings at Lahaina? And it will
9 not increase and it's currently overloaded?

10 MR. GIROUX: Chair, I'd like to object as
11 to facts not introduced in evidence.

12 MR. GEIGER: We would join also. I'm not
13 sure that this necessarily has relevance whatever
14 permits the county has. The question can be what
15 we've been told and what we understand.

16 MS. BOLOMET: This is relevant in that,
17 one, it was put into Robin Knox's testimony. And
18 second they're counting on that there will be
19 potential and capacity for their wastewater to go into
20 this facility.

21 However, the EPA is stopping the Lahaina
22 plant right now from accepting anything else 'cause
23 they're overcapacity.

24 So if they're getting a project approved
25 based on the fact that they're being allowed to use

1 this facility, it's false based on litigation that's
2 currently going on. So it does pertain to this
3 Project.

4 MR. GIROUX: Again, Chair, I'm gonna
5 raise my objection 'cause those facts have not been
6 substantiated.

7 MR. GEIGER: We would join. And also
8 that's just argument that you're hearing now. It's
9 not a question. It's a statement and -- it's not a
10 question.

11 VICE CHAIR HELLER: Ms. Bolomet, in asking
12 your question you're assuming certain facts. And we
13 have not received evidence as to those facts. I'm
14 going to allow the witness to answer this question.
15 Actually I'm going to do that after we take our lunch
16 break.

17 But when you ask the question, if you could
18 try to avoid assuming facts that have not been
19 demonstrated or shown in the evidence. That will
20 avoid these kind of objections and help us move along.

21 MR. BOLOMET: Okay. Thank you.

22 VICE CHAIR HELLER: Right now let's take a
23 1 hour lunch recess.

24 (Recess was held. 12:10-1:15)

25 VICE CHAIR HELLER: Okay. Back on the

1 record. Ms. Bolomet, I believe you were in the
2 process of questioning the witness.

3 MS. BOLOMET: Yes, thank you. I'm going to
4 try to refresh everybody and ask the question again.

5 Q This is relating to the LUC criteria for
6 amending urban boundaries. So the question is: Is it
7 true that public services and facilities, together
8 with improvements to be constructed, are adequate to
9 support the Project?

10 Is it not expected that the existing public
11 services and facilities will be unreasonably burdened
12 or impacted by the proposed development or its
13 classification?

14 MR. GEIGER: I'm going to object because
15 there's two questions there. If we could have the
16 first question and the second question would be
17 better.

18 VICE CHAIR HELLER: Let's take it in parts.

19 MR. BOLOMET: So should I say the first
20 part again?

21 VICE CHAIR HELLER: Please.

22 Q (By Ms. Bolomet): Is it true public
23 services and facilities, together with improvements to
24 be constructed, are adequate to support the Project?

25 A Yes, it is.

1 Q Is it not expected that the existing public
2 services and facilities will be unreasonably burdened
3 or impacted by the proposed development or its
4 classification?

5 A I do not believe they'll be unreasonably
6 burdened, no.

7 Q And what do you base your answer on?

8 A We've contacted the county, the various
9 departments within the county and state agencies that
10 oversee these projects. They've all indicated either
11 adequate capacity source or general approval.

12 Q Do you know what an NPDES permit is?

13 A Yes.

14 Q Could you please explain to us what it is?

15 A It's a pollutant -- National Pollutant
16 Discharge Permit for runoff waters.

17 Q Can you tell us what a UIC permit is?

18 A I'm not familiar with that acronym.

19 Q Do you know what a TMDL is?

20 A Again, I'm not -- if you know what the
21 acronym means and can give me that, I'm not familiar
22 with that acronym.

23 Q Okay. I have it here. I thought you would
24 know. The TMDL is the Total Maximum Daily Load. So I
25 asked you if you knew what the TMDL is for this

1 Project.

2 A In relation to what?

3 Q Your wastewater and your runoff, so the two
4 different...

5 A I believe those are in our engineering
6 report. I would need to look those up.

7 Q Can you look them up and tell us? Are the
8 two different? (Pause)

9 A Sorry, I'm not able to find the engineering
10 report right now.

11 Q Would it be in the EA?

12 A Yes. I'm looking in the EA but nothing's
13 page separated.

14 Q Because we couldn't find it.

15 A I'll go with your word that you can't find
16 it.

17 Q Doesn't it need to be in the EA?

18 A No. I believe the Wastewater and Water
19 Department would know what the demand would be.

20 Q For your Project?

21 A Yes.

22 Q Okay. So the UIC is the underground
23 injection control. Do you have permits for that?

24 A There is no underground injection on the
25 Project.

1 Q Okay. If the waste cannot -- if the
2 Lahaina Waste Management Plant is at overcapacity,
3 then sometimes they do the injection wells. So you
4 don't know anything about that?

5 MR. GIROUX: I'm going to object. I don't
6 think this witness has that information.

7 MR. GEIGER: I'd also object because,
8 again, this is as we were doing before. There's a
9 statement being made. There's no question being
10 asked. So it needs to be first phrased in the form of
11 a question.

12 And secondly it's assuming facts which have
13 not been presented to this Commission yet.

14 VICE CHAIR HELLER: Ms. Bolomet, again, we
15 can get through this faster and avoid some of these
16 objections if you can try to just ask a question
17 without stating as an assumption facts that have not
18 been established.

19 Also I don't think this witness has been
20 offered to testify about the engineering of the water
21 system.

22 MS. BOLOMET: Who would we ask that of?

23 MS. LINCOLN: The county.

24 MS. BOLOMET: Because I'm just trying to
25 establish that if this Project is to go through, that

1 there is proper waste, the proper capacity to take the
2 pollutants and the runoff because these are the things
3 that directly affect our cultural practice with the
4 limu and the fish and the coral and everything down
5 below.

6 So that's the reasoning behind these
7 questions. And so far in all of the reports we
8 haven't seen where they've addressed these things.

9 VICE CHAIR HELLER: Well, it might be more
10 productive to just ask her if she can point out where
11 in the report it's addressed. And if she knows she
12 knows. If she doesn't she doesn't.

13 MS. BOLOMET: Okay.

14 VICE CHAIR HELLER: But we're not going to
15 get anywhere with asking her about the details of
16 things she's not familiar with.

17 Q (By Mr. Bolomet): Okay. So is there a UIC
18 in the EA report?

19 A I do not believe there is.

20 Q Okay. And is there an NPDES in the EA
21 report?

22 A NPDES's are applied for after construction
23 plans are complete.

24 Q Well, so the answer is "no" correct?

25 A Correct.

1 Q Okay. I just have a few more questions.
2 And it's based on, you said if there's a park on the
3 property, once you are -- the West Maui Land and
4 Kahoma Residential is no longer a part of this, who's
5 responsible for taking care of that park?

6 A The homeowners association will be
7 responsible for the maintenance of that park.

8 Q So are they -- are they the ones that will
9 take on the liability insurance for anybody that goes
10 onto that property?

11 A Yes. They would usually carry a liability
12 policy.

13 Q So it would cover all cultural
14 practitioners that will go onto, say, the he'iau or
15 any other archaeological findings that we're able to
16 point out?

17 MR. GEIGER: And again, I would object
18 because this is a statement, assuming facts not in
19 evidence. If she wishes to ask the extent of the
20 coverage and this witness can answer she can ask that
21 question.

22 Q (By Ms. Bolomet): Okay. What's the extent
23 of the coverage, of the insurance coverage?

24 A Generally the insurance will be for the use
25 of the property as a public facility.

1 MS. BOLOMET: Okay. That's it. Thank you.

2 VICE CHAIR HELLER: Any redirect?

3 MR. GEIGER: Yes, just a couple of areas.

4 FURTHER DIRECT EXAMINATION

5 BY MR. GEIGER:

6 Q Let's first focus on the park. You were
7 asked some questions about the park. And you gave
8 some answers with regard to, I guess, offering the
9 park. Was there any sort of determination made, to
10 your knowledge, concerning whether the county was
11 interested in this as a park?

12 A One of the initial steps that we took when
13 we looked at this Project was met with the Parks
14 Department to see if they were interested in the
15 parcel as a whole, portion of the parcel, greenway
16 path or anything like that. And the Parks Department
17 at the time, I think it was around 2005, said, "No."

18 We also met with the various councilmembers
19 at the time who were Charmaine Tavares who was
20 actively involved in the Parks Department, and also
21 Bill Medeiros who both were very aware of the
22 designation as Open Space. And they felt that the
23 residential -- they supported the residential use of
24 the Project.

25 And in addition, the council received the

1 draft letter or the letter I submitted regarding
2 purchase of the park. And they approved the Project
3 with that as a residential Project.

4 Q You've been asked some questions about the
5 offsite impact of this Project. Did the developer
6 take any look about mitigation of any offsite impacts?
7 And if so what were they?

8 A Again, I've spoken regarding our retaining
9 of the storm waters within the Project and mitigating
10 impacts within the Project so that there will be no
11 regional impacts.

12 MR. GEIGER: No further questions.

13 VICE CHAIR HELLER: Okay. Other parties
14 anything further? Commissioners, any questions? Yes,
15 Commissioner Biga.

16 COMMISSIONER BIGA: Good afternoon.

17 THE WITNESS: Hi.

18 COMMISSIONER BIGA: Thank you for coming to
19 testify.

20 THE WITNESS: Thank you.

21 COMMISSIONER BIGA: I just had a couple
22 questions. What other projects does West Maui Land
23 have on the west side area for residents?

24 THE WITNESS: West Maui Land doesn't own
25 any properties, but we do manage the Makila Lands,

1 Pu'unoa properties and Mahano Nui Nui as well as
2 Olowalu land.

3 COMMISSIONER BIGA: So there's possible
4 residential areas for the west side?

5 THE WITNESS: Right now they're all
6 designated Ag. So we do -- they have processed Ag
7 subdivisions. We are looking at some potential change
8 in zoning in some areas.

9 COMMISSIONER BIGA: Okay. The old mill
10 area, the yard area, is that under West Maui?

11 THE WITNESS: No. That's owned by Pioneer
12 Mill. I think it's Ka'anapali Land's development is
13 the owner of that property. They changed their name,
14 but it's Ka'anapali Land.

15 COMMISSIONER BIGA: Okay. The Mill Road
16 that goes out to Keawe, when will that be designated
17 to the county and what part of the Project? I mean I
18 guess when it's all done and finished I guess.

19 THE WITNESS: Yeah, probably when it's
20 completed from end to end from Lahainaluna to Keawe.

21 COMMISSIONER BIGA: So that would be before
22 any homes are sold?

23 THE WITNESS: No. Our portion is from
24 Keawe to the Project site. That's what will be
25 completed as part of this Project, but, too, with the

1 20-foot travelway and 3 to 4-foot shoulders. The rest
2 of it will be done in the future. I believe the
3 county is working on that project with the design of
4 it.

5 COMMISSIONER BIGA: What will happen if
6 this Project should be sold, just hypothetically?
7 What would happen with all of the conditions that was
8 based on the developer to finish? What would happen
9 then?

10 THE WITNESS: If the Project were sold,
11 which is not our intent, but if it is and whoever
12 purchased it intended to go forward with the
13 residential project or this Project, they would have
14 to meet all the conditions.

15 COMMISSIONER BIGA: With all the agreements
16 that was based on the state, county and community.

17 THE WITNESS: Yes.

18 COMMISSIONER BIGA: Is it possible to have,
19 I think was 10 or 8 where, the 'ohana dwellings, where
20 they're going to build their own?

21 THE WITNESS: I'm sorry?

22 COMMISSIONER BIGA: I think there was
23 gonna be just some areas where the land was just going
24 be sold to parcels and somebody would come in and
25 build their own.

1 THE WITNESS: There's a potential we're
2 offering vacant land for individuals who might have
3 their own construction skills and can save money that
4 way. So we are offering an option for vacant land.
5 We don't know what the numbers are. There hasn't been
6 vacant properties offered in West Maui to this extent.

7 We think for this market it would be a
8 fairly small portion of the property, anywhere from 5
9 to 10, but there's no established numbers on that.

10 COMMISSIONER BIGA: Where I'm going with
11 that question is can the developer hold the same
12 standards as the Project that you guys are building as
13 far as energy savings, solar and things of that sort?

14 THE WITNESS: I think the challenge was the
15 enforcement of it on how the developer through
16 inspections, or that was kind of why I said I don't
17 think we're going to do that primarily because the
18 enforcement of those standards. The county has
19 standards for solar and other matters. So many of
20 those would fall under the county.

21 COMMISSIONER BIGA: Okay. Thank you.

22 COMMISSIONER McDONALD: You may have
23 already mentioned, but to confirm: Who is going to
24 maintain the operations of that detention basin?

25 THE WITNESS: The Association will maintain

1 that. And in the CC&R's we provide a Best Management
2 Practice schedule for the basin and so the
3 homeowners -- the homeowners association will maintain
4 that.

5 COMMISSIONER McDONALD: Any idea what the
6 Association dues might be?

7 THE WITNESS: My preliminarily estimates
8 are around \$30 a month. So we're trying to keep 'em
9 real minimal. It's just basically, you know, if the
10 basin needs to be de-silted after a large storm event,
11 50-year storm or annually, that would be probably the
12 biggest cost.

13 Other than that it's just weed wacking,
14 keeping the weeds down and mowing the park and
15 irrigation water on the park -- or I mean potable
16 water, but irrigating the park.

17 COMMISSIONER McDONALD: Okay. Thank you.

18 COMMISSIONER BIGA: Sorry. Just going back
19 to that same question I think I raised at the last
20 meeting we had. How qualified or what kind of
21 qualification does the Association need because of the
22 issues that may come up with, I guess, anything that
23 might happen because of a big storm? Or who says that
24 it needs to be cleaned out? Or does this Association
25 have, like, an engineer or somebody with that kind of

1 knowledge?

