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LAND USE COMMISSION

STATE OF HAWAI'I

HEARING AND ACTION

DOCKET NO. A12-795 WEST MAUI LAND CO, INC.)

KAHOMA RESIDENTIAL, LLC )

\_\_\_\_\_)

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 7, 2012, pursuant to Notice.

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

## 1 A P P E A R A N C E S

## 2 COMMISSIONERS:

3 RONALD HELLER, VICE CHAIR (O'ahu)  
4 CHAD McDONALD, VICE CHAIR (At large)  
5 SHELDON R. BIGA  
6 THOMAS CONTRADES (Kauai)  
7 LANCE M. INOUE (At large)  
8 ERNEST MATSUMURA (Hawai'i)

9 EXECUTIVE OFFICER: DAN ORODENKER

10 CHIEF CLERK: RILEY HAKODA

11 STAFF PLANNER: SCOTT DERRICKSON, BERT SAWARUTARI

12 DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

13 AUDIO TECHNICIAN: WALTER MENCHING

14

15 Docket No. A12-795

16 For the Petitioner: JAMES GEIGER, ESQ.  
17 HEIDI BIGELOW

18 For the County: JAMES A.Q. GIROUX, ESQ.  
19 Deputy Corporation Counsel  
20 KURT WALLENHAUPT

21

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

26 Intervenor: MICHELE LINCOLN

27 Intervenor: ROUTH BOLOMET

28 Also Present: KAHU MICHAEL LEE

29

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1                   VICE CHAIR HELLER: (Gavel) Okay. I call  
2 the meeting to order. This is a continued hearing on  
3 Docket No. 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% of the median family income of  
10 families in Maui County, Hawai'i, TMK Nos. (2)  
11 4-5-10:005. Let's have the parties note their  
12 presence for the record.

13                   MR. GEIGER: Good morning, Chair,  
14 Commissioners. I'm James Geiger on behalf of the  
15 Petitioner. Also present is Heidi Bigelow and Rory  
16 Frampton.

17                   VICE CHAIR HELLER: Thank you.

18                   MR. GIROUX: I'm James Giroux with the  
19 county. And with me is Kurt Wollenhaupt from the  
20 Department of Planning.

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: Michele Lincoln, Intervenor.

1 MR. BOLOMET: Ruth Bolomet, Intervenor.

2 VICE CHAIR HELLER: Thank you. I believe  
3 when we recessed yesterday we had Ms. Ridao on the  
4 stand. And Ms. Bolomet was about to proceed with  
5 questioning. So let's resume the questioning of  
6 Ms. Ridao and see if we can get that completed.

7 MR. GEIGER: Chair, I apologize, but before  
8 we got started this morning I was handed four separate  
9 documents that were apparently stamped in and had been  
10 handed to the Commissioners. They appear, for the  
11 most part, to be documents that should have been  
12 exhibits that would have been connected with Mr. Lee's  
13 testimony.

14 This Commission has ordered that all of  
15 those exhibits were to be produced and provided to the  
16 Commission and the parties by August 1. We're now  
17 September 7, well beyond that.

18 This will be the *third* time, third deadline  
19 that's been missed. I would strenuously object to any  
20 of these documents being considered by the Commission  
21 because it severely prejudices my client.

22 VICE CHAIR HELLER: Mr. Geiger, at this  
23 point they've been stamped as received. There's been  
24 no ruling as to the admissibility of evidence. If and  
25 when they're offered into evidence we'll deal with it

1 at that time.

2 MR. GEIGER: Okay. I will assume, then,  
3 that the Commission will not be reviewing these  
4 documents unless and until they are received into  
5 evidence. Would that be correct?

6 VICE CHAIR HELLER: You can make any  
7 assumption you want to make, Mr. Geiger. We'll deal  
8 with the matter when they're offered into evidence --  
9 if and when they're offered into evidence.

10 MR. GEIGER: Thank you.

11 MS. LINCOLN: I have one matter also. I  
12 would like to withdraw Exhibit 9 and admit Exhibit 15.  
13 It's just a revised Elle Cochran testimony. We  
14 removed the letterhead for the county council and  
15 added three paragraphs.

16 MR. GEIGER: Petitioner has no objection.

17 MR. GIROUX: County has no objection.

18 MR. YEE: No objection.

19 MR. BOLOMET: No objection.

20 VICE CHAIR HELLER: Exhibit 9 is withdrawn  
21 and Exhibit 15 is accepted in its place.

22 MS. LINCOLN: Yes. Thank you.

23 VICE CHAIR HELLER: Ms. Bolomet, are you  
24 ready to proceed?

25 MS. BOLOMET: Yes. And can I respond to

1 the things that were handed in this morning? Because  
2 those are written public testimony. That's all it is  
3 is written public testimony that was handed in by --  
4 people gave it to us last night and we're handing it  
5 in for them. And we made enough copies so everybody  
6 could have it.

7 MR. GEIGER: I would object to that  
8 characterization. One of the documents was an e-mail  
9 response. It's not even a full e-mail string to  
10 Ms. Bolomet. It was not addressed to the Commission  
11 at all. So I think there's been a misrepresentation  
12 as to what these documents amount to.

13 And clearly they are related to Mr. Lee who  
14 is a witness here. And they should have been part of  
15 the record. They were not. So that's why I'm  
16 objecting. This handing things in as part of public  
17 testimony in order to do things that were supposed to  
18 have been done previously in accordance with the  
19 Orders, is troublesome and prejudicial and needs to  
20 stop.

21 MR. GIROUX: Chair, I'd just like to throw  
22 my two cents in. The county concurs. The inability  
23 for the county to cross examine and the lack of a  
24 sworn oath raises great concern for the county as far  
25 as the process.

1           VICE CHAIR HELLER: Your objections are  
2 noted. Generally the Commission has been willing to  
3 accept almost anything that anyone wants to submit as  
4 public testimony. And if they're being offered only  
5 as public testimony and not offered as exhibits by the  
6 Intervenor, they will be accepted on that basis.

7           MS. BOLOMET: I do have to make a  
8 correction. I forgot about the e-mail. That will  
9 be -- yesterday you allowed an exhibit when Ms. -- I  
10 think it was Exhibit 40. And you asked if there were  
11 any more exhibits. So I have that to go with later  
12 Mr. Lee's testimony which supports an explanation of a  
13 map that was given to us by a hydrologist at the USGS.

14           And it was brought up that my  
15 interpretation was incorrect by Mr. Dega. So I got  
16 the hydrologist who explained it to me to write an  
17 e-mail to tell us, to explain exactly what he  
18 explained to me. So *that* we will be offering when  
19 Mr. Lee is explaining the map as an additional  
20 explanation.

21           So I was incorrect. I was thinking of  
22 these two public testimonies from Daniel Kanahale and  
23 Kaneloa that we submitted. But there was a third one  
24 that I had forgotten about.

25           VICE CHAIR HELLER: And as I said if it's

1 being offered as an Intervenor's exhibit we will take  
2 up that when it's offered.

3 MR. BOLOMET: Okay.

4 VICE CHAIR HELLER: For now all we've done  
5 is to accept additional public testimonies.

6 MR. BOLOMET: Thank you.

7 VICE CHAIR HELLER: Please proceed with  
8 your examination of Ms. Ridao.

9 MS. BOLOMET: Sure.

10 JO-ANN RIDAO

11 being previously duly sworn to tell the truth, was  
12 examined and testified as follows:

13 CONTINUED CROSS-EXAMINATION

14 BY MS. BOLOMET:

15 Q Good morning.

16 A Good morning.

17 Q There's a letter that was signed by you  
18 accepting the EA?

19 A Yes, probably.

20 Q So is it your job to accept the EA's  
21 normally?

22 A My job as the Director of Housing and Human  
23 Concerns is to accept and review EAs for housing  
24 projects, yes.

25 Q Can you tell me your credentials and your

1 schooling that would let me know that you're an expert  
2 in knowing if the EA is correct or incorrect?

3 A First of all, I should explain that the EA  
4 comes from a state law. And we pretty much have a  
5 checklist based on the state law as to reviewing the  
6 EA's. Besides myself I have staff members that will  
7 review certain sections of the environmental  
8 assessment. Then we take, you know -- we make a  
9 recommendation of acceptance or not.