2 THE WITNESS: In past Associations I've
3 worked with they've hired somebody to come in and
4 inspect it to ensure -- because most likely the
5 Association itself, unless there happens to be
6 somebody in the neighborhood that has that degree or
7 that knowledge -- most likely they would hire an
8 outside consultant to come and inspect it annually and
9 advise what would need to be done or after a large
10 storm event an inspection.

11 COMMISSIONER BIGA: Thank you.

12 VICE CHAIR HELLER: Anything else? I have
13 a question following up on Commissioner Biga's
14 question about the lots that might be sold as vacant
15 lots. I think you said there's an 18-month time
16 period in which the purchaser must construct a home on
17 the lot?

18 THE WITNESS: That's part of our CC&R's,
19 yes.

20 VICE CHAIR HELLER: And what is the
21 enforcement mechanism for that?

22 THE WITNESS: We'd have to write -- the
23 Association could begin with writing letters and
24 usually to the point where you can file liens against
25 the property to finish the construction.

1 VICE CHAIR HELLER: And it would be up to
2 the Association to take those enforcement steps?

3 THE WITNESS: Likely. In the beginning
4 usually the developer helps the Association 'til the
5 Project is basically settled, just to assist them with
6 those types of issues.

7 VICE CHAIR HELLER: Thank you. Anything
8 else, Commissioners? Mr. Geiger, your next witness.

9 MR. GEIGER: We have no further witnesses
10 on direct. We did have Mr. Frampton for rebuttal but
11 that should come in after the witnesses have been
12 produced on that.

13 VICE CHAIR HELLER: County, ready to
14 proceed?

15 MR. GIROUX: We are ready to proceed. We
16 have David Taylor chomping on the bit to testify.

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

20 THE WITNESS: Yes, I do.

21 VICE CHAIR HELLER: Go ahead.

22 DIRECT EXAMINATION

23 BY MR. GIROUX:

24 Q Could you state your name for the record?

25 A David Taylor.

1 Q Did you submit a written testimony in
2 preparation for this case?

3 A I do not believe so.

4 Q Did you send a position statement to
5 Mr. Wollenhaupt regarding this?

6 A I believe, yes, I believe we did.

7 Q Do you have a copy of that?

8 A Yes, I do.

9 Q And you also submitted your resumé?

10 A Yes, I did.

11 MR. GIROUX: I'd like to submit the resumé
12 and the written statement as exhibits. No. 12 is the
13 resumé and 13 is the statement.

14 VICE CHAIR HELLER: Any objections?

15 MR. GEIGER: No objections.

16 MR. GIROUX: And based on his resumé I'd
17 also like to qualify him as an expert in the area of
18 water.

19 MR. GEIGER: No objection.

20 MR. YEE: No objection.

21 VICE CHAIR HELLER: Ms. Lincoln?

22 MS. LINCOLN: No objection.

23 MS. BOLOMET: No objection.

24 VICE CHAIR HELLER: Okay. The statement
25 and resumé are admitted and he's accepted as an

1 expert.

2 MR. GIROUX: Thank you, Chair.

3 Q Would you like to summarize very briefly
4 what your position statement is regarding this
5 Project.

6 A Our Department's position statement is that
7 this Project would be exempt from the County's water
8 availability ordinance as a hundred percent affordable
9 Project. And that the Department at this time is
10 prepared to supply water for this Project, but that
11 water cannot be guaranteed until such a time that an
12 application for water meters for the Project is
13 received and reviewed.

14 Q Can you explain just for background what
15 the county ordinance is regarding water availability?

16 A The county Water Availability Ordinance,
17 commonly known as Show Me the Water, limits certain
18 subdivisions, subdivisions of a certain lot number, to
19 need to either supply their own source of water or
20 have a guarantee from the Director of Water Supply
21 that there is adequate water.

22 There are a number of exemptions to this
23 ordinance. One of those exemptions is a hundred
24 percent affordable projects.

25 Q If this Project were built today, according

1 to your numbers, would there be enough water?

2 A We currently do not have any sort of
3 building or water meter moratorium in West Maui. So
4 if these applications came in today we would
5 definitely have the water, and we would approve the
6 water meters for this Project.

7 MR. GIROUX: I have no further questions.

8 VICE CHAIR HELLER: Petitioner, any
9 questions?

10 MR. GEIGER: No questions.

11 VICE CHAIR HELLER: OP?

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q Back in 2007, which was sometime ago, there
15 was a letter from Jeffrey Ing to Kyle Ginoza which is
16 contained in the FEA, Petitioner's s Exhibit 7, which
17 indicated that at that time that additional water for
18 development is not currently available in the Lahaina
19 system.

20 Is your testimony today that that
21 circumstance has changed now that there is additional
22 capacity available for new developments?

23 A I'm not familiar with the letter. And out
24 of context I don't know that anything's changed
25 because I'm not familiar with what that letter was in

1 reference to.

2 Q But your testimony today is that there is
3 additional capacity today for new projects in this
4 water system?

5 A My testimony today is that there is no
6 moratorium on meter issuance in the West Maui area at
7 this time.

8 Q Is there excess capacity, then, for
9 additional projects?

10 A Yes.

11 Q Do you know how much capacity remains for
12 new projects?

13 A No, I do not.

14 Q Do you have an estimate or a range?

15 A Water in West Maui comes from a variety of
16 sources, groundwater and surface water. Because
17 surface water comes and goes with rain, we are
18 currently, currently doing a very thorough analysis of
19 some statistical analysis of how much water we feel we
20 can count on for future projects. We're in the middle
21 of that. I do not have a number and it's really too
22 early to give an estimate.

23 I just want to be clear. I'm not being
24 evasive. It's not like a bathtub where there's a
25 known amount and every project takes away. The water

1 comes and goes. Demand comes and goes. Matching
2 supply with demand of changing situations is not a
3 simple comparison.

4 And we're going through a very detailed
5 engineering study to try to figure out how much
6 reliable capacity can we count on, how many projects
7 can we support with the ups and downs of supply and
8 demand. So we're in the middle of that. And I do not
9 have even an estimate for you at this time.

10 Q Do you have an estimate of when the study
11 would be completed?

12 A I don't at this time because it's not a
13 linear effort that we know exactly where our efforts
14 are going to lead.

15 Q Could you say it would be within a year,
16 within 2 years?

17 A Certainly within a year.

18 Q So although you don't know the current
19 capacity for purposes of giving us a number, you can
20 say that there is whatever that number is, sufficient
21 capacity today to provide water for this Project?

22 A There is. And in addition we have a number
23 of projects identified which can add capacity which do
24 not have long, long lead times that we're already in
25 preliminary stages of. So our goal is that we stay

1 ahead of demand.

2 I can't promise whether or not that will
3 happen. But I think the likelihood is in West Maui
4 that we will be able to stay ahead of demand for the
5 foreseeable future.

6 Q You mentioned how, as an affordable housing
7 Project, this is exempt from the Show Me The Water
8 ordinance. Is there also a priority for affordable
9 housing projects to get water meters?

10 A There -- there is no list. There's no
11 waiting list in West Maui so there's no such thing as
12 priority. It's first come first served with
13 applications. There's no subjective evaluation within
14 our department. So there is no prioritization.

15 Q So I guess I was asking, though, if, if
16 there was a list or if there was an issue where people
17 had to wait to get the next water meter for the next
18 project, you may have a waiting list at some point.

19 Is there some attempt to make sure that the
20 affordable housing projects sort of get to the top of
21 the list?

22 A There is a list in Upcountry Maui that the
23 council established by ordinance. And any such
24 ordinance would have to include prioritization, which
25 would be a policy decision by the council. And again

1 would not be any subjective decision within the
2 Department. Again, right now there is no such list in
3 West Maui.

4 Q Okay. So there wouldn't be, you know -- so
5 you can't tell us because it's an affordable housing
6 Project you're gonna find the water because that's a
7 County Council call on the prioritization in the
8 situation where a list would have to be created?

9 A The County Council through the Water
10 Availability Ordinance, has exempted by matter of
11 policy certain projects including a for 100%
12 affordable housing projects from that bill. So that
13 from a matter of policy of the council has in one
14 sense prioritized those projects.

15 If there was a shortage of water and if
16 there was a list, such an ordinance may or may not add
17 affordable housing as a priority. And that would be
18 up to the discretion of the legislative body when they
19 made that ordinance.

20 Q So we're just not sure because we haven't
21 gotten to that point. Because there's no list,
22 there's no statute, therefore there's no
23 prioritization.

24 A That's correct.

25 MR. YEE: All right. Thank you. Nothing

1 further.

2 VICE CHAIR HELLER: Ms. Lincoln.

3 CROSS-EXAMINATION

4 BY MS. LINCOLN:

5 Q I'd like to start with -- and they told me
6 that you would be able to explain "infill" to me. It
7 was an exhibit that was introduced earlier. And they
8 refer to this Project as an infill Project.

9 Can you explain how this proposed
10 subdivision meets all the criteria for infill?

11 A I'm not sure that I'm the right person to
12 address that. There's another part of the Water
13 Availability Ordinance that allows subdivisions of
14 certain number of lots that are considered infill to
15 be exempted from the Water Availability Ordinance.

16 The reason *this* Project would be exempted
17 is a different section, the affordable housing
18 section. So our department has never made a
19 determination whether or not this would or would not
20 be infill because it's exempt under another section.

21 Q But can you just explain to me? Because
22 the county and the Petitioner keep referring to this
23 property as an "infill" Project. So when I read the
24 infill Project it says that there are 10 contiguous
25 vacant lots. Well, there's a lot more than 10. So

1 how does it meet that criteria?

2 A Again, our department did not make any
3 determination about this Project about whether or not
4 it is or is not infill.

5 We do not administer any ordinances or
6 definitions that determine what is or is not infill
7 unless it's in the context of the Water Availability
8 Ordinance. So my department has no opinion about
9 whether or not this is infill.

10 Q Okay. I'm just confused because this was
11 put in as an exhibit by the Petitioner. And it's
12 called Exhibit A. It talks about infill development.
13 And they refer to it as an infill.

14 All I'm asking for is -- they told me you
15 could define to me "infill". I've asked two people
16 already and they told me ask the water -- all I'm
17 asking is just a definition of infill.

18 A Again, I'm not aware of any definitions in
19 our rules or ordinances that define infill. I think
20 in general infill means there's development around it
21 and this is somewhere inside a developed area.

22 That's in general what it means. But as
23 far as a specific definition I'm really not authorized
24 to make up my own specific definition for that word.

25 Q Okay. I'm not asking you to. It's

1 ordinance #3813 bill No. 10. That's what I'm
2 referring to. And it's under "Exemptions for the Maui
3 County Code." And it has "Infill development".

4 MR. GEIGER: Just for the record so it's
5 clear that is a County of Maui exhibit. It is not a
6 Petitioner exhibit.

7 MS. LINCOLN: Oh, okay. I'm sorry.

8 Q The county of Maui Exhibit No. 8 Ordinance
9 No. 3813 bill No. 10 under "exemptions" they told me
10 you would be the one to explain to me what infill is
11 and how this Project meets infill requirements.

12 And on that one it says that "10 or less
13 contiguous lots is considered infill." It says, "It's
14 consistent with applicable zoning designations on the
15 General Plan, which it's not. That's why we're here
16 trying to rezone it.

17 So the only criteria it meets for infill is
18 that it's within the service area of the Department's
19 Central West Maui system.

20 VICE CHAIR HELLER: Ms. Lincoln, again, you
21 need to ask questions, and not make arguments or
22 statements. I think you've already asked the question
23 about the definition of infill. He's basically
24 answered it as best he can. We're just repeating it
25 and adding argument at this point.

1 MS. LINCOLN: If the county submits this as
2 a piece of evidence, as an exhibit, who can explain it
3 to me then?

4 VICE CHAIR HELLER: You can ask him that
5 question if you want.

6 MS. LINCOLN: I just did.

7 THE WITNESS: I'm a witness for the county.
8 I was asked by our Planning Department and our
9 Corporation Counsel to come and be an expert on water
10 and the department that I manage.

11 I am not an expert in other things about
12 the county which I don't manage. So I don't know
13 where to point you other than I am not a witness who's
14 an expert in planning related functions that the
15 county does.

16 MR. GIROUX: Chair, at this time I would
17 just like to object as far as relevance. The
18 testimony is that the exception that is being used is
19 because it's affordable housing, not because it's
20 infill.

21 VICE CHAIR HELLER: There's no question
22 pending at this time.

23 Q (By Ms. Lincoln): Okay. I know they're
24 doing an islandwide water reliability. And I was told
25 from the Water Department they thought they were going

1 to have the results for Lahaina's water reliability
2 completed by the end of June, first part of July.

3 Do we have -- is the study for the
4 Lahaina's water reliability complete?

5 A The study you're referring to is the same
6 study that I noted earlier. We're doing it in-house,
7 doesn't even really have an official name. We call it
8 a few different things.

9 But how much water we have, what do we need
10 to do next to make sure our ability to supply water is
11 above the demand *is* what we're doing. That's the
12 study that my staff would have referred to.

13 We have some -- our preliminary results
14 were focused on what the next thing is we have to do
15 so we can get it started.

16 We still, we still don't have a number to
17 say: Here's the line in the sand of exactly how much
18 we have. So that's ongoing.

19 Q But is the Lahaina portion finished where
20 we can at least kind of like: Did you look at that?
21 Is there just kinda something you can project and just
22 say...?

23 A My projection is that from an engineering
24 operational standpoint we have a number of very
25 reasonable, achievable options to increase our

1 reliable capacity to deliver water enough in the near
2 term to meet demand. And we are implementing some of
3 those projects.

4 It is our hope and our intention to keep
5 our ability to supply water above the demand for West
6 Maui.

7 Q Is it true that water meters could cost as
8 much as \$30,000 each?

9 A Water meters could cost as much or more
10 than that.

11 Q Okay. So that adds up to \$2,040,000 for 68
12 meters. So who's going to be responsible to pay for
13 201-H exempt housing water meters if they should need
14 to be added? Who pays for those under 201H?

15 A Currently water meters are a little
16 above -- 5/8-inch residential water meters are just
17 above \$6,000 each. Water meter pricing as well as
18 water rates are defined by the County Council through
19 the annual budget. Until that changes the current
20 pricing is in effect.

21 So it is not within the Department's
22 discretion to change those rates. So when you say
23 they could, they could cost anything the council
24 decides for any reason the council decides. They
25 could also be much, much cheaper. They could be free.

1 So how we balance revenue and expenditure
2 with rates, fees, water meter fees, property taxes, et
3 cetera, is a policy choice that the County Council
4 makes every year in the budget. So what happens in
5 the future I don't know. Right now that's the price
6 for water meters.

7 Q Who still pays that \$6,000 fee then?

8 A My understanding is that those fees are
9 still due from the Applicant for the water meter.

10 Q Even though they're a 201H they're not
11 exempt from that \$6,000 fee. But should they cost
12 more than the taxpayers'? Or however they do it
13 through rates or whatever is how that is compensated
14 for the deficiency?

15 A The annual budget approved by the council
16 sets water meter pricing and any exemptions thereof.
17 So that's an annual budget. Those pricings now, and
18 whether or not they're exemptions, could change next
19 June.

20 I can't tell you when any Applicant comes
21 in for a water meter if it's after next June, like if
22 it's after July 1st of 2013 the ordinance may say
23 something very different. It may say that this
24 Project for whatever reasons has been exempted from
25 water meter fees by the County Council.

1 I don't know and I can't project what the
2 County Council's policy choices will be as it affects
3 water meter pricing and water rates in the future.

4 Q Thank you. Have you ever -- has the Water
5 Department ever refused water meters to a project?

6 A Yes.

7 Q Even as the project is along it does?

8 A Yes.

9 Q And then --

10 A Well, if I can clarify.

11 Q Go ahead.

12 A We don't refuse. We don't make subjective
13 decisions. The Water Department would make
14 engineering judgments about whether or not there's
15 available water from a source standpoint, whether or
16 not the local infrastructure could support that water
17 meter, may say to the Applicant, "You have to improve
18 the infrastructure in your local area or regional area
19 before we can serve you." But we don't refuse from
20 the sense of subjective decision making.

21 There is an engineering analysis. And
22 there is response from the department about our
23 ability to serve, but it is not subjective. It's
24 objective based on engineering standards.

25 Q Does 201H somehow exempt them from having

1 to go through that criteria you just mentioned?

2 A No, it does not.

3 Q And then just to make it clear 'cause
4 Mr. Yee was asking the same question in a way, who
5 gets preference to available water meters? Affordable
6 housing, already pre-approved projects or is it first
7 come first served?

8 A It is first come first served.

9 Q Okay. And then what would happen if
10 there's not enough water meters just in that instance?

11 A I don't know what you mean by "not enough
12 water meters".

13 Q Okay. Like an hour before West Maui Land
14 gets in to turn in their application, another housing
15 application turns it in, they first come, first
16 served. So it would get denied based on the person
17 who came in ahead of them, is that correct?

18 A That's correct.

19 Q And then are you familiar with low-flow
20 diversion technology, that it's able to divert water
21 from the Kahoma Flood Channel to irrigate this
22 property?

23 A No, I'm not.

24 Q And then are you familiar with stream
25 channel alteration permits and stream diversion water

1 permits?

2 A A little bit.

3 Q Okay. Could there be any other source for
4 Ag water so non-potable water for this property just
5 from the Water Department's standpoint? Is there any
6 source for water, like, just for irrigation that's not
7 potable, non-potable for irrigating?

8 A There are, I think, almost everywhere in
9 the world there are the same sources of water for
10 anything.

11 Q Okay. But this has a flood channel running
12 right next to it and there's water just running out to
13 the stream. I guess what I'm asking, that's
14 non-potable water. It's just running out to the
15 stream.

16 Is there any other source besides that from
17 the Water Department's perspective that could be used
18 for, like, when you go on a golf course it says,
19 "Don't drink the water. It's not potable." I mean is
20 there some source of water for this property that
21 would be for irrigation purposes?

22 A I'm not familiar with this specific
23 hydrogeology in this area. So I don't know the answer
24 to that.

25 MS. LINCOLN: Okay. That was my questions.

1 Thank you.

2 VICE CHAIR HELLER: Ms. Bolomet.

3 CROSS-EXAMINATION

4 BY MS. BOLOMET:

5 Q Does your expertise include water quality
6 or is it an assessment for -- and does it also include
7 assessment for environmental impacts to aquatic
8 resources including the limu?

9 A I've been an engineer for the county for
10 about 20 years. I've done a wide variety of projects
11 including environmental assessments for a wide variety
12 of projects. I am not -- I have no expertise in
13 Hawaiian cultural practices.

14 MR. GIROUX: Chair, I'd just like to
15 interject we did offer him as an expert in potable
16 water.

17 VICE CHAIR HELLER: Noted.

18 Q (By Ms. Bolomet): Can you tell me if
19 Lahaina's Wastewater Treatment Plant has capacity for
20 this Project?

21 A My former position was as the Wastewater
22 Division Chief. I vacated that position 20 months
23 ago. The Wastewater Division is part of the
24 Department of Environmental Management. I'm currently
25 the Director of the Department of Water Supply.

1 I am not authorized to speak on behalf of
2 the Department of Environmental Management. My
3 knowledge of the Department of Environmental
4 Management and wastewater functions is general and may
5 not be up-to-date about what's happened in the past 20
6 months since I vacated that position.

7 So I have general knowledge, certainly, of
8 the wastewater system in West Maui. I'm not
9 up-to-date on the latest goings on of the
10 functionality of that plant or of that system.

11 Q And who can we ask this question of?

12 A Again, I don't want to pretend to
13 understand the methodology of these proceedings. I'm
14 here to answer questions. You can ask me.

15 I don't know what your rules of procedures
16 are about who's she's allowed to ask what.

17 VICE CHAIR HELLER: She's just asking if
18 you can identify the person who *would* know the
19 answers.

20 THE WITNESS: I think people within the
21 Department of Environmental Management would know
22 those answers.

23 Q (By Ms. Bolomet): What position? I mean
24 I'd like to call and ask. I don't know who to call.

25 A You can call the Director of Environmental

1 Management, the Deputy Director of Environmental
2 Management.

3 Q Okay. There's been testimony that there's
4 a retention basin going into this Project. Can you
5 tell me if this retention basin meets the new County
6 2012 water quality-based drainage standards?

7 A I'm the Director of the Department of Water
8 Supply. We supply water. Drainage, runoff control is
9 part of the Department of Public Works, not part of
10 the Department of Water Supply. And I'm not qualified
11 or expert in those areas.

12 Q Okay. So you said you supply -- you're in
13 charge of the department that supplies water. Will
14 you look at the maps that we gave to you. These we
15 got from the Public Works engineer.

16 VICE CHAIR HELLER: Ms. Bolomet, for the
17 record is this an exhibit?

18 MS. BOLOMET: This is part of Clare Apana's
19 testimony that we were talking about this morning.

20 VICE CHAIR HELLER: Was it marked as an
21 exhibit?

22 MS. BOLOMET: Yes. Exhibit 2, it's A, B,
23 C, C-2. It was handed out this morning. We're going
24 to be referring to page -- it's the fifth page, also
25 called Exhibit 2C-2.

1 MR. GEIGER: Chair, one minute. (pause)

2 VICE CHAIR HELLER: Okay. Go ahead.

3 Q (By Ms. Bolomet): My question is when I
4 look at these maps in the upper left corner it says,
5 "Existing 4-inch waterline is not part of the county
6 water supply system and is abandoned."

7 Where would they be getting water from if
8 they're not getting it from the county?

9 A I don't know. I'm sorry, I don't know what
10 you're referring to. I don't know who is "they".

11 Q There's a pipe on the Public Works map
12 Exhibit 2C-2.

13 A I see your line. And I see your note. I
14 don't understand your question.

15 Q There's a square -- there's a square and
16 it's making a note that says there's an existing
17 4-inch waterline. And it's saying it's not part of
18 the county water supply system. If it's not coming
19 from the county's supply system where is it coming
20 from?

21 A What it says is it says it's "not part of
22 county's water supply system and is abandoned".

23 Q Yes.

24 A What that means in engineering vernacular
25 is somebody found, the surveyors found a waterline

1 that was no longer in use. They verified that it's
2 not a county line. Doesn't say who put it in, what it
3 was for, but they're saying it's not currently being
4 used. It's abandoned. So it's not pressurized,
5 there's no water in it. It's just an old piece of
6 pipe sitting in the ground they found.

7 It's on here as a note, I suppose, to
8 anyone who's going to dig there saying, "Hey, be
9 aware. There's an old line here."

10 Q Okay. But it does say -- it says water --
11 it's talking about a waterline, is that correct?

12 A The person who found it, sewer pipe, water
13 pipe, drain pipe, electrical conduit, it's all pipe.
14 But if you're in the business you can look at
15 something and know what it was originally meant for.

16 So whoever saw this made the determination
17 that this was once a waterline for some purpose. They
18 didn't know what it was. It looks like, my
19 interpretation is they must have checked with the
20 county. The County Water Supply said, "It's not
21 ours."

22 They didn't find anything else out. Again,
23 they just noted it in here saying "We found this, we
24 don't know what it is, who owns it, it isn't currently
25 being used. It's not the Water Department's but it's

1 here for your information in the future."

2 Q Okay. So if we go down below that little
3 box there's more writing. It says "36-inch RCP, CL3."
4 And we're going to go down even below that where it
5 says "2 plus DO end new 6-inch PVC irrigation
6 waterline CONONN." Does that mean "connected to"
7 existing 4-inch irrigation waterline? Are you
8 following that?

9 A I'm not exactly sure what you're reading.
10 But these are blueprints of -- these are -- see the
11 stamp on page, on the next page, Page 6 you see the
12 words "as built". It says "as BU" which means as
13 built, means these plans were made by someone after
14 something was built as a record of what was there when
15 they left.

16 So I don't know whether anything's happened
17 since then. I don't know who made these. I don't
18 know what they found. But this is really a record of
19 whoever stamped this term "as built" on saying "I was
20 there. I saw this. This is what I found. This is
21 what's here now." And they left that for the record.

22 I have no familiarity with the site or
23 these plans. Somebody drew this to leave a record for
24 the future of what was their best knowledge of what
25 existed at the time.

1 Q Okay. Can you go to the second page where
2 it says "as built".

3 A Is that Page 6?

4 Q No.

5 A Page 2.

6 Q 2.

7 A Okay.

8 Q So would the U.S. Army Engineer District
9 Corps of Engineers be the ones who supplied these
10 plans?

11 A Uhm, you know, I can't tell. There's
12 something missing from the bottom. Right in the left
13 of the box there's a V and an E. I'm not sure what
14 that is. I'm not sure if that's a firm.

15 This could have been something that was
16 either done by the Army Corps of Engineers or it could
17 have been done by a consultant hired by the Army Corps
18 of Engineers. Perhaps "VE" might be their -- might be
19 their logo.

20 Q Page 1 it shows what it is.

21 A Okay. I'm not sure. I believe Value
22 Engineering might be the name of a company. I'm not
23 familiar with them. If so then this company Value
24 Engineering prepared these plans. If not, and I would
25 guess that a company called Value Engineering prepared

1 these plans for the Army Corps of Engineers. Seems to
2 be what they say.

3 Q Okay. And then below that it says "Kahoma
4 Stream flood control Project".

5 A Yes.

6 Q And then under "as built" it's saying
7 "Revised new irrigation waterline plan and profile" --

8 A Yes.

9 Q -- "10" space "90".

10 A Yes.

11 Q So that's saying in October of 1990 these
12 plans were made for the flood control project, Kahoma
13 Stream Flood Control Project?

14 A I believe what it's saying is that these
15 plans were modified at that time. You can see below
16 there it's 8-15-86 meaning there was a modification
17 then. So exactly when the original project was drawn
18 and what was modified when I'm not sure. I'm not
19 familiar.

20 But clearly somebody in 1986 and then in
21 1990 added some information to these and that's the
22 record of who added it and when.

23 Q Okay. So if -- it appears to me this is
24 the plans for this property and the LCA area of 9795B,
25 which you can't see here. But it's just zoomed into

1 that area. You can look on page 8 and you could see
2 the, it's like a darkened area on those that have
3 color. It's blue. Then the drainage pipe is, I
4 guess, yellow. That's this particular area.

5 MR. GEIGER: Is there a question?

6 MS. BOLOMET: Yes. Is he over there? I
7 need him to be in the right place so that I can ask
8 the question.

9 Q My question is: First of all, you're going
10 to be supplying the water. So would you be given
11 these plans by the Public Works Department to know
12 what kind of pipes, water pipes are already in place?
13 There's irrigation pipes and water pipes and sewer
14 lines and a drainage line. So would you be given this
15 plan?

16 A No. The Department of Water Supply runs
17 our utility system to our points of connection.
18 Somewhere around here -- and the Applicant, probably
19 in the Applicant's engineering plans -- it shows the
20 nearest county-owned waterline to their property.