10 My background is that I have been an  
11 executive director for a local non-profit organization  
12 for over 30 years. I have developed housing projects  
13 for the low income population of Maui with that  
14 organization.

15 I have been with the county for the past  
16 six years. And my schooling has nothing to do with  
17 reviewing EAs. Pretty much I went to school to pursue  
18 a career as a social worker and I ended up being a  
19 non-profit executive director.

20 Q Okay. So basically what you do is you're  
21 just making sure all the documents are there, not that  
22 the content is correct. Is that a correct assumption?

23 A We read the document. We take portions of  
24 it. We read the document to make sure that what is  
25 required by the law is included in the document, yes.

1 And we don't make any judgment as far as, you know, if  
2 the -- I should say we don't -- yeah, we don't make  
3 anyway judgment. We make sure that the information is  
4 there.

5 Q Okay. So who makes the judgment if the  
6 information is correct or incorrect?

7 A The process with the EA is that it goes to  
8 the Office of Environmental Quality Control. The  
9 public is given, I believe, 45 days for review. So  
10 the Office of Environmental Quality Control, I'm  
11 assuming they also review that the document is  
12 complete. And then the public is able to review that  
13 document for 45 days and comment on what is involved,  
14 what is in the EA.

15 Q So there's nobody on the county staff that  
16 actually can say if the information is correct or not?

17 A No. I mean we don't -- we don't research  
18 to see that the information is correct or not. We  
19 assume that the EA is provided in the correct format.

20 Q Okay. And who was the cultural  
21 practitioner that the county hired or worked with to  
22 make sure that all the cultural aspects were included  
23 in the EA?

24 A We do not hire a cultural practitioner or  
25 an expert in the cultural part of the EA. That is the

1 responsibility of the person -- of the Applicant that  
2 is doing the environmental assessment review.

3 Q Okay. So there's no check and balances,  
4 only somebody checking off that documents were handed  
5 in. Is that what you're saying?

6 A Pretty much that is the process.

7 Q Okay. When you're planning housing it's  
8 workforce housing, is that correct?

9 A Yes, residential workforce housing.

10 Q Okay. When you're planning workforce  
11 housing, you talked about you look at sustainability,  
12 is that correct?

13 A Yes, pretty much.

14 Q Okay. So when you are approving  
15 sustainability, what is your criteria for seeing if a  
16 project meets sustainability?

17 A Pretty much the criteria that the  
18 department looks at is that the Project will provide  
19 for housing in the affordable category based on the  
20 guidelines that are provided to us by the Department  
21 of Housing and Urban Development.

22 Q So as the county is approving housing in a  
23 particular area, at any time does anybody think about  
24 making sure there's enough food or agricultural land  
25 left in the area so that food can be grown and provide

1 food for all these people that are now moving into  
2 this area as part of sustainability?

3 A That is -- I do not look at that. That is  
4 not something that I look at, no.

5 Q Does anybody in the county look at that?

6 A You know, I could not answer that.

7 Q Okay. Are there any consequences for  
8 non-compliance of, say you approve a project and there  
9 aren't -- the items that were agreed upon, those items  
10 around met. What are the consequences for not meeting  
11 your agreements as a developer?

12 A We have had situations where a developer  
13 has not complied with their requirements and they have  
14 been fined. We have situations where the Applicant  
15 has sold a home without going through the proper  
16 channels, and they have had to give back the money  
17 beyond what was allowed for resale. So there are  
18 checks and balances.

19 Q Do you guys keep records of the infractions  
20 that a developer would make or the times that they're  
21 not able to keep their promises? Let's answer that  
22 question first.

23 A As it relates to our department, yes.

24 Q Okay. And when you take into consideration  
25 new projects, are you taking into consideration

1 whether the Petitioner or developer is trustworthy to  
2 maintain his -- their promises or their agreements  
3 when you approve another one with that particular  
4 developer?

5 A If a developer has, say, had an infraction  
6 in the past and it was a very serious infraction, yes,  
7 we would look at that. If the developer has a  
8 reputation of credibility we like working with those  
9 guys.

10 Q Okay. That's assuring. There was -- Heidi  
11 Bigelow testified that the roadway from the Project to  
12 Keawe Street would be the only thing that this  
13 developer would be completing.

14 However, yesterday you talked about from  
15 Keawe -- you made it sound like all of, I guess that's  
16 called Mills Road from Keawe to Lahainaluna would be  
17 complete if this Project went through. Did I  
18 understand that incorrectly?

19 MR. GEIGER: First of all, I object to the  
20 mischaracterization of what Ms. Bigelow testified to,  
21 and would move to strike that part.

22 MS. BOLOMET: Ms. Bolomet, can you restate  
23 the question without assuming what the testimony was  
24 yesterday?

25 Q (By Ms. Bolomet): Okay. Did you -- did

1 you make a statement that -- or lead us to believe  
2 that the road, Mills Road, would be complete from  
3 Keawe Street to Lahainaluna if this Project were to go  
4 through?

5 A No. I did not make that statement. I  
6 believe I was responding to Ms. Lincoln's question  
7 regarding Lui Street and the upper end of the Project.

8 Q Okay. And do you expect -- I see in a lot  
9 of the testimony about the way the traffic's gonna  
10 move. I know you're not the traffic person. However,  
11 you did do some approval when you spoke about this  
12 yesterday.

13 It sounded like it was being sold, that  
14 there would be one additional street which would be  
15 the street going through this subdivision up through  
16 Lui Street, plus the addition of Mill Street between  
17 Keawe and Lahainaluna as a way to reduce traffic. Did  
18 I understand that correctly?

19 A No, you didn't. I did not make the  
20 statement that the street would be completed all the  
21 way to Lahainaluna.

22 Q I don't know what the name of the street's  
23 going to be that's gonna go through the proposed  
24 Project.

25 A I don't know either.

1 Q It's going to connect to Lui?

2 A Yes on the top.

3 Q Right.

4 A If that's Lui Street that's where it will  
5 connect to go out, yes.

6 Q Okay. So if you -- if the county is not  
7 suggesting that this would be an additional  
8 thorough-way to get to Lahainaluna Road, why do you  
9 keep bringing up you -- I'll say "you". Why did you  
10 keep bringing up that this, about this traffic pattern  
11 wouldn't be affected with this additional street?

12 A I didn't bring that up. I was questioned  
13 by Ms. Lincoln about that. So I was answering her  
14 question.

15 Q Okay. In your answer why did you answer  
16 the way you did? I understood it as you were saying  
17 that there was another street that would be added that  
18 would help dissipate the traffic with the addition of  
19 these 68 houses. So can you explain to me again what  
20 you meant when you answered Ms. Lincoln yesterday?

21 A Okay. I'm sorry that you got that  
22 impression. What I was saying was that the connection  
23 to Lui Street and this new street would be an  
24 additional route.

25 Q For whom?

1           A       For everyone in the existing subdivision as  
2 well as in the new subdivision to get out to Keawe  
3 Street.

4           Q       And how is that different from what I just  
5 asked? I know I said it with a lot more words, but  
6 how is that different?

7                   MR. GEIGER: I'm going to object. That's  
8 argumentative. It's also cumulative at this stage.

9                   MR. BOLOMET: I'm just trying to --

10                   VICE CHAIR HELLER: Sustained.

11                   MR. BOLOMET: -- understand. What does  
12 "sustain" mean?

13                   VICE CHAIR HELLER: I sustained it. I  
14 think she's answered your question. If you have a new  
15 question you should move on.

16           Q       (By Mr. Bolomet): So Will Spence testified  
17 in his testimony, I think it was on the 6th,  
18 August 6th, that this particular property would make  
19 for a good diversified agricultural area. Do you work  
20 with Will Spence directly?

21           A       No, I don't work with Will Spence directly.  
22 We are department heads. I'm the department head for  
23 the Department of Housing and Human Concerns. He is  
24 the department head for Planning. We don't work with  
25 each other on a daily basis. However, we do work --

1 we do see each other very often, yes.