21 Their engineering consultants working with
22 our engineers find the best place to hook up. And the
23 Applicant would build the piping system, tie into our
24 system at their cost. We wouldn't build anything. We
25 wouldn't add to our system.

1 Certain parts of their system may be given
2 to us afterwards, et cetera. But they might -- they
3 would need to know all the plans of what's there so
4 they can route their waterlines and their other
5 utilities. But we don't do that work.

6 Q Okay. Because I believe Rory Frampton
7 testified that there are waterlines that would be
8 hooked up to the county meter. And I'm just wondering
9 are these the lines that were put in place by -- this
10 was a county project, but it was put in place by the
11 Corps of Engineers for this future Project.

12 Do they -- do they plan this far back that
13 there's gonna be a development on this property?

14 A I can't speak to what the Army Corps of
15 Engineers did or didn't do. What I *can* tell you is
16 any developer, any applicant who's going to tie into
17 the county water system approaches us, our engineering
18 group. We identify the nearest point of adequacy
19 where their new improvements can tie into our system.

20 And that applicant/developer is responsible
21 for building their system, building it to our
22 standards and turning over whichever portions are to
23 be turned over to us.

24 So the applicant and the applicant's
25 engineers need to work out the details of what they're

1 going to build, and where and what's there and so
2 forth. But that's really not something -- that's not
3 a service we provide. That's a service that they hire
4 their own engineer to do.

5 Q So in 1986 when these plans were originally
6 made, they already knew that there was going to be a
7 sewer line. They already knew that there was going to
8 be an irrigation line. And they already knew there
9 was going to be a water connection to the existing
10 irrigation waterline?

11 MR. GEIGER: I'm going to object. That's
12 argumentative. And secondly it's assuming facts that
13 do not show in the exhibit she's showing him.

14 VICE CHAIR HELLER: I think it's also
15 cumulative. He's already testified that he's not
16 familiar with this. We're not getting anywhere by
17 trying to ask him about the details of a document he's
18 not familiar with.

19 MS. BOLOMET: Okay. I'm trying -- when I
20 look at these documents I'm trying to figure out who
21 to ask these questions. And I was told to ask him
22 about the water and these pipes. Because I tried
23 asking before when we were in Lahaina, and I was told
24 to wait to ask him.

25 So who do we ask? I hear and I read in the

1 Petition there's no water. But in 1986 there was
2 water pipes put in here. They show there were
3 existing water pipes. I want to know who to ask.

4 MR. GEIGER: I'm going to object to the
5 extent it's argumentative as to what this shows or
6 doesn't show.

7 VICE CHAIR HELLER: Okay. Ms. Bolomet,
8 each party can choose what witnesses they're going to
9 call. If you feel that there's a gap in the evidence
10 offered by the Petitioner or the County or whoever,
11 you can comment when it's time for argument about that
12 perceived gap in the evidence.

13 But this is the witness they've offered at
14 this time. If he doesn't know the answers to these
15 questions, repeating the questions isn't going to help
16 any.

17 MS. BOLOMET: Okay. All righty. I'll move
18 on.

19 Q You explained that you're going through a
20 process right now, a study process, that hopefully
21 will be done within a year. But this Commission has
22 to make a determination in the next few months. Are
23 you asking this Commission to make a determination
24 based on what you don't know?

25 A I'm not an Applicant in these proceedings.

1 And I'm not asking this Commission to do anything.

2 Q Okay. Are you testifying that there's
3 enough water, even though your studies are incomplete
4 at this time?

5 A I've testified that we currently do not
6 have a building moratorium. We do not have a water
7 meter moratorium. We have plans and goals to always
8 try to keep our ability to supply water ahead of the
9 demands of the community.

10 Q Okay. And when you -- when you supply
11 water you don't -- once you release it you don't have
12 any more jurisdiction over the water? I mean once
13 it's gone, you release it from your control. So you
14 wouldn't be concerned about water quality at that
15 point? Or are you concerned about water quality?

16 A I don't understand your question.

17 Q The Water Department is concerned about
18 water quality -- or is the Water Department
19 responsible for the water quality that comes, that's
20 delivered?

21 A Yes, it is.

22 Q Okay. Do you put in chlorine and that sort
23 of thing into the water?

24 A The Department of Water Supply's regulated
25 by the Department of Health and by the EPA. And we

1 must by federal law meet the requirements of the
2 Federal Safe Drinking Water Act.

3 Q Do you use chlorine to do that, to purify
4 the water?

5 A There are -- in West Maui in this area we
6 do use chlorine as part of that process.

7 Q And how does -- chlorine will kill algae,
8 is that correct?

9 A Chlorine can, can kill algae, of course.

10 Q And are you aware that limu is an algae?

11 A I am aware of that.

12 Q So once this water is released that's been
13 chlorinated and it goes into the stream's runoff and
14 eventually into the oceans below this ahupua'a, this
15 land district, this Project Area, the chlorine inside
16 this water, are you aware that it can affect the
17 quality of limu that's at the shoreline and in the
18 ocean?

19 A The Department of Water Supply supplies
20 water to the meter, to everyone's meter, which is
21 where the department system ends and where the private
22 ownership of that piping starts. We provide water at
23 that meter that meets Safe Drinking Act requirements.

24 At that point it still must have chlorine
25 residual. There still has to be some chlorine at that

1 point. What happens after that is not something that
2 the Department of Water Supply has any control over or
3 is regulated by.

4 I can go one little step further to tell
5 you by the time you're finished with that water and it
6 goes down your drain, there's no more free chlorine at
7 that point. This water -- let me just say that.

8 Q Has the Department of Water gone and tested
9 this to -- you're making a statement. Do you have
10 tests to support that?

11 A Well, that water, the water that goes to
12 the wastewater system is influent to the wastewater
13 system. So we have certainly tested water that's
14 coming into the wastewater system when I was in that
15 job. And there's no chlorine left, there's no free
16 chlorine in raw sewage.

17 Q Okay. I'm not talking about the raw
18 sewage. I'm talking about the runoff now going down
19 to the ocean. Have you tested --

20 A Runoff is -- runoff is rainwater. Runoff
21 is by definition not Department of Water Supply water.
22 That's not, that's not what runoff is. Runoff is
23 natural water from precipitation events. Runoff is
24 not Department of Water Supply's supplied water.

25 MR. GIROUX: Chair, I think we're going

1 beyond the scope of my expert's ability --

2 Q (By Mr. Bolomet): But if there's
3 irrigation and if there's irrigation water, and you
4 wash your car, you know, the kids play outside, that
5 becomes sprinklers is irrigation.

6 A Oh, I see. Okay. You're using a term not
7 in our usual vernacular.

8 Q What? Sprinkler?

9 A All I can say is back to my original
10 statement. We supply water to the meter that meets
11 federal and state regulations.

12 Q Okay. But state and federal regulations
13 have been proven over time to be carcinogenic, is that
14 not true?

15 MR. GIROUX: Objection.

16 VICE CHAIR HELLER: Ms. Bolomet, I think
17 you're becoming argumentative and you're going beyond
18 the areas in which this witness has been presented to
19 testify.

20 Q (By Ms. Bolomet): All right. Can you
21 explain what the stream diversion permits are, please?

22 A In general the State Commission on Water
23 Resource Management is the steward of all waters in
24 the state of Hawai'i. And in order to take stream
25 flow and divert it for human use you need a permit

1 from the State Water Commission to do so.

2 Q So are there permits to divert water from
3 the old Kahoma Stream on record?

4 A The Department of Water Supply in West Maui
5 uses water from one ditch and the Kanaha Stream that
6 we have that we're allowed to do. What anyone else is
7 doing in West Maui I have no knowledge of.

8 Q Who would have knowledge of who has the
9 diversion permits?

10 A The Commission on Water -- the State
11 Commission on Water Resource Management.

12 MR. BOLOMET: Okay. That's it. Thank you.

13 VICE CHAIR HELLER: Redirect?

14 MR. GIROUX: I have no redirect.

15 VICE CHAIR HELLER: Commissioners, any
16 questions?

17 COMMISSIONER BIGA: I have one -- (pause)
18 that's okay.

19 VICE CHAIR HELLER: Anything else,
20 Commissioners? Mr. Giroux, your next witness.

21 MR. GIROUX: Thank you, Chair. We've got
22 Jo-Ann who's our Housing witness.

23 JO-ANN RIDAO
24 being first duly sworn to tell the truth, was examined
25 and testified as follows:

1 THE WITNESS: I do.

2 VICE CHAIR HELLER: Go ahead.

3 DIRECT EXAMINATION

4 BY MR. GIROUX:

5 Q Can you state your name for the record.

6 A My name is Jo-Ann Ridao.

7 Q Ms. Ridao, did you submit a written
8 Position Statement regarding this Project?

9 A I believe I submitted what I thought was
10 written testimony.

11 Q Thank you. Do you have any -- did you have
12 a chance to read it over, and is there any changes you
13 would like to make?

14 A No. I do not want to make any changes to
15 my testimony.

16 Q Okay. And did you also submit a resumé?

17 A Yes, I did.

18 MR. GIROUX: Chair, at this time we'd like
19 to submit Exhibit 3 and Exhibit 11 into the record.

20 MR. GEIGER: No objection.

21 MR. YEE: No objection.

22 MS. LINCOLN: No objection.

23 MS. BOLOMET: No objections.

24 MR. GIROUX: And we'd also like to submit
25 Ms. Ridao as an expert in affordable housing.

1 VICE CHAIR HELLER: Any objections?

2 MR. GEIGER: No objection.

3 MR. YEE: No objection.

4 MS. LINCOLN: No objection.

5 MS. BOLOMET: No objection.

6 VICE CHAIR HELLER: Okay. Exhibits 3 and
7 11 are received and she's accepted as an expert.

8 MR. GIROUX: Thank you, Chair.

9 Q Ms. Ridao, can you give a brief summary of
10 your position statement.

11 A Yes. There are just a couple points that I
12 want to touch upon. And primarily they are that this
13 Project is subject to the county of Maui's residential
14 workforce housing policy which is Maui County Code
15 2.96.

16 The Project does qualify as a hundred
17 percent affordable housing project. Because of the
18 close proximity of this Project to jobs and services,
19 we are very much in support of the Project.

20 Also, I want to just kinda touch upon the
21 fact that in the Hawai'i Housing Planning Study of
22 2011 Lahaina has been designated as area of high need
23 for housing.

24 Q Ms. Ridao, are you referring to Exhibit 7
25 Hawai'i Housing Plan Study 2011 prepared by the county

1 of Maui?

2 A Yes.

3 Q And it was your testimony that within that
4 study there shows a high need for affordable housing?

5 A Yes.

6 MR. GIROUX: Chair, I'd just like to
7 confirm that Exhibit 7 was received as an exhibit.

8 MR. GEIGER: Even if it wasn't we have no
9 objection.

10 VICE CHAIR HELLER: We previously received
11 it, didn't we? Exhibit 7 has already been admitted.

12 MR. GIROUX: Thank you, Chair.

13 Q Is there anything else you'd like to add
14 about the study or anything about this Project?

15 A No.

16 MR. GIROUX: No further questions.

17 VICE CHAIR HELLER: Petitioner?

18 CROSS-EXAMINATION

19 BY MR. GEIGER:

20 Q Hi, Jo-Ann.

21 A Hi.

22 Q Just a few follow up I hope. As I
23 understand it the county is committed to ensure that
24 the low income population is housed in adequate
25 shelter, is that correct?

1 A Yes, we are.

2 Q And that this Project complies with the
3 State Housing Functional Plan where the goal is to
4 provide every Hawai'i resident with the opportunity to
5 live in safe, decent, and affordable housing?

6 A Yes, it is.

7 Q Now, with regard to the Hawai'i Housing
8 Study that you referenced, which is Exhibit 7, it
9 indicated, I believe, that about 1150 units would be
10 needed. Would that be in the West Maui or Maui in
11 general?

12 A I believe they're -- in Maui in general
13 there is a need for around 1600 units currently.

14 Q So roughly two-thirds is needed in West
15 Maui.

16 A Yes.

17 Q Okay. And it indicated it was HUD income
18 classified single-family residences. Can you explain
19 what that means?

20 A Single-family residences are usually
21 detached. Normally they're 2- or 3-bedroom units
22 detached.

23 Q So these are the types of units that are
24 sorely needed in Maui County.

25 A Yes, they are.

1 Q Now, I think it's correct that people -- I
2 think in your written testimony you indicated that
3 people who live on Maui want to remain on Maui.
4 That's been the experience of the county?

5 A That has been determined in the SMS study
6 that Maui people want to remain on Maui.

7 Q And isn't it correct that in West Maui
8 there are a number of housing units where you'll have
9 multi-generation in the same housing unit,
10 grandparents, parents, kids?

11 A Yes. And I think the study shows that
12 also.

13 Q So this Project would allow people who
14 would be living with their parents or their
15 grandparents to go out and obtain an affordable house,
16 correct?

17 A This Project would provide that
18 opportunity, yes.

19 MR. GEIGER: Nothing further. Thank you
20 very much.

21 THE WITNESS: You're welcome.

22 VICE CHAIR HELLER: OP?

23 CROSS-EXAMINATION

24 BY MR. YEE:

25 Q Has the County and the Petitioner completed

1 execution of an affordable housing agreement for this
2 Project?

3 A No, we have not yet completed that
4 agreement.

5 Q But I take it you feel you're fairly close
6 on the probable provisions in that agreement?

7 A Yes. We would probably follow very closely
8 the conditions of the resolution that was adopted by
9 the Council.

10 Q There was one particular aspect of the
11 Project that was different than other documents we've
12 seen. That involved the possibility of vacant lots
13 being sold as affordable lots.

14 Will the Housing Agreement deal in any way
15 with how that percentage or ratio is handled in this
16 case?

17 A I don't think we're going to be as strict
18 to identify how many. I think the issue for us was
19 that we wanted it to be flexible enough whereby a
20 family had the opportunity to build their own home if
21 they were able to afford a lot.

22 Q Would there be a requirement, for example,
23 that anyone who had asked to get a turn key home be
24 allowed to purchase a turn key home?

25 A Yes.

1 Q So I understand that the precise number may
2 not be clear, but would there be a requirement or
3 provision in the agreement that would say, you know,
4 in the process, perhaps, for going out to look for
5 applicant's qualification and then an agreement to
6 construct homes for those who want one and qualify for
7 such a turn key home?

8 A Yes. We do that.

9 MR. YEE: That's all the questions I have.
10 Thank you.

11 VICE CHAIR HELLER: Ms. Lincoln?

12 CROSS-EXAMINATION

13 BY MS. LINCOLN:

14 Q In comment on Heidi Bigelow's testimony,
15 did the County make decisions based on information
16 provided about the community input?

17 A Yes.

18 Q Okay. If that wasn't completely and
19 accurately portrayed, does that have any bearing on
20 decisions that you made?

21 A I have no reason, based on the written
22 documents and minutes that I've seen, to doubt that it
23 was not accurate. And I have heard your prior
24 comments. So, no, it would not have -- it would not
25 change my mind on this Project.

1 Q So even though the community was at that
2 meeting a hundred percent -- I wasn't at the 2010
3 meeting, but at the May 2008 meeting -- it was a
4 hundred percent opposed to it, that doesn't really
5 matter to workforce housing or your department? You
6 don't care what the local community thinks? Is
7 that....

8 A I was at County Council meetings where
9 there was testimony in favor and against this Project.
10 And that is what primarily I would base my public
11 testimony decision on.

12 Q Okay. I guess why do they have those
13 meetings, then, informing neighbors within a certain
14 distance to a property? Why even go through that
15 process if it's not really going to be fully
16 assessed? Why not just jump to the County Council and
17 just let people show up there and testify?

18 A I'm assuming that the reason for that is to
19 give people the opportunity to speak in their
20 environment for and against the Project -- for or
21 against the Project. It's just one of the steps in
22 order to get this Project through the process.

23 Q Okay. Regarding your written testimony.

24 A Yes.

25 Q Could you please define your statement,

1 "The Project will have minimum impact on the
2 surrounding community."

3 A My statement is that, you know -- and I
4 heard your discussion on infill -- I see this Project
5 as an infill in the context that it is next to
6 existing housing. It fits in in my mind to the
7 surrounding area. As far as impacts, in my mind it
8 fits in well. So I'm saying that it wouldn't have a
9 major impact on the surrounding area.

10 Q And do you live in the surrounding area?

11 A No, I don't. But in, oh, I forget, in the
12 1990s I was working for Lokahi Pacific and I did the
13 development of the Kahoma Project -- I'm sorry, it's
14 on Paeohi -- okay, you're familiar.

15 Q Yeah, I know. That's right in my
16 neighborhood. But we'll bring that up later. So
17 since you brought up infill, are you aware that the
18 definition of "infill" is 10 residential dwellings or
19 less and consistent with applicable zoning
20 designations in the General Plan?

21 MR. GIROUX: Chair, I'm going to object.
22 It's from a different title than is administered by
23 the Housing Department. I believe that's coming out
24 of the Water Bill.

25 VICE CHAIR HELLER: Okay. If the witness

1 is not familiar with the particular section, she can
2 say so. I'm going to allow the question.

3 Q (By Ms. Lincoln): I wasn't going to bring
4 it up again, but since you --

5 A My definition of "infill" is not from your
6 definition of infill.

7 Q You mean the County's. It's not mine.
8 It's the county ordinance 3818.

9 A That's from the Water Bill as has been
10 noticed.

11 Q That's fine. Thank you. All right. Also
12 from your written testimony how will a 1-acre park
13 with no features, facilities or views promote a sense
14 of community for the neighborhood?

15 A Well, in my mind first of all, it provides
16 an opportunity or place for the children to play as
17 well as the neighborhood to come and get together. So
18 I see that as a feature where people can be, can
19 socialize and be part of the neighborhood that way.

20 Q Okay. So less than 1-acre park versus
21 taking away the open space of 16.7 acres, that's
22 providing, in your opinion, an adequate park space --

23 A Yes.

24 Q -- for the neighborhood?

25 A Yes.

1 Q Okay. Have you personally driven
2 throughout all the neighboring community to assess
3 that particular situation and the Project provides for
4 excellent ingress and egress?

5 A I have driven through the neighborhood. I
6 have, yes.

7 Q Okay. And you still feel that that's an
8 adequate sized park and that the streets, the
9 ingresses and egresses are all safe and to code and
10 you'll stand behind that?

11 A I cannot comment to the ingress and egress
12 and the safety of the streets.

13 Q But you did put in your written testimony
14 the "Project provides for excellent ingress and
15 egress." That's part of your written testimony.

16 A Yes. That's probably based on the
17 general -- again, I'm seeing this as somewhat of an
18 improvement because they are going to improve Mill
19 Street that will go out to Keawe Street. So I see
20 that as an improvement as to what it is now.

21 Q Okay. Then what about -- 'cause, well,
22 there isn't one now, but what about in our
23 neighborhood? What would be your -- what's the
24 Project provides for excellent ingress and egress but
25 then on the Lui Street ingress and egress?

1 A You would be able to go out from Lui Street
2 into this property -- Project, and go out on Mill
3 Street to Keawe Street.

4 Q And that you feel the conditions of the
5 surrounding neighborhood are adequate for this
6 additional traffic?

7 A Yes. And I see it as an improvement
8 actually.

9 Q Okay. I want to confirm: Does the County
10 Council have the ability to issue a variance for this
11 100 percent affordable Project and allow it to be
12 built as a cul-de-sac? Will Spence answered that. I'm
13 just confirming that.

14 A I'm not sure. I cannot answer that.

15 Q That's okay. Will Spence did. Is it within
16 the County's purview to provide the Petitioner with
17 higher density in another project as a means for
18 compensation and leaving this land open space for the
19 community?

20 A I couldn't answer that either.

21 Q Okay. Can the County Council allow for
22 higher density in another project in lieu of payment?

23 A I can't answer that.

24 Q If the Petitioner told the county that this
25 land is worth 3,340,000 then why did -- 'cause that

1 was in October that they said that -- November that
2 they said that, sorry -- if the Petitioner told the
3 county this land is worth \$3,340,000 then why did
4 their new tax assessment go from 169,200 in 2011 down
5 to 146,400 in 2012?

6 A I don't know that answer, sorry.

7 Q Okay. How many houses of the eight under
8 the hundred percent affordability will be at the price
9 of 372,000?

10 A Okay. I would not be particularly
11 monitoring that. But as long as the houses are within
12 that range, not higher than that range for a
13 3-bedroom, then they are okay. They're in the range
14 of affordable housing.

15 Q Okay. So technically they don't even have
16 to start as low as 372. As long as it's in that range
17 it could be closer to the 400.

18 A No, they could not, not for a 3-bedroom.
19 They cannot go over 372,000.

20 Q Do they have to provide a 3-bedroom?

21 A No. They could do a 2-bedroom or a
22 4-bedroom.

23 Q Right. So the Petitioner -- there's no
24 stipulation on there's gonna be -- of the 8 there's
25 gonna be -- certain amounts that are going to be in

1 this range, this range, or this range.

2 A No.

3 Q So they could pick, if they chose to, just
4 the higher range.

5 A Yes, they could.

6 Q Okay. I think you answered this question:
7 How many houses and lots will be provided versus
8 vacant lots? And you don't really know. They're just
9 saying that they're gonna provide that. Okay.

10 Just to clarify too, there's no -- they
11 have the same time limit on the vacant lot sales as
12 they would the house sales --

13 A Yes.

14 Q -- it's in the same affordable rate.

15 A Correct.

16 Q Okay. But there's still nothing in writing
17 saying that this is how many houses they're actually
18 going to provide and be built out?

19 A There's no agreement, correct.

20 Q All right. And then when they put a time
21 limit on a project, can the developer get extensions?

22 A Yes. However, in this case it would be a
23 lot more complicating for the developer because they
24 would have to go back to the County Council.

25 Q Okay. If they did how long can the

1 extensions be for and how many could they do?

2 A I don't know.

3 Q Okay. And then what are the consequences
4 for non-compliance with, like, county or state
5 mandates?

6 A Consequences would probably be, would be
7 decided on a case-by-case basis. So it would be
8 depending on what they have not complied with.

9 It would be, I think for if they did not
10 comply -- say they did not comply with a sale, we
11 would be then -- we would step in then and either say:
12 "You know what? You can't -- you'd have to pay back
13 that purchaser for the amount that you went over." I
14 mean that would kind of give you an example of what
15 the extent of the -- what do you call it be?

16 MS. BOLOMET: Non-compliance?

17 THE WITNESS: Yeah. Kind of like it's if
18 you don't comply, if you do something that is above
19 and beyond what has been agreed upon, we would
20 probably step in and make you -- make the developer
21 comply with that agreement.

22 Q (By Ms. Lincoln) So then the county is the
23 one who monitors and enforces.

24 A Yes.

25 Q Okay. So, for example, what if the

1 county's involved, like, with something that's not
2 above -- I'm just referring to the fill that was put
3 at the bottom of the property. Like who -- the county
4 did that with permission of West Maui Land.

5 Like if that's checks and balances, if the
6 county's the one that's responsible for checks and
7 balances, what if the county's involved with
8 unpermitted fill?

9 MR. GIROUX: I object. It's beyond the
10 scope of the witness.

11 VICE CHAIR HELLER: If the witness doesn't
12 know she can just say so.

13 THE WITNESS: I don't know.

14 Q (By Ms. Lincoln) So there's really no
15 checks and balances for the county then.

16 VICE CHAIR HELLER: That's becoming
17 argumentative.

18 MS. LINCOLN: Okay. Sorry. Didn't mean to
19 do that.

20 Q Okay. Regarding the SMS findings, your
21 Exhibit 7, I did not read in there that the west side
22 of Maui had to provide the 1150. On my paper it says,
23 "The county of Maui single-families was 1,151." But I
24 don't see where it stipulates where West Maui has to
25 do that. Could you tell me where that is in that

1 document?

2 A I don't think -- I believe we were
3 referring to an -- in my testimony I was referring to
4 an overall number of 1600. I did not particularly
5 identify the 1150.

6 Q I thought Mr. Geiger just asked you a
7 question. That's what's making me bring it up. And
8 you said that West Maui had to provide a certain
9 amount. When I'm looking here it says "The county of
10 Maui has an overall single-family of 1,151," so I'm
11 just clarifying.

12 A Yeah, it does not -- the study is not
13 saying that they have to provide it. The study is
14 saying that is what the need is for West Maui.

15 Q Okay. So it didn't say that West Maui had
16 to provide all those either?

17 A No.

18 Q They're just saying that's probably where
19 the need's gonna be.

20 A That's what the need is, yes.

21 Q Now, would Pulelehua with 880 units and
22 other pre-approved projects be able to provide these
23 units required?

24 A That is not a requirement. Again, it's
25 identifying a potential need.

1 Q Okay. Would Pulelehua with 880 units and
2 other pre-approved projects for West Maui be able to
3 meet that need?

4 A Yes.

5 Q Okay. So these 68 homes, 58 homes,
6 whatever, is not necessarily make or break this SMS
7 finding, because there's already pre-approved projects
8 that could meet that criteria for affordable housing?

9 A Yes.

10 Q Okay. I'm at median income. And if I want
11 to live at Launiupoko is it the County's
12 responsibility to provide affordable housing out
13 there?

14 A I believe Launiupoko was developed prior to
15 this residential workforce housing becoming a law.

16 Q But could it be --

17 A Oh, yeah.

18 Q -- out there then?

19 A Yeah. For all new developments the
20 residential workforce housing policy comes into play
21 for all housing developments.

22 Q Is there a way to do something retroactive
23 since that community's done and there's still some
24 space there? Is there a way for the county to go back
25 and provide workforce housing out there since it's an

1 established -- they all have the infrastructure out
2 there already? Would it be able to go backwards and
3 provide it there?

4 A Not that I am aware of.

5 Q I guess I'm not saying require them to.
6 I'm just asking could it have affordable housing put
7 out there?

8 A If it were -- you know, I think there would
9 be a lot of processes to go through to do that. But,
10 you know, you can go through the County Council and
11 the processes and hopefully you would be able to do
12 that. Because it's already a development we cannot go
13 back and require them.

14 Q Right. But it is within their -- could be
15 within their purview to do that.

16 Are you aware that as of recent as
17 September 1st there are 29 single-family homes under
18 \$685,000 in West Maui? And according to the HUD
19 affordability range chart 9 are under the 160 percent,
20 5 are under the 140 percent, 7 are under the 120; 3
21 are under the 100 and 5 are under the 80 percent?

22 A No, I'm not aware of that.

23 Q Of the 5 that under the 80 percent you had
24 mentioned a development that you helped do in Lahaina?

25 A Yes.

1 Q There's probably about three or four of 'em
2 right in that development. So it's fairly new
3 construction. You said that happened in the '90s?

4 A Yes.

5 Q So there are some right now available. And
6 they would be in the price range that are under the
7 80 percent?

8 A Yes.

9 Q Are you aware of that?

10 A Yes.

11 Q Okay. And then of the 29 homes that are
12 available on the market right now, 9 include an 'ohana
13 and 22 of them are 625 or less. So lenders like
14 Fannie Mae and Freddie Mac, those are a viable option
15 for under 625?