2 Q And do you -- why would he say that this  
3 would be good for diversified farming versus why would  
4 you say that this would be good? I mean it seems like  
5 the departments aren't talking to each other. So why  
6 would you not talk to another department on the issue  
7 of turning this ag -- prime ag land into an Urban  
8 Zoning?

9 MR. GIROUX: Chair, I'm going to object.  
10 It sounds like a mischaracterization of Mr. Spence's  
11 testimony.

12 MR. GEIGER: I'm also going to object  
13 because it would call for speculation. It's a  
14 multiple question and there's argumentative -- it's an  
15 argumentative question. And I think it's cumulative  
16 of what we've been doing for the last four days.

17 VICE CHAIR HELLER: I'm going to sustain  
18 the objection to the question in its current form. If  
19 you just want to ask: Why did she not discuss that  
20 topic with Mr. Spence, that would be an allowable  
21 question.

22 MS. BOLOMET: Okay.

23 Q Why didn't you discuss this topic with  
24 Mr. Spence?

25 A We have discussed this topic as the county.

1 And I am surprised that Mr. Spence has a different  
2 opinion than I do.

3 Q Okay. So when you -- when you approve an  
4 EA, does it take into consideration the consequences  
5 or the impacts on cultural and agricultural impacts to  
6 the community?

7 MR. GEIGER: Objection, cumulative. That  
8 question has been asked.

9 VICE CHAIR HELLER: Sustained. I think  
10 we're going over the same ground.

11 MS. BOLOMET: Okay. Well, then I'm done.  
12 Thank you.

13 VICE CHAIR HELLER: This was a county  
14 witness. Any redirect?

15 MR. GIROUX: Yes, thank you, Chair.

16 RE-DIRECT EXAMINATION

17 BY MR. GIROUX:

18 Q Going back to yesterday, Ms. Lincoln was  
19 asking you questions about wouldn't Launiupoko or  
20 other agricultural areas be suitable for affordable  
21 housing. Why does the county look for urban areas to  
22 supply workforce housing?

23 A The major reason is that we look for  
24 locations that are close to work and services. So  
25 this location provides that opportunity for work and

1 services.

2 Q Jumping fast forward for today the  
3 questions from Ms. Bolomet. She asked questions about  
4 the EA acceptance process. To your knowledge was  
5 there any appeal filed to challenge the EA?

6 A No, there were not.

7 Q And as far as any litigation, was there  
8 anything filed in circuit court trying to overturn the  
9 acceptance of this EA?

10 A No, not of this date, no.

11 Q Okay. As far as your knowledge goes, a  
12 cultural assessment is required within the EA  
13 document, right?

14 A Yes, it is.

15 Q Okay. And did the one that you received  
16 have that?

17 A Yes.

18 Q I'm going to move on to sustainability.  
19 You were asked whether or not the county did an  
20 inventory of agricultural land in assessing whether or  
21 not to urbanize this ag parcel.

22 Are you aware of what the zoning is for the  
23 hundred acres between Lahainaluna and Ka'anapali?

24 A No, I'm not.

25 Q Is that historically used as agriculture

1 for sugar?

2 A It has been historically, yes.

3 Q And the zoning has not changed for those  
4 parcels, is that true?

5 A I'm assuming that is true.

6 MR. GIROUX: I think that's all I have.

7 VICE CHAIR HELLER: Any further questions  
8 from the parties? Commissioners, questions? Go  
9 ahead.

10 COMMISSIONER McDONALD: Thank you for your  
11 testimony. As far as the EA question, maybe the  
12 Petitioner -- this is maybe more appropriate for the  
13 Petitioner, but during the EA process was  
14 distributions made to the appropriate agencies meaning  
15 the U.S. Fish and Wildlife, the state agencies, Corps  
16 of Engineers? Were they able to review the EA  
17 document?

18 THE WITNESS: Yes. Thank you for asking  
19 that question. There is a list of agencies that are  
20 recommended for notification. And all of the  
21 recommended agencies on that list were notified.

22 COMMISSIONER McDONALD: Thank you.

23 THE WITNESS: And then what happens is that  
24 their comments are usually in the EA.

25 COMMISSIONER McDONALD: Okay. Thank you.

1 Thank you for the clarification.

2 VICE CHAIR HELLER: Commissioner Biga.

3 COMMISSIONER BIGA: Morning, Ms. Ridao.

4 THE WITNESS: Good morning.

5 COMMISSIONER BIGA: Thank you testifying  
6 this morning. My question is, living here in Maui for  
7 all your life I think you said.

8 THE WITNESS: Yes.

9 COMMISSIONER BIGA: And this is a  
10 hypothetical question. Do you think -- and I'm  
11 talking about statistics because, you know, to me  
12 that's just something that you can base your Project  
13 on.

14 But I ask you as a person from Maui, do you  
15 think these homes could possibly be more, where could  
16 be, a lot more homes could be at the 80 percent level  
17 because of the cost of living in Lahaina?

18 THE WITNESS: Yeah, that is a hard question  
19 to answer. What I can assure you is that because this  
20 process -- this Project went through the 201-H  
21 process, that issue was thoroughly discussed with the  
22 county council. And they approved the breakdown as it  
23 is in the proposal.

24 COMMISSIONER BIGA: Okay. I understand.

25 THE WITNESS: Of course, I would love to

1 have 'em all be 80 percent, you know? But I mean we  
2 have to understand the realities of building a house  
3 and the cost of development, the infrastructure costs,  
4 all of that, yeah.

5 COMMISSIONER BIGA: I understand. Thank  
6 you.

7 VICE CHAIR HELLER: Commissioner Makua.

8 COMMISSIONER MAKUA: Yes. In this list of  
9 agencies that you folks are recommended to send the EA  
10 to, what cultural organizations, the Burial Council --  
11 I know the county has a Commission on Culture now. Are  
12 any of these agencies or entities part of that list?

13 THE WITNESS: I believe that the State  
14 Historic Preservation Division office is part of that  
15 list.

16 COMMISSIONER MAKUA: So there's nobody here  
17 in the county.

18 THE WITNESS: In the county agency, uhm,  
19 no, we don't -- we don't have -- we do distribute to  
20 all of the different county departments.

21 COMMISSIONER MAKUA: But there is nobody in  
22 the county. So not even the Cultural Commission or  
23 somebody that can look at this part? Just because  
24 this part has been pretty inadequate in Maui County it  
25 is. That's probably why there's questions about it.

1           THE WITNESS: You know, I'm not sure if it  
2 goes to the local cultural -- the Arts Commission. I  
3 guess James is looking through the list right now.  
4 (pause) Department of Land and Natural Resources,  
5 Office of Hawaiian Affairs, Lahaina Restoration  
6 Foundation, West Maui Improvement Foundation. That's  
7 about it.

8           COMMISSIONER MAKUA: Thank you.

9           VICE CHAIR HELLER: Commissioners, anything  
10 further? I have a follow up question on the same  
11 topic.

12          THE WITNESS: Sure.

13          VICE CHAIR HELLER: You mentioned public  
14 notice or distribution availability to the public on  
15 the report.

16          THE WITNESS: Yes.

17          VICE CHAIR HELLER: Can you expand a little  
18 bit on what are the exact requirements and procedures?

19          THE WITNESS: Once the EA is filed with the  
20 Office of Environmental Quality Control they have a  
21 newsletter. And it is published for, I believe it's  
22 45 days. There's a number of days that the Applicant  
23 has to get it into them. Then they -- in order to  
24 meet the publication dates. Then the Office of  
25 Quality Control will publish that. And then people

1 have 45 days to answer. So there's a notification  
2 process. And usually people will go either online or  
3 they are -- the followers of the Office of Quality  
4 Control notifications get a paper notification also.

5 VICE CHAIR HELLER: Thank you. Anything  
6 further, Commissioners? Thank you. County, do you  
7 have the next witness?

8 MR. GIROUX: Yes. We have Rowena Dagdag  
9 from Public Works.

10 ROWENA DAGDAG ANDAYA  
11 being first duly sworn to tell the truth, was examined  
12 and testified as follows:

13 THE WITNESS: I do.

14 VICE CHAIR HELLER: Please go ahead.

15 MR. GIROUX: Chair, for this witness I have  
16 supplied an additional resumé. I guess when we get to  
17 that point I'll be asking that it be received as  
18 Exhibit 9. But I'll start my direct and we can get to  
19 that issue.

20 VICE CHAIR HELLER: Okay.

21 DIRECT EXAMINATION

22 BY MR. GIROUX:

23 Q Can you state your name, please?

24 A My name is Rowena Dagdag Andaya.

25 Q Did you submit a testimony in this case?

1 A Yes, I did.

2 Q And what is your position in the county  
3 right now?

4 A I'm currently the Deputy Director of Public  
5 Works. And I've served in this capacity since January  
6 of 2011.

7 Q Did you produce a resumé?

8 A Yes, I did.

9 MR. GIROUX: Chair, at this time I would  
10 ask the Board to accept her resumé marked as  
11 Exhibit 9.

12 VICE CHAIR HELLER: Any objections?

13 MR. GEIGER: This is Petitioner. Just for  
14 clarification are you then withdrawing Exhibit 2,  
15 Mr. Goode's CV and substituting this CV because we  
16 have a different witness?

17 MR. GIROUX: That is correct. Mr. Goode is  
18 the head of the department. Ms. Dagdag is the deputy.  
19 So we'll be withdrawing Mr. Goode's CV.

20 VICE CHAIR HELLER: Which was county  
21 Exhibit 2?

22 MR. GIROUX: Yes.

23 COMMISSIONER BIGA: We have no objection  
24 for the substitution of one bio for the other.

25 MR. YEE: No objection.

1 VICE CHAIR HELLER: Ms. Lincoln?

2 MS. LINCOLN: No objection.

3 VICE CHAIR HELLER: Ms. Bolomet?

4 MR. BOLOMET: No objection.

5 MR. GIROUX: We would just like to at this  
6 time have Ms. Dagdag confirmed as an expert in the  
7 field of Public Works for the county.

8 MR. GEIGER: No objection.

9 MR. YEE: No objection.

10 MS. LINCOLN: No objection.

11 MS. BOLOMET: No objection.

12 VICE CHAIR HELLER: The bio is received as  
13 Exhibit 7 and she is accepted as an expert.

14 Q (By Mr. Giroux): Ms. Dagdag, did you have  
15 a chance to review this Project as part of your  
16 official position?

17 A We have -- our department is charged with  
18 the review of the documents that are provided in  
19 connection with the Project. I've had a chance to  
20 review the Project. However, we do have engineers on  
21 staff who do review the technical aspect as well as  
22 the proposed conceptual plans that were provided.

23 Q Did you write your statement after talking  
24 with the engineers in your department?

25 A We did.

1 MR. GIROUX: I'd just like to have her  
2 statement entered into the record, just to confirm  
3 that it's part of the record.

4 VICE CHAIR HELLER: Was that marked as an  
5 exhibit?

6 MR. GIROUX: Exhibit 9. Oh, oh. If we  
7 could change her resumé to Exhibit 10. I was told  
8 that we were up to 8. If we could just make that  
9 correction.

10 MR. GEIGER: You're actually up to 14.

11 MR. GIROUX: This case just grows faster.  
12 (laughter)

13 VICE CHAIR HELLER: So the bio, which has  
14 already been accepted, is being renumbered as 14. And  
15 you're now offering 15 as the statement?

16 MR. GIROUX: I believe it's 9.

17 VICE CHAIR HELLER: Oh, that was already  
18 marked as 9.

19 MR. GIROUX: Yes.

20 VICE CHAIR HELLER: Any objections to the  
21 written statement marked as 9?

22 MR. GEIGER: Petitioner has no objection.

23 MR. YEE: No objection.

24 MS. LINCOLN: No objection.

25 MR. BOLOMET: No objections.

1 VICE CHAIR HELLER: Exhibit 9 is received.

2 MR. GIROUX: Thank you, Chair.

3 Q Can you just explain to the Board without  
4 reading the statement but give a summary of your  
5 statement?

6 A My statement included the function of the  
7 department. Again, we are the Department of Public  
8 Works. We have three divisions. Each division is  
9 charged with either the planning, the maintenance or  
10 the permitting of our county roads, drainage  
11 structures, and other types of facilities.

12 We have an engineering division that  
13 reviews preliminary drainage engineering reports as  
14 well as traffic reports.

15 My statement also included information  
16 about the roadway connections into the Project Area.  
17 And they have been identified as Lui and Kalena Street  
18 on the west end and Mill Street on the east end, I  
19 believe. I'm sorry. Lui Street and Kalena from the  
20 east end. And the west end Mill Street and Keawe. I  
21 also provided in my testimony that we do have  
22 standards for roadways.

23 I do have one correction on Page 2 of my  
24 testimony where it states that the development  
25 included a 52-foot right-of-way, where actually it's a

1 58-foot right-of-way.

2 At this time the proposed Project currently  
3 exceeds the standards for our roadways, our  
4 subdivision roadways.

5 We also have drainage standards that need  
6 to be adhered to when a developer comes before us for  
7 any project that involves drainage. That gets  
8 reviewed and approved by our department as well.

9 At this time the proposed Project currently  
10 meets our current codes and other regulations that our  
11 department is charged in approving. We also wanted to  
12 note that at the time of construction the Project does  
13 get reviewed again in further detail.

14 Q At the time of construction. So any new  
15 laws or regulations that are passed in the meantime  
16 would have to be adhered to prior to construction?

17 A That is correct.

18 Q Are there any new drainage laws that you're  
19 aware of that are in the works?

20 A Well, we are currently in the process of  
21 approving our new stormwater quality rules. That will  
22 take place in the next few weeks. We do have a public  
23 hearing on that. The draft rules have been published.  
24 And once we have that meeting with the community and  
25 we'll bring it back to council and have that approved.

1 MR. GIROUX: No further questions.

2 VICE CHAIR HELLER: Petitioner?

3 CROSS-EXAMINATION

4 BY MR. GEIGER:

5 Q Thank you. Good morning. First of all,  
6 does the Department of Public Works support this  
7 Project?

8 A At this time we have reviewed the Project  
9 and have determined that it does meet the codes  
10 required.

11 Q Okay. I want to ask you a few questions  
12 about the proposed rules that you just mentioned on  
13 water quality for stormwater runoff. As I understand  
14 there's a public hearing set for Monday on those  
15 rules?

16 A Yes.

17 Q And you would expect, unless something  
18 unusual happens, that those rules will probably be  
19 adopted in 40 to 80 days?

20 A We anticipate that.

21 Q It's my understanding that the rules were  
22 modeled after some EPA rules, is that correct?

23 A That is correct.

24 Q Could you explain to the Commissioners a  
25 little bit about that?

1           A        I don't have a lot of information on it.  
2 But in many jurisdictions throughout the county the  
3 EPA has recommended that the counties and the  
4 jurisdictions take a look at their current rules and  
5 modify them such to have standards and guidelines for  
6 stormwater treatment.

7                    And that would allow us to be able to  
8 improve the quality of stormwater that runs through  
9 different projects, through different areas.

10          Q        And the draft rules that the department is  
11 proposing were based upon those EPA rules?

12          A        Yes, they were.

13          Q        You said in the counties, but I assume this  
14 is nationwide.

15          A        This is.

16          Q        What are the county standards for roadway  
17 right-of-way?

18          A        I'm sorry?

19          Q        What would be the county standard for a  
20 roadway right-of-way?

21          A        For the roadway right-of-way it would be  
22 44-foot for the subdivision or minor street as well as  
23 the cul-de-sac area. And the travel width would be  
24 28-foot. The current Project as it is I believe is  
25 58-foot right-of-way.

1 Q Significantly greater than the 44-foot  
2 required.

3 A Yes. I want to also add that this Project  
4 involves sidewalks on both sides of the street.  
5 Currently our code or rules require just one sidewalk.  
6 They also provide a different feature such as  
7 bulb-outs, onsite parking that's designated, bike  
8 lanes, and grass medians on the side, alongside the  
9 sidewalks as well, things that aren't required at this  
10 time.

11 Q So, in other words, the sidewalks on both  
12 sides, the bike lanes, the grass medians, bulb-outs,  
13 or what I would call pop-outs where plantings can go,  
14 those are all over and above the county requirements.