16 A That is my understanding, yes.

17 Q Okay. Are you aware that these figures I
18 just gave you do not include for sale by owner or
19 non-MLS listings?

20 A No, I'm not.

21 Q Okay. So how does this reflect a critical
22 shortage of homes when it doesn't even take into
23 consideration the 298 condos that are available in
24 West Maui under \$685,000?

25 A The Project is an option. So this would be

1 an option for people to purchase. And that's how I
2 look at it. We need to provide persons affordable
3 housing options to purchase.

4 Q Okay. Is it constitutional for the county
5 to endorse the removal of open space for housing on
6 privately held land?

7 A I cannot answer. I don't know. I can't
8 answer that question.

9 Q Okay. Doesn't the only -- so you can't
10 answer any questions about -- as a county worker is it
11 not required to, like, know the constitution of the
12 state of Hawai'i? Is it part of your purview?

13 MR. GIROUX: I object as argumentative,
14 Chair.

15 THE WITNESS: Well, if you ask me that
16 question in writing and I had the opportunity to
17 research it, I would answer you. But on my, you know,
18 off the top of my head no, I don't know.

19 Q (By Ms. Lincoln): Okay. Would you be
20 surprised to find that the only housing provision in
21 the state constitution applies to public land?

22 A No, I don't know that.

23 Q I'm just asking would you be surprised to
24 find out that the state constitution only applies to
25 public land, not private land?

1 A Well, I'm assuming that, yeah.

2 Q Okay. So are you aware that the state
3 constitution does provide for conservation and
4 environmental sections to all lands private and
5 public?

6 A I couldn't answer that.

7 Q Why does this housing Project outweigh the
8 rights of the people under the constitution of the
9 state of Hawai'i for open space?

10 MR. GIROUX: Objection.

11 MR. GEIGER: I'll object. It's
12 argumentative and I'm not sure where we're going with
13 this. It does appear to be cumulative.

14 VICE CHAIR HELLER: It's more argument than
15 a question.

16 Q (By Ms. Lincoln) Okay. I'm sorry. Why
17 does this housing Project outweigh the open space? Is
18 that okay?

19 MR. GEIGER: Same objection.

20 VICE CHAIR HELLER: It's repetitive, but I
21 think we're almost at the end. I hope we're almost at
22 the end.

23 MS. LINCOLN: In fact that's my --
24 (laughing) last one.

25 VICE CHAIR HELLER: So I'm going to allow

1 this final question.

2 A I couldn't answer that question.

3 MS. LINCOLN: Thank you.

4 VICE CHAIR HELLER: Ms. Bolomet, before you
5 start let me just check with our reporter. Do you
6 need a break?

7 THE REPORTER: Yes. (audience laughter)

8 VICE CHAIR HELLER: Okay. Take 10 minutes.
9 We're taking a break. And when we come back we will
10 move to Docket No. A94-706. We'll continue *this*
11 docket tomorrow morning.

12 MR. GEIGER: Thank you.

13 (Recess was held 2:45. Commissioner Makua is no longer
14 present)

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1 VICE CHAIR HELLER: Back on the record.
2 This is an action meeting regarding Docket No. A94-706
3 and Movant Maui Tomorrow Foundation, Inc. South Maui
4 Citizens for Responsible Growth and Daniel Kanahele's
5 Petition to Intervene filed on August 30, 2012. Will
6 the parties please identify themselves for the record.

7 MR. PIERCE: Hi. This is Tom Pierce on
8 behalf of the Movants -- I'm sorry -- on behalf of the
9 Petitioners today. And that would be Maui Tomorrow
10 South Maui Citizens and Daniel Kanahele. And I have
11 representatives of each of those parties with me
12 today.

13 VICE CHAIR HELLER: Let's go.

14 MR. YEE: Okay. Good afternoon. Deputy
15 Attorney General Bryan Yee on behalf of the Office of
16 Planning. Rodney Funakoshi from the Office of
17 Planning will be joining us shortly.

18 MR. HOPPER: Thank you, Mr. Chair, Members
19 of the Commission. Michael Hopper, deputy corporation
20 counsel representing the County of Maui Department of
21 Planning. With me is Ann Cua, staff planner.

22 MR. STEINER: Good afternoon. Jonathan
23 Steiner on behalf of Pi'ilani Promenade North, LLC and
24 Pi'ilani Promenade South, LLC.

25 MR. KAM: Good afternoon. Joel Kam on

1 behalf of Honua'ula Partners, LLC.

2 VICE CHAIR HELLER: Let me update the
3 record in this matter. On August 24, 2012 the
4 Commission granted Movant's Motion for Order to Show
5 Cause and ordered the landowners Pi'ilani Promenade
6 North, LLC; Pi'ilani Promenade South, LLC, and
7 Honua'ula Partners, LLC to show cause why the land
8 should not be reverted from Urban to its former
9 classification of Agriculture.

10 The Commission also received written
11 correspondence from Cynthia Umani Groves, Ann Cua,
12 William Spence and approximately 500 signed postcards
13 from Tom Blackburn-Rodrigues and four pages of
14 signatures submitted by Rene Richardson.

15 On August 30, 2012 the Commission received
16 Movant's Maui Tomorrow Foundation, Inc. South Maui
17 Citizens for Responsible Growth and Daniel Kanahale's
18 Petition to Intervene in Show Cause hearing.

19 On August 29, 2012 the Commission mailed
20 the agenda notice for the September 6th and 7th
21 meeting to the parties and the statewide and Maui
22 mailing lists.

23 On August 31, 2012 the Commission received
24 written correspondence from Terry McAuliff. The
25 Commission's e-mail address began experiencing trouble

1 receiving e-mail traffic on that date. And although
2 reported to the department's IT section it has not
3 been restored as of this date.

4 On September 4, 2012 the Commission
5 received Petitioner's Pi'ilani Promenade North, LLC
6 and Pi'ilani Promenade South, LLC and Honua'ula
7 Partners, LLC Memorandums in Opposition to Petition to
8 Intervene and Show Cause hearing.

9 Let me briefly describe our procedure for
10 today on this docket. First, I will call for those
11 individuals desiring to provide public testimony to
12 identify themselves. All such individuals will be
13 called in turn to our witness box where they will be
14 sworn in prior their testimony.

15 After completion of the public testimony
16 portion of the proceedings Movants will make their
17 presentation. After completion of the Movants'
18 presentation we will receive any comments from
19 Petitioners Pi'ilani Promenade, LLC and Honua'ula
20 Partners, Maui County and the State Office of
21 Planning.

22 After we have received the comments from
23 the parties we will conduct our deliberations. Are
24 there any questions on the procedure for today?
25 Hearing none, do we have a public testimony sign up

1 list?

2 MR. ORODENKER: Yes, Mr. Chair. We only
3 have one public testifier today, her name is Robin
4 Knox.

5 ROBIN KNOX
6 being first duly sworn to tell the truth, was examined
7 and testified as follows.

8 THE WITNESS: Yes, I do.

9 VICE CHAIR HELLER: Please state your name
10 and if you would give us either a residence or
11 business address and then proceed.

12 THE WITNESS: My name is Robin Knox. My
13 residence is 28 Waikalani Place, Kihei.

14 VICE CHAIR HELLER: Go ahead.

15 THE WITNESS: I'm an environmental
16 scientist by training and profession and experience.
17 And I have been serving for the past 2 years as the
18 coordinator of the Southwest Maui Watershed Plan,
19 which is a plan for the 50,000 acres above Kihei,
20 Makena, Wailea to control the non-point source
21 pollution or runoff.

22 I would like to make it clear I'm
23 testifying on behalf of myself as a resident, not on
24 behalf of the watershed advisory group. But I was
25 informed by my work with that group.

1 One of the things we did was hire a Ph.D.
2 water resources engineer to do some modeling of the
3 runoff from these watersheds, which are fairly large.
4 The subject Project is between Kalanihakoi and
5 Waipuilani Gulches, and I live downstream of it in
6 that same area.

7 During 2010 and 2007 I witnessed extreme
8 flood events in these areas where South Kihei Road for
9 miles was covered with muddy water. In Kalanihakoi
10 and Waipuilani sub-basins in the stream beds above the
11 highway and below the highway, I observed 4 to 6 feet
12 of sediment deposits.

13 I took water quality samples for total
14 suspended solids when the streams were flowing. And
15 normally you would report those things in parts per
16 million, like 30 parts per million total suspended
17 solids might be a typical reading.

18 But I was getting 32 parts per thousand.
19 So it was considerably higher, orders of magnitude
20 higher, than any stormwater runoff total suspended
21 solid data that I've ever seen in my 30 years doing
22 water quality work.

23 My concern is for safety first of all and
24 secondly for water quality. From a safety standpoint
25 I'm not comfortable that the County's design criteria

1 for planning for the 50-year recurrent event storm is
2 adequate to protect us from the volume of water coming
3 down.

4 I feel that without restoration to stop all
5 the sediment for coming off of the land, that the
6 sediment load itself is both a safety hazard -- it's a
7 maintenance problem for the county. And it is
8 definitely a water quality problem.

9 The Department of Health has reported that
10 the waters receiving all this runoff are impaired due
11 to sediment lifts.

12 This all calls for a heightened level of
13 planning for water quality that may go beyond what
14 regulations require at the county level in order to
15 meet federal regulations for protection of water
16 quality.

17 I would like to make the Commission aware
18 that I did approach the developer's representative,
19 Charlie Jencks, in an attempt to engage them as a
20 stakeholder in our watershed planning process which is
21 sponsored -- it's funded by EPA. It's sponsored by
22 the Department of Health in the Central Maui Soil and
23 Water Conservation District.

24 Mr. Jencks told me that speaking with me
25 was a waste of his time. And I think that's a good

1 summary of how this Project has approached our
2 community. We have significant and valid safety and
3 environmental concerns.

4 And we're not even getting the time of day
5 or even politeness out of these people that are
6 proposing this. So that's all I have today. I thank
7 you for your time and for allowing me to testify.

8 VICE CHAIR HELLER: Parties, any questions?
9 Commissioners, any questions? Thank you. Is there
10 anyone else here today who wishes to provide public
11 testimony on this docket? Okay. If not, Mr. Pierce,
12 please go ahead make your presentation.

13 COMMISSIONER INOUE: Chair?

14 VICE CHAIR HELLER: Oh, I'm sorry. You had
15 a question?

16 COMMISSIONER INOUE: Could I move for an
17 executive session before we begin the arguments?

18 VICE CHAIR HELLER: Okay. Is there a
19 second?

20 COMMISSIONER BIGA: Second.

21 VICE CHAIR HELLER: All in favor?

22 (Commissioners voting: Aye) Okay. We'll recess for a
23 brief executive session.

24 (Executive session 3:10-3:30)

25 VICE CHAIR HELLER: Okay. Back on the

1 record. Before we proceed I want to clarify
2 procedurally the way the Commission is going to be
3 handling this entire Order to Show Cause proceeding.

4 There are two phases here, two stages we
5 need to address or potentially address. The first
6 question is: Has there been a violation of the
7 conditions in the Commission's existing Decision and
8 Order? If the answer to that is "no" then that's the
9 end. We don't need to go any further.

10 If the answer to that is "yes" then the
11 second phase would be: What do we do about the fact
12 that there's been a violation? We propose to handle
13 those in two distinct phases or at least do the first
14 phase and determine if we need to move on to the
15 second phase.

16 With that in mind, for purposes of today's
17 hearing on the Motion to Intervene we are treating it
18 as a motion to intervene in the first phase. And if
19 and when we reach the second phase we can deal with
20 who are going to be the parties participating in that
21 second phase.

22 I'm just telling you that so in terms of
23 discussing the Petition to Intervene we can be clear
24 on what it is we're addressing right now. Any
25 questions about that?

1 MR. PIERCE: Well, Mr. Commissioner, I
2 guess I would at least reserve the right for my
3 clients to brief that issue because, you know, we
4 were -- this is a contested case under the chapter 91.
5 And what we essentially would have is a separate
6 contested case. And I'm just not sure if that's how
7 the Administrative Rules would look at that from our
8 perspective.

9 But I guess we're okay proceeding with it
10 like that today with the reservation. Because it
11 sounds like is that an order that's being issued by
12 the Commission today?

13 VICE CHAIR HELLER: Well, that is the
14 procedural direction that I as Chair am issuing in
15 terms of procedurally how we're planning to go forward
16 with this hearing. If you want to submit any kind of
17 motion or memo, I guess you can submit it. But the
18 motion that's actually before us today is just the
19 Motion for Leave to Intervene.

20 And we're going to deal with that on the
21 assumption that what we're talking about right now is
22 intervening in the first phase. And then if and when
23 we reach the second phase we can deal with who's an
24 intervenor in the second phase.

25 MR. PIERCE: I guess my problem is that if

1 I look at the rule, and you can correct me if I'm
2 wrong, the two sections, the Order to Show Cause and
3 the reverter or what potentially the Commission can do
4 in terms of identifying a violation, they fall under
5 the same rule I believe.

6 So certainly we will be presenting it
7 today -- if this is okay with the Commission -- we
8 will present our case today as if we're under that
9 rule. And I guess we would ask for an opportunity for
10 that to be made an Order of some sort by the
11 Commission so that we could evaluate that. And
12 preferably we would have an opportunity to put on an
13 argument for the Commission on that issue as to why--

14 VICE CHAIR HELLER: And I'm not foreclosing
15 any argument on that issue. I'm just saying that I
16 wanted to let you know before we actually hear and
17 decide the Petition to Intervene, that the way we're
18 regarding it for now is intervening in the first
19 phase.

20 And then if and when we reach a second
21 phase we can address it at that time as to who's
22 participating in the second phase.