15 A Yes.

16 Q I had a question about the offsite  
17 improvements. There have been some questions about  
18 the Kahua Street/Kua Road extension. Can you provide  
19 the Commission any sort of update on where that might  
20 be?

21 A At this time the Kahua Street extension,  
22 which was previously called the Mill Street extension,  
23 that came about as a condition from the West Maui  
24 Resorts as one of their mitigation efforts in the area  
25 to provide for better circulation of traffic in

1 Lahaina.

2 We are currently in the Draft EA phase. In  
3 fact, the Draft EA hasn't been published yet. But  
4 we've been working with a different consultants on the  
5 alignment of the road.

6 So we should be publishing or the  
7 developer, I believe it's Ka'anapali Land Management,  
8 KLMC, they are moving forward in their draft EA in a  
9 few months.

10 Once the Draft EA is published and we start  
11 working on the planning and the design, then we'll  
12 move forward with the different land issues involving  
13 subdivision.

14 And at that point then it becomes a county  
15 project. At this point we haven't -- we haven't moved  
16 forward with the funding for it yet. It's still a  
17 conceptual plan. But that's something that we're  
18 looking towards improving the circulation in Lahaina  
19 Town.

20 Q And the reason that the county's not  
21 processing the EA is because it's a privately owned  
22 road at this time, correct?

23 A Yes, it is.

24 Q But the anticipation is the county's going  
25 to be accepting the road.

1           A       Yes.  And it will be a county project  
2 once -- at the time of construction.

3           Q       You mentioned that there were some  
4 conceptual plans where the road was gonna go.  Would  
5 that have any impact on this project?  Or has this  
6 Project been planned with where the road will be?

7           A       I believe the project has been planned.  
8 And the developer does have improvements along that  
9 portion that connects towards Keawe Street.

10          Q       I believe it's about 900 feet of paving  
11 that the developer is going to do.  Is that consistent  
12 with your recollection?

13          A       Yes.

14          Q       And that would be, what, 20-foot wide  
15 pavement plus some shoulder yet to be determined?

16          A       About 3 to 4-foot shoulders, yes.

17          Q       And I think there's also going to be a  
18 requirement to stripe that paving so that it looks  
19 like a nice new road.

20          A       Yes.

21          Q       I want to talk to you briefly about the  
22 wastewater.  In this particular matter it's the  
23 county's understanding that there's currently capacity  
24 for this Project in the Lahaina District?

25          A       Well, I speak for the Department of Public

1 Works. And wastewater is a function of the Department  
2 of Environmental Management. So I'm not prepared to  
3 answer that.

4 Q That's fine. Then I guess my next question  
5 was with regard to the Kahoma flood control channel,  
6 that would fall within the Public Works so far as  
7 maintenance, correct?

8 A Yes, it is. We do have a Lahaina District  
9 that maintains that.

10 Q Okay. There were some questions previously  
11 about the silt basin or the retention basin. Are you  
12 familiar with that? Not the testimony, but the silt  
13 basin or the retention basin.

14 A Somewhat, yes.

15 Q Okay. Is there a dam in that particular  
16 structure or is that some other device that sits  
17 there?

18 A That particular structure is basically a  
19 sediment or debris basin. It's not a dam. But what  
20 it does it just collects the different material that  
21 flows through the Kahoma Stream. However, it's not --  
22 it doesn't function as a dam.

23 Q Okay. And do you have any idea what the  
24 capacity of that flood control structure is?

25 A I believe it's 49,000 CFS, but I don't know

1 offhand exactly.

2 Q "CFS" cubic foot per second.

3 A Right.

4 Q Whatever that translates to that's a lot of  
5 water?

6 A Yes.

7 Q Does the county actually do maintenance  
8 where they'll take and clean out the sediment basin?

9 A We do. We do periodic maintenance of the  
10 sediment basin. We also work in partnership with the  
11 Army Corps of Engineers. So what they do is they  
12 inspect the flood control area periodically, provide  
13 recommendations to our staff. Then our staff follows  
14 through with their recommendations. But on an ongoing  
15 basis we do have staff out there maintaining and  
16 cleaning out the structure.

17 Q So the structure is reviewed to make sure  
18 it's not going to perform its function on a periodic  
19 basis.

20 A Yes.

21 Q Not only by the county but also the Corps  
22 of Engineers?

23 A The Corps of Engineers.

24 Q How often does that happen?

25 A I believe it's a yearly process. Once a

1 year they come and inspect the dams, and the flood  
2 control areas within Lahaina.

3 Q Okay.

4 A But, again, this isn't a dam.

5 Q I understood. I was focusing on the  
6 structure. Now, with regard to the basin are there  
7 times when the county has to do some sort of emergency  
8 action where they take action?

9 A Especially when the Army Corps of Engineers  
10 tells us to do something right away then we need to go  
11 ahead.

12 Q There's been some testimony or comments  
13 here, at least, the county has removed fill or debris  
14 from the basin and placed it on the Petition Area.  
15 Can you tell us anything about that?

16 A Yes. We were made aware of that a few  
17 months ago that we had the staff remove some of the  
18 sediment and transport it onto the property.

19 Q Did the county then obtain after-the-fact  
20 permits for that work?

21 A At this time we have not gotten  
22 after-the-fact permit for the work. But we have  
23 been -- we have two divisions or -- again, I mentioned  
24 we have three separate divisions within the county of  
25 Maui. Highways Division does all the maintenance work

1 and the sediment basins and all other flood control  
2 structures. Then we also have Development Services  
3 Administration that deals with all the grading  
4 ordinances and inspections.

5           So those two divisions work separately from  
6 each other. And in discussion with staff from  
7 Development Services Administration we've come up with  
8 some -- No. 1 mitigation that we need to do onto the  
9 property. And also, we've also determined that we  
10 need to move forward with an after-the-fact. And this  
11 is something that we take very seriously with our  
12 staff.

13           So in moving forward with other types of  
14 maintenance activities we want to make sure that the  
15 divisions are following the current codes and rules  
16 and standards.

17           Q       Are you familiar with FEMA flood control  
18 maps?

19           A       Ah, not, not very. That's more a function  
20 of the Planning Department.

21           Q       Okay. And, finally, just so I make sure I  
22 understand. Am I correct that the Project is, the  
23 conceptual plans that you've reviewed to date meet the  
24 drainage requirements of the county of Maui?

25           A       Yes, they do.

1 Q And, again, they will be subject to review  
2 before a construction permit is issued to actually be  
3 in construction, correct?

4 A Yes.

5 Q They will have to meet whatever the rules  
6 are in effect at that time.

7 A That's correct.

8 MR. GEIGER: Thank you.

9 VICE CHAIR HELLER: OP?

10 CROSS-EXAMINATION

11 BY MR. YEE:

12 Q Thank you. You testified regarding these  
13 new, I guess, ordinances, the stormwater ordinances  
14 whose aim is to improve the quality of the stormwater.

15 A Yes.

16 Q Have you had an opportunity or has your  
17 department had an opportunity to look at whether the  
18 proposed plans for this Project would meet those new  
19 proposed ordinances as currently drafted?

20 A At this time we haven't had that  
21 opportunity to look, to kind of match it up. But it  
22 will come before us. The proposed plan will come  
23 before our department once again, be reviewed  
24 according to those rules.

25 Q You spoke a little bit about the timing and

1 going out to public hearing as this has already been  
2 noticed, correct?

3 A Yes.

4 Q Do you have an estimate of when the  
5 approval of the ordinance would occur?

6 A I'm not sure. I believe -- I can't cite  
7 the rules at this time as far as how many days it  
8 would take. But I believe an estimate of about 45 to  
9 80 days for the rules to take into effect.

10 Q Who has final approval of the rules?

11 A I believe it's the county council.

12 Q Has the county council already given  
13 preliminary approval to these rules?

14 A No, not yet. But we've had -- we've given  
15 the Planning Department as well as the Planning  
16 Commission an opportunity to provide comment and  
17 feedback. We've also made the rules public so that  
18 people in the community are aware of it.