23 MR. PIERCE: Okay. Thank you.

24 VICE CHAIR HELLER: So with that you can go
25 ahead and address the Petition to Intervene.

1 MR. PIERCE: Thanks. And on that part
2 we're going to rest on our pleadings. And the only
3 thing I would like to do -- I understand the
4 Commission has been here a long -- it's already been a
5 long day -- I want to briefly bring up a client, the
6 two client representatives as well as Mr. Kanahale to
7 verify the facts that have been set forth in my
8 Petition. So I'd like to call first Ms. Irene Bowie,
9 the representative here for Maui Tomorrow.

10 VICE CHAIR HELLER: And the purpose of this
11 is just to have her state on the record that what's in
12 the Petition is true and correct?

13 MR. PIERCE: Correct.

14 VICE CHAIR HELLER: Do we need to go
15 through that exercise? I mean I assume all the
16 parties agree that she'll say that what's in their
17 Petition is their position.

18 MR. PIERCE: The landowners have argued
19 that we've failed to meet the evidentiary standard.
20 So for that reason I'd like to do it. There is
21 perhaps a question of law as to whether the landowners
22 are correct on that issue. But in an abundance of
23 caution I think I can do the whole thing in 15 minutes
24 or less.

25 VICE CHAIR HELLER: Okay. Go ahead and

1 build your record if you feel you need to.

2 IRENE BOWIE

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

5 THE WITNESS: Yes, I do.

6 VICE CHAIR HELLER: Go ahead.

7 DIRECT EXAMINATION

8 BY MR. PIERCE:

9 Q Please state your name.

10 A Irene Bowie.

11 Q And who do you represent?

12 A Maui Tomorrow Foundation.

13 Q In what capacity do you represent Maui
14 Tomorrow?

15 A I'm the executive director.

16 Q Have you read the Petition to Intervene
17 that was filed on Maui Tomorrow's behalf with the Land
18 Use Commission that's the issue before us today?

19 A Yes.

20 Q Can you verify as to the truth and accuracy
21 of the factual statements made in there related to
22 Maui Tomorrow?

23 A Yes.

24 Q I'd like to provide you a copy of the
25 Petition to Intervene. And I'm going to assume,

1 unless I hear an objection that's okay with the
2 parties?

3 MR. KAM: No objection.

4 Q (By Mr. Pierce): If you turn to Page 9 of
5 the Petition to Intervene, do you see the five
6 numbered paragraphs regarding the potential harm that
7 were enunciated there with respect to what's called in
8 the Petition "representative persons"?

9 A Yes, I do.

10 Q Are you familiar with the factual
11 statements that are made in those five paragraphs?

12 A Yes, I am.

13 Q Do you consider Maui Tomorrow to have
14 constituents and supporters that meet each one of
15 those five paragraphs?

16 A Yes, definitely.

17 MR. PIERCE: Thank you. No further
18 questions.

19 VICE CHAIR HELLER: Any questions from the
20 parties? Let's start with Mr. Hopper.

21 MR. HOPPER: No questions.

22 MR. YEE: No questions.

23 MR. KAM: No questions.

24 MR. STEINER: No questions.

25 VICE CHAIR HELLER: Commissioners, any

1 questions? Okay. Your next witness.

2 MR. PIERCE: I'd like to be call Mark Hyde.

3 MARK HYDE

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

6 THE WITNESS: I do.

7 VICE CHAIR HELLER: Go ahead.

8 DIRECT EXAMINATION

9 BY MR. PIERCE:

10 Q Could you state your name, please.

11 A Mark Hyde.

12 Q And who do you represent here today?

13 A South Maui Citizens for Responsible Growth.

14 Q What's your capacity with respect to that
15 organization?

16 A I'm the president.

17 Q Have you read the Petition to Intervene?

18 A Yes.

19 Q Can you verify as to the truth and accuracy
20 of the factual statements made therein?

21 A Yes, they're true.

22 Q And with respect to the Petition that's
23 right there with you, going again to Page 9, had you
24 looked at those five numbered paragraphs on Page 9?

25 A Yes, I have.

1 Q Does South Maui Citizens represent people
2 who fall within each of those categories?

3 A Yes, we do.

4 MR. PIERCE: Thank you.

5 VICE CHAIR HELLER: Any questions, Mr. Kam?

6 MR. KAM: No questions.

7 VICE CHAIR HELLER: Mr. Steiner?

8 MR. STEINER: No questions, thank you.

9 VICE CHAIR HELLER: Mr. Hopper?

10 MR. HOPPER: No questions.

11 VICE CHAIR HELLER: Mr. Yee?

12 MR. YEE: No questions.

13 VICE CHAIR HELLER: Commissioners? Okay.

14 And you have one more?

15 MR. PIERCE: Yes. I'd like to call Daniel
16 Kanahele.

17 DANIEL KANAHELE

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

20 THE WITNESS: Yes.

21 DIRECT EXAMINATION

22 BY MR. PIERCE:

23 Q Could you state your name and your address
24 Mr. Kanahele?

25 A Daniel Kalealoha Kanahele, 1100 Kupulau

1 Drive, Kihei.

2 Q How long have you lived in Kihei?

3 A About five years.

4 Q Do you have other family in Kihei?

5 A Yes, I do.

6 Q Where did you live before you moved to
7 Kihei?

8 A I lived on O'ahu.

9 Q And where were you born?

10 A I was born in St. Francis Hospital in
11 Nu'uuanu, O'ahu.

12 Q What is your occupation?

13 A I'm self-employed. I do landscape work and
14 other labor-related work.

15 Q Where does your work take place ordinarily?

16 A Mostly in Kihei and Wailuku.

17 Q How often do you drive Pi'ilani Highway?

18 A Every day.

19 Q And how often would you find yourself in
20 front of the -- are you familiar with the property
21 that's the issue before us today?

22 A Yes.

23 Q How often do you drive in front of that
24 property?

25 A Five times a week at least.

1 Q Have you read the Petition to Intervene
2 that I've referred to here today?

3 A Yes.

4 Q And can you verify as to the truth and
5 accuracy of the factual statements that are made as to
6 you in that Petition?

7 A Yes, I can verify that.

8 Q And with respect to page 9 and the five
9 numbered paragraphs there identifying specific types
10 of harm, are you familiar with those statements?

11 A Yes.

12 Q And do you consider yourself or members of
13 your family to be affected by the potential harms that
14 are set forth in those five sections?

15 A Yes.

16 Q Can you describe your ancestry for us?

17 A I am a hapa haole. I am Hawaiian,
18 Caucasian, a little bit of Chinese thrown in for
19 flavor. So I'm a little Pake. My father is Daniel
20 Kanahale. He was born in Lahainaluna. His father is
21 Clinton Kanahale. He was born in Kona only because
22 his mother happened to be in Kona in her ninth month
23 of pregnancy and he came out. But he's actually
24 raised in Hana.

25 His mother Abigail Nauoho is from Hana and

1 her father Daniel Nauoho is also from Hana.

2 My mother's side: My mother is Elizabeth
3 Monsarrat. Her father is Julian Monsarrat, managed
4 Kapapala Ranch on the Big Island for over 40 years.
5 And her mother is Abigail Kiniakua from Punalu'u. And
6 her parents are Kamali Kekaula from Punalu'u and Sammy
7 Kiniakua from Kohala, Hawai'i Island.

8 Q Do you consider yourself to be of Native
9 Hawaiian lineage?

10 A Oh, yeah, absolutely.

11 Q What would be the importance of cultural or
12 archaeological sites to you as a Native Hawaiian?

13 A Oh, immense importance. As you know we
14 don't have a written history as far as we know. So I
15 consider to a large extent the archaeological,
16 historical sites our libraries. They're our books,
17 many of them yet to be read.

18 So they contain our history, history yet to
19 be read. So they are very important to our cultural
20 identification as Hawaiians to understand what those
21 sites mean.

22 Q Are you aware of any cultural or
23 archaeological sites on the subject property?

24 A I am.

25 Q And how have you become aware of those?

1 A I did read their Archaeological Inventory
2 Survey that was done in 1994 by Zaminex. Eric
3 Fredrickson I think was the lead archaeologist. So
4 I've read their, AIS Archaeological Inventory Survey.

5 Q Would you describe those sites as important
6 to you as a Native Hawaiian?

7 A Absolutely.

8 Q And can you describe for us is there a way
9 in which -- the way that this postured before us today
10 is that it was originally proposed as Light
11 Industrial. It's now being proposed for housing,
12 affordable housing on a portion of the property as
13 well as retail shopping centers and/or outlets on
14 another portion of the property.

15 Do you see possibly any harm resulting to
16 you as a result of the change in use?

17 A I see potential harm, yes.

18 Q Can you at this stage, although you're not
19 here for a proof hearing, but just for the sake of
20 assisting us, what would be some of the reasons that
21 you would see a possible harm from that change?

22 A Well, you know, originally they proposed
23 123-lot site when I saw the plan for that. And now
24 they're proposing something quite different. I'm not
25 sure what the impacts of the changes are going to have

1 on these archaeological sites. There were 20 sites
2 documented. One was given Preservation status. The
3 other 19 were given Significance of DR meaning data
4 recovery and according to the archaeologist no further
5 work was required.

6 So I don't know what the final end will be
7 of these sites, not only on the property but also,
8 just as importantly, adjacent, immediately adjacent to
9 the proposed Project.

10 MR. PIERCE: Thank you. I have no further
11 questions.

12 VICE CHAIR HELLER: Mr. Kam?

13 MR. KAM: No questions, thank you.

14 VICE CHAIR HELLER: Mr. Steiner?

15 CROSS-EXAMINATION

16 BY MR. STEINER:

17 Q Are you aware of any -- you said that
18 you're aware of sites through the survey. Are you
19 aware of any sites other than what you've learned
20 through the survey? Archaeological sites?

21 A You mean in the Project Area? I am not.

22 MR. STEINER: Nothing further.

23 VICE CHAIR HELLER: Mr. Hopper? Mr. Yee?

24 MR. YEE: No questions.

25 VICE CHAIR HELLER: Commissioners, any

1 questions? Thank you.

2 MR. PIERCE: We'll rest our case now.

3 VICE CHAIR HELLER: Okay. Mr. Kam, I guess
4 we'll go back to this end.

5 MR. KAM: I actually don't have anything
6 more to add other than what we've stated in our
7 Memorandum in Opposition. So we'll just rest on our
8 brief.

9 VICE CHAIR HELLER: Mr. Steiner?

10 MR. STEINER: I would just add that based
11 upon the facts as set forth in the Petition even as
12 established, if established at this hearing, still
13 haven't indicated an interest in this Project which is
14 significantly different from that of the general
15 public.

16 And on that basis and on the basis of our
17 briefs we would ask the Petition for Intervention be
18 denied.

19 VICE CHAIR HELLER: Mr. Hopper.

20 MR. HOPPER: Thank you, Mr. Chair. The
21 county of Maui did file on September 4th a Statement
22 of No Opposition. I'm not certain if the Commission
23 has received that, but the county of Maui has no
24 opposition to the Petition to Intervene and we would
25 rest on that statement. We have nothing further.

1 VICE CHAIR HELLER: Mr. Yee?

2 MR. YEE: Without prejudice to our right to
3 argue issues of relevance, at the actual substantive
4 hearing, the Office of Planning takes no position with
5 respect to the Petition to Intervene.

6 VICE CHAIR HELLER: Commissioners, any
7 questions for the parties? I have a question I'd like
8 to address to Mr. Pierce. Just to clarify, you are
9 representing all three of the Petitioners seeking to
10 intervene at this point, correct?

11 MR. PIERCE: Correct.

12 VICE CHAIR HELLER: And *if* this were
13 granted, if the Petition to Intervene were granted,
14 you would be continuing to represent all three
15 together, correct?

16 MR. PIERCE: Correct.

17 VICE CHAIR HELLER: In terms of briefing
18 you would be filing one combined brief on whatever
19 issues there are, one set of exhibits as opposed to
20 three sets of exhibits, correct?

21 MR. PIERCE: Correct.

22 VICE CHAIR HELLER: Okay. Just wanted to
23 make sure we had a clear understanding on that.
24 Commissioners, what is your pleasure? (pause) Anybody
25 have a motion they want to make?

1 COMMISSIONER INOUE: I guess I will. I
2 would move to grant the Petition to Intervene with
3 condition that just one attorney will be speaking on
4 behalf of all three parties.

5 And if there's potential arguments among
6 the three you're going to have to resolve it somehow
7 and not bifurcate it in the future, at least in the
8 first phase, as the Chair has indicated.

9 VICE CHAIR HELLER: Is there a second?

10 COMMISSIONER BIGA: Second that motion.

11 VICE CHAIR HELLER: Any discussion? Then
12 let's call for the vote.

13 MR. ORODENKER: Thank you, Mr. Chair. The
14 motion is to grant the Petition to Intervene with the
15 condition only one attorney will be speaking on behalf
16 of all three parties.

17 Commissioner Inouye?

18 COMMISSIONER INOUE: Aye.

19 MR. ORODENKER: Commissioner Biga?

20 COMMISSIONER BIGA: Aye.

21 MR. ORODENKER: Commissioner Matsumura?

22 COMMISSIONER MATSUMURA: Aye.

23 MR. ORODENKER: Commissioner Teves is
24 excused. Commissioner McDonald?

25 COMMISSIONER McDONALD: Yes.

1 MR. ORODENKER: Commissioner Contrades?

2 COMMISSIONER CONTRADES: Yes.

3 MR. ORODENKER: Commissioner Makua is
4 excused. Chair Heller?

5 VICE CHAIR HELLER: Yes.

6 MR. ORODENKER: Mr. Chairman, the motion
7 passes unanimously with six votes.

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25 (Continued: A12-795 West Maui Land Company, Inc-Kahoma

1 Residential, LLC.)

2 VICE CHAIR HELLER: Okay. Back on the
3 record. Ms. Bolomet, I believe you were in the
4 process of questioning the witness.