19 Q Just so that I'm clear. And maybe it  
20 doesn't make a difference. But you keep referring to  
21 "rules". Is there a difference between rules and  
22 ordinances?

23 A Yes, there's a difference. Administrative  
24 rules basically guide how we interpret the ordinance.

25 Q And what the county council is going to be

1 looking at approving, are they rules?

2 A Yes.

3 MR. YEE: I think I'll leave it at that.

4 Thank you.

5 VICE CHAIR HELLER: Ms. Lincoln.

6 CROSS-EXAMINATION

7 BY MS. LINCOLN:

8 Q I just have a few questions. Just so I'm  
9 clear. On the unpermitted fill that was put at the  
10 bottom of the property, is that going to get removed  
11 or is it going to be an after-the-fact permit?

12 A It will be inspected first by Development  
13 Services Administration. They will provide  
14 recommendations for the mitigation. Then we will  
15 determine at that point whether it be the  
16 after-the-fact or if it be completely removed from the  
17 property.

18 Q So it will go on record. So if there are  
19 any historical remains or something underneath they'll  
20 know if they need to go deeper.

21 A Yes.

22 Q Okay. Good. Since you're the last county  
23 witness, there's been several questions that not have  
24 been answered for me. And if you can't answer them  
25 that's fine. I'll just let 'em go. But if you can

1 that would be great.

2           Would you be able to explain the transfer  
3 of land from the county of Maui to the Petitioner?  
4 Because according to the county tax records in 1993  
5 there was, like, a fee conveyance. But the county  
6 council in 1995 thought the land belonged to the  
7 county. Would you be able to answer --

8           A       I do not have the answer for that.

9           Q       Okay. Then would you be able to answer the  
10 county's criteria in relationship to infill on the  
11 county's Exhibit No. 8? It's ordinance No. 3818  
12 regarding infill.

13          A       With respect to infill projects, no, I  
14 don't have an answer.

15          Q       Regarding taxes. If someone comes to the  
16 county and they give them a value what their land is,  
17 it's normally reflected in the next tax assessment.  
18 Would you be able to answer a question regarding that?

19          A       Our department doesn't.

20          Q       Just double checking because you were the  
21 last county witness. Okay. Now I've got real  
22 questions for you. Did the county do a complete  
23 traffic study separate than the findings of the  
24 Petitioner's traffic expert?

25          A       It is the Petitioner, the Applicant, that

1 does the study, the traffic study. Then our  
2 department reviews the traffic study for -- and makes  
3 recommendations on it. We base our recommendations on  
4 national standards.

5 Q Okay. Does the county take into  
6 consideration the entire impact of the eight ingresses  
7 and egresses on Keawe Street and the bypass yet to be  
8 completed? Like, do they look at the whole, complete  
9 picture rather than that single ingress/egress?

10 A We do look at the overall picture of the  
11 traffic circulation. That goes in part of our, part  
12 of our study.

13 Q Okay. So you guys do that though. The  
14 expert from them didn't necessarily. You would do  
15 that.

16 A We would take a look at it.

17 Q Are you familiar with Keawe Street?

18 A Yes, I am.

19 Q Okay. Are you aware that soon after Keawe  
20 Street was built with the landscape medians put in, it  
21 had to be torn up and a turn-lane put in?

22 A I don't have -- I don't know the answer to  
23 that.

24 Q Okay. But the fact that they had to tear  
25 up the median and put in a turn lane means that there

1 was a mistake made and they had to change it?

2 MR. GEIGER: Objection cumulative.

3 Objection argumentative. No question. Statement.

4 VICE CHAIR HELLER: Sustained.

5 Q (By Ms. Lincoln): Did the original plans  
6 for Keawe Street work out with approval from the  
7 county?

8 A The original plans, I believe they were  
9 reviewed by the county. We were involved in that. So  
10 that's...

11 Q Okay. So the county approved the original  
12 Keawe Street. Okay. So when they had to redo Keawe  
13 Street who pays for that?

14 A When they redo Keawe Street?

15 Q When they redid Keawe Street, they built  
16 Keawe Street. And then they had to put in a turn  
17 lane. So who actually pays for that?

18 A I'm not prepared to answer that right now.

19 Q Okay. Well, who pays for roads anyway? Is  
20 it like through taxes?

21 A It's through taxes. And for some roads it  
22 would be also sometimes it becomes a requirement of  
23 the developer or the state. So in -- for some -- I  
24 mean I'm not too sure. I'd have to go and research  
25 that before I can give you an answer.

1 Q Do you know if Keawe Street which one that  
2 was? Was the county responsible for that or the  
3 developer?

4 A I'll need to --

5 Q It's where the bypass comes out, just so  
6 you're aware. Keawe Street is where the new Lahaina  
7 bypass is going to be exiting.

8 A Right. Right. That's probably -- most of  
9 it, the state would have -- we would work in  
10 partnership with the state to do that extension.

11 Q So the state would have -- so then state  
12 taxes that paid for that improvement. Okay. If a  
13 traffic light is needed at the Mill Street and Keawe  
14 Street intersection, who then would be responsible for  
15 that?

16 A For putting in the traffic light?

17 Q Yeah. Because of all these ingresses and  
18 egresses on Keawe Street, if it proves that there's  
19 going to need to be additional traffic lights, who  
20 actually is responsible? Is it the county or the  
21 state then?

22 A It would depend if the traffic light is  
23 warranted. Then it would either be the -- we would  
24 either need to provide it or perhaps the developer  
25 would need to provide it as well. But at this time I

1 don't think it warrants a traffic signal.

2 Q And then if it proves that sidewalks and  
3 gutters are needed on Lui and Kalena where the ingress  
4 and egress is at the top of the property, if it proves  
5 that with the amount of traffic going through there  
6 that it, for safety reasons of the community that  
7 sidewalks are required on Lui and Kalena where the top  
8 ingress and egress is, who would be responsible to pay  
9 for that?

10 A Well, at this time we're not requiring  
11 anyone to develop sidewalks or gutters. And we  
12 haven't identified that as a Project at this time.

13 Q I guess I'm just asking, like, in the  
14 future if it would be a county's responsibility or a  
15 state's responsibility?

16 A It would be a county's responsibility.

17 Q Okay. That's all I'm asking if it is.

18 THE REPORTER: Ms. Lincoln, would you slow  
19 down.

20 Q (By Ms. Lincoln): So your department is  
21 responsible for the flood control system?

22 A Yes.

23 Q And it does need to be maintained to a  
24 certain level and Army Corps of Engineers checks on  
25 that. If it's not maintained then it's considered a

1 flood risk.

2 A I don't think it would be considered a  
3 flood risk, but there would be some -- we are charged  
4 with the maintenance, the long-term maintenance of the  
5 basin. So, but, I can't say for sure if it's a flood  
6 risk if we don't.

7 Q Why would they require it to be cleaned out  
8 then? Why have Army Corps of Engineers check on it?

9 A They do a periodic check on it to make sure  
10 that the flood control structure is working properly.  
11 So that's basically when -- and our department is  
12 basically charged with the cleanup or the maintenance  
13 of it.

14 Q Was the county told they had to remove that  
15 fill behind the wall, the one that was placed on the  
16 bottom of the property, in a certain amount of time to  
17 meet a deadline or it would pose as a flood risk?

18 A The Army Corps of Engineers asked the  
19 department to remove it. I don't know for sure about  
20 the timeline. I can ask staff on it. But we are  
21 required to adhere to the request of the Army Corps of  
22 Engineers. So that's the reason why we went in and  
23 had to do the work immediately.

24 Q Okay. In the event that the flood  
25 control -- it's not a dam, it's a retention wall -- if

1 that fails for any reason due to an earthquake or  
2 whatever event, who would be responsible for flooding  
3 in the adjacent properties? Who would be held liable?

4 A I don't know. I can't -- I'm not prepared  
5 to answer that at this time.

6 Q Okay. So is there any precedence before of  
7 putting something in writing when you're building  
8 homes next to a flood control area? Is there anything  
9 that can be put into writing for the people that live  
10 in that neighborhood just for future mitigations?

11 A I'm not aware of a process.

12 Q So the I'ao there's no -- with the I'ao  
13 flood control and the homes there, the issues they  
14 have, you're not aware of?

15 A I'm another sure at this time.

16 MS. LINCOLN: That was it. Thank you. I  
17 appreciate it.

18 VICE CHAIR HELLER: Ms. Bolomet?

19 CROSS-EXAMINATION

20 BY MS. BOLOMET:

21 Q Good morning.

22 A Good morning.

23 Q Is the county obligated to follow Hawai'i  
24 State Constitution Article XII Section 7 on cultural  
25 rights?

1           A       I don't -- I'm not familiar with that.

2           Q       Is the county required to follow Hawai'i  
3 State Constitution?

4           A       Well, we are a required to follow State  
5 Constitution.

6           Q       In the State Constitution, Article XII  
7 Section 7 protects the cultural and gathering and  
8 religious rights of kanaka ma'oli. Are you aware of  
9 this?

10          A       No, I'm not.

11          Q       Article XI Section 7 requires you to  
12 protect the water and the water quality for kanaka  
13 ma'olis as well as everybody. Are you aware of that?

14          A       I'm not familiar with those.

15          Q       Okay.

16          A       However, we do -- we have ordinances. And  
17 in our ordinances and rules we do have standards for  
18 -- well, currently we have a water quality --  
19 stormwater quality rules. We're moving towards that.  
20 We do have ordinances and rules that we follow. But  
21 as far as -- I'm not sure where...

22          Q       Are you aware that the Hawai'i State laws  
23 and Constitution supercedes county laws and  
24 ordinances?

25                   MR. GEIGER: I'm going to object. I don't

1 think that this witness is qualified for that type of  
2 question. Seems to be completely a legal question as  
3 opposed to anything else. It also seems  
4 argumentative.

5 VICE CHAIR HELLER: Yes. Ms. Bolomet,  
6 you're getting close to the edge in terms of being  
7 argumentative. I'm going to overrule the objection  
8 and allow this question. But it's not appropriate to  
9 just argue about what the law is with the witness.

10 MS. BOLOMET: Okay. I'm trying to  
11 establish --

12 Q If I understood correctly, do you  
13 approve -- you're part of the approval process for  
14 these plans that came in?

15 A Our department is involved in the approval  
16 process, yes.

17 Q Okay. So when you're going through the  
18 approval process, are you taking into consideration or  
19 your department, is it taking into consideration these  
20 laws? That's what I was trying to get to.

21 A Our ordinance is derived, based off of  
22 state law, I believe. And we also have, we have it  
23 reviewed by our legal counsel. So whatever we do  
24 follows state and federal laws as well.

25 Q Could you tell me who's the cultural

1 practitioner that your department worked with to make  
2 sure that the cultural rights of the kanaka ma'oli was  
3 protected when you approved these plans in this  
4 proposal?

5 A Our department does not have a cultural  
6 practitioner.

7 Q That you consult with.

8 A We didn't. We didn't consult.

9 Q The Kahoma Flood Channel, when it was being  
10 built between 1986 and 1990, there were some Public  
11 Works maps that were, that shows the different pipes  
12 that were running through the Project.

13 Yesterday Ms. Apana submitted some of these  
14 maps that, in her Exhibit 2, C2. It was actually  
15 Exhibit 2 and there was a number of maps that were in  
16 there which were pieces of two bigger maps.

17 These maps had -- says that there were  
18 pipes that were already existing and new pipes that  
19 were put in there for irrigation and for water, sewer  
20 and a drainage pipe.

21 So was the Public Works planning for a  
22 subdivision to come in here at the time when they put  
23 in sewage lines into ag properties?

24 MR. GEIGER: Objection. This is  
25 cumulative. These questions were asked of the county

1 witness yesterday who answered them.

2 VICE CHAIR HELLER: Overruled. If you know  
3 you can answer.

4 THE WITNESS: Our department has the maps,  
5 but we have no maintenance or responsibility over  
6 these pipes. So I don't know why the pipes were put  
7 in there.

8 Q (By Mr. Bolomet): So it wasn't the county  
9 that put it in to this area.

10 A I don't think it was part -- I don't think  
11 so. We need to research it. We don't know at this  
12 time.

13 Q Okay. Because there's a drainage pipe that  
14 goes from Lui Street to the channel. And it says that  
15 the Kahoma county flood channel was a county Project  
16 that was performed, performed by the Army Corps of  
17 Engineers.

18 A Again all of that we would need to -- we  
19 need sometime to review it, make a determination.

20 Q All right. When the fill that was taken  
21 out of Kahoma Channel and was put onto this property,  
22 there was an enormous amount of fill that was removed  
23 and put onto the property. It changed the height of  
24 the property, the grade was changed. Were there  
25 permits for new grading and for dumping fill onto this

1 property?

2 A I believe I already testified that there  
3 weren't any permits.

4 Q Oh, okay. I thought you were testifying  
5 for the lower part. I'm talking about higher parts  
6 where all these pipes were put in.

7 A I'm sorry, I'm not aware of that. I'm not  
8 aware of that.

9 Q Are you aware of the current climate trends  
10 towards increasing rainfall intensity?

11 A I can't answer that right now.

12 Q Is there someone in your department that  
13 focuses on this type of subject?

14 A On climate change, the effects?

15 Q How it will increase rainfall intensity?

16 A I don't think so.

17 Q So I'm going to make a statement that there  
18 is a trend towards increasing rainfall intensity.

19 With that said, does the new rules and ordinances that  
20 you're coming up with for drainage does it take into  
21 consideration the climate trend towards increased  
22 flooding?

23 A I, I don't know.

24 Q So would you know what design storm  
25 required by the county drainage design is?

1           A        We have rules on it that I can pull it up  
2 but I don't have it with me right now.

3           Q        Are low impact green infrastructure and  
4 LEED's platinum required in this Project?

5           A        I don't think they're required, no.

6           Q        Are they included actually?

7           A        I don't know.

8           Q        When you approved the Project when you read  
9 the program you don't know if it was in there if they  
10 included it?

11          A        We have staff that reviews through that but  
12 I don't.

13          Q        You didn't do it personally. Okay. You  
14 keep referring to rules EPA rules. What were you  
15 referring to.

16          A        On exactly what the years.

17          Q        Okay. The through-road that's gonna be  
18 going through the subdivision, you mentioned that it  
19 might be turned over to you.

20          A        The internal road.

21          Q        Yes.

22          A        I believe so.

23          Q        Does the county pay for this land when it  
24 becomes a county road?

25          A        It becomes a county road so we take on the

1 responsibility of maintaining it.

2 Q But you don't pay for the land that it's  
3 on.

4 A I don't think so.

5 Q So if there's going to be striping  
6 eventually put down the road, it's going to be wide  
7 and it becomes a county road. This now will become an  
8 official thorough-way for traffic to use through this  
9 neighborhood, is that correct?

10 A As it becomes part of our road way network  
11 yes.

12 Q The Project, at least the way I hear it  
13 that it's being proposed as being a safe place for  
14 families to work in, I mean to live in and children  
15 could move around in this area with parks and that  
16 sort of thing.

17 But if there's a road going through here,  
18 how does the county propose keeping all those -- I  
19 mean not like a major throughway -- how does the  
20 county propose keeping the families and children safe?

21 A Well, we look at the -- we have certain  
22 standards on our roads. We have police department  
23 that enforces the laws, traffic laws. And that's one  
24 area. I mean we would -- in order to keep it safe we  
25 would require maintenance on the roads with respect to

1 any damages to the sidewalks or to the pavement or  
2 that's what we're charged to do.

3 I mean in terms of maintenance, making sure  
4 is that it's safe we would take on that responsibility  
5 of making sure that the pavement and the sidewalks are  
6 in a useable form and safe.

7 Q Do you put in speed bumps that sort of  
8 thing to prevent people from going fast, go slow in  
9 the neighborhoods?

10 A I believe that the Project will be  
11 incorporating speed bumps in the plans in the road.

12 Q Will the county maintain that?

13 A We will maintain that.

14 Q You talked about there were some new  
15 ordinances coming out for stormwater pollution. How  
16 much will the new ordinance reduce the stormwater  
17 pollution load?