5 MS. BOLOMET: Yes, thank you.

6 JO-ANN RIDAO
7 previosly being first duly sworn to tell the truth,
8 was examined and testified as follows:

9 CONTINUED CROSS-EXAMINATION

10 BY MS. BOLOMET:

11 Q I'm going to try to refresh everybody and
12 ask the question again. This is relating to the LUC
13 criteria for amending urban boundaries so the question
14 is: Is it true that public services and facilities
15 together with improvements to be constructed are
16 adequate to support the Project?

17 Is it not expected to the existing public
18 services and facilities would be unreasonably burdened
19 or impacted by the proposed development or it's
20 classification?

21 MR. GEIGER: I'm going to object because
22 there's two questions. If we could have the first
23 question and the second question would be better.

24 VICE CHAIR HELLER: Let's take it in parts.

25 MS. BOLOMET: Shall I ask the first part

1 between legal --

2 Q Is it true public services and facilities
3 together with improvements to be constructed are
4 adequate to support the Project?

5 A Yes, it is.

6 Q If it's not extended to the existing
7 public, services and facilities would be unreasonably
8 burdened or impacted by the government or its
9 classification?

10 A I don't believe they would be unreasonably
11 burdened, no.

12 Q What would you base your answer on?

13 A We've contacted the county, the various
14 departments within the county and state agencies that
15 oversee these projects. They've all indicated either
16 adequate capacity source or general approval.

17 Q Do you know what an NPDES permit is?

18 A Yes.

19 Q Would you please explain to us what it is?

20 A It's a pollutant -- National Pollutant
21 Discharge Permit for runoff waters.

22 Q Can you tell us what an UIC permit is?

23 A I'm not familiar with that acronym anymore.

24 Q Do you know what a TMDL is?

25 A Again I'm not -- if you know what the

1 acronym is give me that. I'm not familiar with that
2 acronym.

3 Q I have it here. I thought you would know.
4 The TMDL is total maximum daily load. So I asked you
5 if you knew what TMDL is for this Project.

6 A In relation to what?

7 Q Your wastewater and your runoff, the two
8 different?

9 A I believe those are in our engineering
10 report. I would need to look those up.

11 Q Can you look them up and tell us are the
12 two different?

13 A Sorry. I'm not able to find the
14 engineering report right now.

15 Q Would it be in the Environmental
16 Assessment?

17 A Yes. I'm looking in the EA but nothing is
18 page separated.

19 Q Because we, we couldn't find it.

20 A I'll go with your word that you can't find
21 it.

22 Q Did it need to be in the EA?

23 A No. I believe the Wastewater and Water
24 Department would know what demand would be.

25 Q For your Project?

1 A Yes.

2 Q Okay. So the UIC is the underground
3 injection control. Do you have permits for that?

4 A There is no underground injection on the
5 Project.

6 Q Okay. If the waste cannot -- if the
7 Lahaina Waste Management Plant -- is that overcapacity
8 then sometimes they do the injection wells so you
9 don't know anything about that?

10 MR. GIROUX: I'm going to object to that.
11 I don't think that witness knows that information.

12 MR. GEIGER: I also object because this is
13 what's before -- there's a statement being made,
14 there's no question being asked. So it needs to be
15 phrased in the form of a question. And secondly it's
16 assuming facts which have not been presented to this
17 Commission yet.

18 VICE CHAIR HELLER: Ms. Bolomet, again, we
19 can get through this faster to avoid some of these
20 objections if you can try to just ask a question
21 without stating as an assumption facts that have not
22 been established. Also I don't think this witness has
23 been offered to testify about the engineering of the
24 water system.

25 MS. BOLOMET: Who would we ask that of?

1 MS. LINCOLN: The County?

2 MS. BOLOMET: I'm just trying to establish
3 that if this Project is to go through, that there is
4 proper waste, the proper capacity to take, capacity to
5 take the effluents from the runoff. Because these are
6 things that directly affect our cultural practice and
7 the limu the fish, the coral and everything down
8 below.

9 That's the reasoning behind these
10 questions. So far in all of the reports we haven't
11 seen where they have addressed these things.

12 VICE CHAIR HELLER: Well, it might be more
13 productive to just ask her where in the report it's
14 addressed. If she knows she knows. If she doesn't
15 she doesn't. We're not going to get anywhere with
16 asking her about the details of things that's she's
17 not familiar with.

18 Q (By Ms. Bolomet): So is there a UIC in the
19 report?

20 A I don't believe there is.

21 Q An NPDES in the EA report?

22 A NPDES are applied for after crosswalks and
23 plans are complete.

24 Q Well, so the answer is no, correct?

25 A Correct.

1 Q I just have a few more questions. You said
2 if there's a park on the property once the West Maui
3 Land and Kahoma Residential is no longer a part of
4 this who's responsible for taking care of that park?

5 A The homeowners association will be
6 responsible for the maintenance of that park.

7 Q Are they the ones that will take on the
8 liability insurance for anybody that goes onto that
9 property?

10 A Yes. They would usually carry a liability
11 policy.

12 Q So it would cover all cultural
13 practitioners that would go onto, say, the he'iau or
14 any other archaeological find that we're able to point
15 to?

16 MR. GEIGER: Again, that's a statement of
17 facts not in evidence. If she requests the extent of
18 the coverage the witness can answer.

19 Q (By Ms. Bolomet): What is the extent of
20 the coverage, of the insurance coverage?

21 A Generally the insurance will be for the use
22 of the property as a public facility.

23 MS. BOLOMET: Okay. That's it. Thank you.

24 VICE CHAIR HELLER: Any redirect?

25 MR. GEIGER: Yes, just a couple of areas.

1 HEIDI BIGELOW

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

4 REDIRECT EXAMINATION

5 BY MR. GEIGER:

6 Q Let's first focus on the park. You were
7 asked some questions about the park. You gave some
8 answers with regard to, I guess, offering the park.
9 Was there any sort of determination made, to your
10 knowledge, whether the county was interested in this
11 as a park?

12 A One of the initial steps that we took when
13 we looked at this Project was met with the Parks
14 Department to see if they were interested in the
15 parcel as a whole, portion of the parcel, greenway
16 path or anything like that. And the Parks Department
17 at the time, I think it was around 2005, said, "No."

18 We also met with the various councilmembers
19 at the time, Charmaine Tavares, who was actively
20 involved with the Parks Department, also Bill Medeiros
21 who both were aware of the designation as open space.
22 They felt that the "residential" -- they supported the
23 residential use of the Project.

24 And in addition the Council received the
25 draft letter or the letter I submitted regarding

1 purchase of the park. And they approved the Project
2 with that as a residential Project.

3 Q You've been asked some questions about the
4 offsite impact of this Project. Did the developer
5 take any look at mitigation of any offsite impacts?
6 If so what were they?

7 A Again, responding about our retaining of
8 course, retaining of stormwater within the Project and
9 mitigating impacts within the Project so that there
10 will be no regional impacts.

11 MR. GEIGER: No further questions.

12 VICE CHAIR HELLER: Other parties anything
13 further? Commissioners, any questions? Yes,
14 Commissioner Biga.

15 COMMISSIONER BIGA: Good afternoon.

16 THE WITNESS: Hi.

17 COMMISSIONER BIGA: Thank you for coming to
18 testify.

19 THE WITNESS: Thank you.

20 COMMISSIONER BIGA: I just had a couple
21 questions. What other projects does West Maui Land
22 have on the west side area or residents?

23 THE WITNESS: West Maui Land doesn't own
24 any properties but we do manage Mahano Nui Nui,
25 Pu'unoa and Mahano as well as Olowalu.

1 COMMISSIONER BIGA: So there's possible
2 residential areas for the west side.

3 THE WITNESS: Right now they're Ag. So we
4 have proposed Ag subdivisions. We are looking at some
5 potential change in zoning in some areas.

6 COMMISSIONER BIGA: The old mill area, the
7 yard area, is that under West Maui?

8 THE WITNESS: No, that's owned by Pioneer
9 Mill. I think it's Ka'anapali Land. They changed
10 their name but it's Ka'anapali Land.

11 COMMISSIONER BIGA: The Mill Road that goes
12 out, when will that be designated County? What part
13 of the project? I guess when it's all done when
14 finished I guess?

15 THE WITNESS: Yeah, probably when it's
16 completed from end to end, from Lahainaluna to Keawe.

17 COMMISSIONER BIGA: That would be before
18 any homes are sold?

19 THE WITNESS: No. My portion is from Keawe
20 to the project site. That's what will be completed as
21 part of this Project. But with the 20-foot travelway
22 and 3 to 4-foot shoulders, the rest of it will be done
23 in the future. I believe the county is working on
24 that Project, with the design of it at this time.

25 COMMISSIONER BIGA: What will happen if

1 this Project should be sold? Just hypothetically,
2 what would happen with all of the conditions that was
3 based on the developer to finish? What would happen
4 then?

5 THE WITNESS: If the Project were sold,
6 which is not our intent, but if it is and whoever
7 purchased it intending to go forward with the
8 residential project or this Project, they would have
9 to meet all the conditions.

10 COMMISSIONER BIGA: With all the agreements
11 that was based on the state, county and community?

12 THE WITNESS: Yes.

13 COMMISSIONER BIGA: Is it possible to have,
14 I think was 10 or 8 where the 'ohana dwellings where
15 they're going to build their own?

16 THE WITNESS: I'm sorry?

17 COMMISSIONER BIGA: I think there was just
18 going be some area where the land was going to be sold
19 to parcels and somebody would come in build their own.

20 THE WITNESS: There's a potential. We're
21 offering vacant land for individuals who might have
22 their own construction skills, save money. That's why
23 we are offering an option for vacant land. We don't
24 know what the numbers are.

25 There hasn't been vacant properties offered

1 in West Maui to this extent. We think for this market
2 it would be a fairly small portion of the property,
3 anywhere from 5 to 10 but there's no established
4 numbers on that.

5 COMMISSIONER BIGA: Why I'm going to that
6 question: Is the developer to hold the same, same
7 standards as the Project that you guys are building as
8 far as energy savings, solar and things of that sort?

9 THE WITNESS: I think the challenge was the
10 enforcement of it on how the developer, through
11 inspection, that was designed of why I said I don't
12 think we're going to do that primarily because the
13 enforcement of those standards. The county has
14 standards for solar and other matters so many of those
15 would fall on the county.

16 COMMISSIONER BIGA: Okay. Thank you.

17 COMMISSIONER McDONALD: You may have
18 already mentioned it, but to confirm, who's going to
19 maintain the operations of that detention basin?

20 THE WITNESS: The Association will maintain
21 that. In the CC&R's we provide our Best Management
22 Practices schedule for the basin.

23 COMMISSIONER McDONALD: For the basin.

24 THE WITNESS: The Homeowners Association
25 will maintain it.

1 COMMISSIONER McDONALD: Any idea what the
2 Association dues might be?

3 THE WITNESS: My preliminary estimate is
4 around \$30 a month. So we're trying to keep them real
5 minimal. It's just basically, you know, if the basin
6 needs to be desilted after a large storm event,
7 50-year storm or annually, that would be probably the
8 biggest choice.

9 Other than that it's just weed whacking,
10 keeping the weeds down, mowing the park and irrigation
11 water on the park, I mean potable, potable water but
12 irrigating the park.

13 COMMISSIONER McDONALD: Okay. Thank you.

14 COMMISSIONER BIGA: Chair? I think I read
15 at the last meeting we had how qualified or what kind
16 of qualification does the Association need? Because
17 of the issues that might come up with anything that
18 might happen because of a big storm or, who says that
19 it needs to be cleaned out?

20 Does this Association have, like, an
21 engineer or somebody with that kind of good knowledge?

22 THE WITNESS: In past, Associations hired
23 somebody to come and inspect. It would most likely
24 be the Association itself unless there happens to be
25 somebody in the neighborhood that has that degree or

1 that knowledge.

2 Most likely they would hire an outside
3 consultant to inspect it annually and analyze what
4 needs to be done after a large storm event inspection.

5 COMMISSIONER BIGA: Thank you.

6 VICE CHAIR HELLER: Anything else?

7 Following up on Commissioner Biga's question about the
8 lots that might be sold as vacant lots, I think you
9 said there's an 18-month time period in which the
10 purchaser must construct a home on the lot.

11 THE WITNESS: That's part of the CC&R's,
12 yes.

13 VICE CHAIR HELLER: What is the enforcement
14 mechanism for that?

15 THE WITNESS: We'd have to write -- the
16 Association could begin with writing letters usually
17 to the point where you can file liens against the
18 property to finish the construction.

19 VICE CHAIR HELLER: And it would be up to
20 them to take those enforcement steps.

21 THE WITNESS: Likely. In the beginning
22 usually the developer helps the Association 'til the
23 Project's basically settled, just basically assist
24 them with those types of issues.

25 VICE CHAIR HELLER: Thank you. Anything

1 else, Commissioners? Mr. Geiger, your next witness.

2 MR. GEIGER: We had no further witnesses on
3 direct. We did have Mr. Frampton on rebuttal, but
4 that should come in after the witnesses have been
5 produced on that.

6
7 VICE CHAIR HELLER: Okay. We're adjourned
8 for today.

9 (The proceedings were adjourned at 4:00 p.m.)

10 --oo00oo--

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

2

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

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

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

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

14

15

16

17 DATED: This_____ day of_____2012

18

19

20

21

22 _____
23 HOLLY M. HACKETT, HI CSR #130, RPR
24 Certified Shorthand Reporter
25