18 MR. GEIGER: I object to the extent --  
19 well, there's no evidence there's a stormwater  
20 pollution load. I think it's an argumentative  
21 question. If she wants to ask about how they work she  
22 can ask that.

23 VICE CHAIR HELLER: Overruled. If you know  
24 you can answer.

25 THE WITNESS: I don't know.

1 Q (By Ms. Bolomet): Okay. Going back to the  
2 fill. Is the fill without permit a violation of the  
3 Clean Water Act?

4 A I don't know that answer. I don't know the  
5 answer to that with respect to Clean Water Act.

6 Q Regarding the dam cant you tell me the  
7 function, yeah, the function of the dam?.

8 A Once again it's not a dam. It's a debris  
9 basin. So it collects the material from the runoff  
10 from upstream properties.

11 Q If the debris is not cleared can it then --  
12 can the structure function as a dam?

13 A I'm not -- I don't have an answer for that.  
14 But I don't think it's -- it's not a dam. It wasn't  
15 designed to be a dam. It's a debris basin.

16 Q Can you define what a dam is?

17 A A dam, basically the dam holds large  
18 amounts of water. And in certain places in Lahaina we  
19 do have -- we do have dam structures that retain water  
20 and it slowly goes out through a valve. In this case  
21 with the Kahoma structure it's a large flood control  
22 channel and allows a large amount of water to run  
23 through. But the flood structure itself collects all  
24 the debris material, allows for water to filter  
25 through.

1 Q Okay. So if the debris is not cleared out  
2 it starts stockpiling there, will this act as a dam?

3 A Well, we regularly maintain that structure  
4 to removal the debris. What happens is the water just  
5 goes over the top and onto the rest of the flood  
6 control. But it's not a dam.

7 Q Okay. But the question was -- well, let me  
8 pose it another way. We have a big storm, there's  
9 trees running down there. There is now a blockage  
10 that's very high. Will it act as a dam? A blockage?

11 A What I have already testified is basically  
12 all I know at this point. But if you want additional  
13 information or for further clarification we can, we  
14 can put it in writing for you.

15 Q This has to do with emergency preparedness.  
16 I'm looking at how do you remove in a time -- in a  
17 good timeframe keep that thing clear and remove it so  
18 in a big hundred year storm there isn't a big overflow  
19 that will jeopardize lives and property of this  
20 particular subdivision. That's what I'm seeing as a  
21 dam. It's the debris that comes in there, creates a  
22 dam.

23 A The flood structure itself is designed for  
24 a large storm event, for a hundred year storm. These  
25 don't come very often. But what happens -- but the

1 structure itself should work efficiently. And that's  
2 all I know at this point. I don't have any other  
3 information for you regarding that.

4 Q Okay. So say this November we have a very  
5 large storm with continuous rains and a lot of debris  
6 piles up this. How does the county propose keeping  
7 that clean very quickly so that it doesn't, the water  
8 stockpiled up and overflow? Let's say it's a 200 year  
9 storm. So how was the county going to handle that?  
10 Is there an emergency crew that comes up to take care  
11 of this?

12 A We have staff that goes out to maintain it.  
13 And before any storm, you know, we do go in beforehand  
14 to ensure that it's maintained and clear so that water  
15 can pass through. Again, that's all I know right now.

16 Q Let me just make sure I got all my  
17 questions answered. Can you explain what the hundred  
18 year flood storm -- wait. Let me say this again.  
19 What is the rain intensity and recurrent frequency of  
20 the hundred year flood in the Project Area?

21 A I don't have an answer for that right now.

22 Q Do you remember the last big storm that we  
23 had in that area?

24 A No, I don't. We've responded to several  
25 storms, but I'm not sure.

1 Q Isn't the reason the flood, this flood  
2 channel was put in was because it was in response to  
3 numerous floodings since the '70s? So we haven't had  
4 a hundred years yet.

5 A It was put in there to -- yes, to mitigate  
6 those storms. But, again, I don't have a lot of  
7 information about that. I can research it for you,  
8 then come back with an answer if you need.

9 Q Okay. I'm just, I'm just looking at your  
10 personal experience knowing the area and you working  
11 with your crews.

12 There was a flood channel put in in  
13 response to storms that were happening regularly, not  
14 every hundred years, just in the last 40 years.

15 Can you -- do you know offhand how often  
16 those were happening that the county could justify  
17 putting in this huge flood channel?

18 A I don't have a lot of background. I'm not  
19 even 40. (Laughter)

20 MR. BOLOMET: Well, that's it then. Thank  
21 you.

22 VICE CHAIR HELLER: Okay. Any redirect?

23 MR. GIROUX: Yes.

24 xx

25 xx

## REDIRECT EXAMINATION

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BY MR. GIROUX:

Q We'll go backwards this time. Can you give a short explanation in engineering terms what we mean by hundred year storm?

A I'm not an engineer. I'm sorry.

Q But it didn't mean that it's not based on hundred years, right? It's based on a percentage?

A Yes.

Q Can you explain that much?

A I can't really give you your answer on that one.

Q I guess there's some discussion as far as the safety of this drain on area. Did you tell the Corps of Engineers about drainage going into this area?

A As far as the flood control?

Q Yes.

A Yes, I don't personally have conversations.

Q There's correspondence in your office.

A Yes.

Q Are you aware of any responses that were warning of damaging structures around this flood control?

A No.

1                   VICE CHAIR HELLER: Let me remind you,  
2 just for the benefit of our reporter let him finish  
3 his question before you start to say your answer  
4 because it's very hard for her if two people talk  
5 simultaneously.

6           Q           (By Mr. Giroux) Just to clarify the record.  
7 You have no record of Corps of Engineers warning the  
8 county of any dangers of building structures around  
9 the flood controls?

10          A           Not warning the counties of building any  
11 structures around flood control. But I do believe this  
12 Project also gets reviewed at Army Corps of Engineers  
13 so they have an opportunity to respond, comment,  
14 provide recommendations as necessary.

15                   MR. GIROUX: I have no further questions.

16                   VICE CHAIR HELLER: Anything further by the  
17 parties? Commissioners, questions? Commissioner  
18 Biga.

19                   COMMISSIONER BIGA: Morning, Rowena. I had  
20 a couple questions. What would be the timeline when  
21 Old Mill Road would be turned over to the county?

22          A           That, I don't have an answer for that right  
23 now. It's still in the Draft EA and planning design  
24 stage. But as far as the timeframe we don't have an  
25 answer to that now.

1                   COMMISSIONER BIGA: Will the road be done  
2 before or after the Kahoma Project is done?

3                   THE WITNESS: I am not sure about the  
4 timeline of the Kahoma Project. As far as our  
5 timeline as well I can't really say.

6                   COMMISSIONER BIGA: If in the future a  
7 stoplight would be needed at the entrance and exit of  
8 that Kahoma Project where the Mill Road is, who would  
9 be responsible for that if it needs it?

10                  THE WITNESS: The county would be  
11 responsible. We would have to do some sort of signal  
12 warrant or a study beforehand. And today we're  
13 looking at different types of alternatives to street  
14 traffic signals in improving circulation as well. So  
15 it might not be a traffic signal. It might be a  
16 different kind of device.

17                  COMMISSIONER BIGA: Okay. Thank you.

18                  VICE CHAIR HELLER: Commissioners, anything  
19 further? I have one question. With regard to the  
20 issue of stormwater runoff and pollutants that could  
21 be included in the runoff, can you give us any  
22 description or comparison of how that problem is  
23 affected by whether the property is in agricultural  
24 use versus residential use?

25                         In other words, is the concern bigger for

1 residential or bigger for agricultural? Or is it not  
2 necessarily one way or the other?

3 THE WITNESS: I don't -- I can't really  
4 answer that. I think we do have different standards  
5 when it comes to designing for drainage control and  
6 stormwater quality. So I would think that we would  
7 take into effect the type of development that goes  
8 onto the property.

9 VICE CHAIR HELLER: In terms of the  
10 different standards, are the standards more stringent  
11 for agriculture or more stringent for residential?

12 THE WITNESS: I can't really say for sure  
13 what, what the definition of "stringent" would be. I  
14 would say that we would take the land use into  
15 consideration when developing or when the developer is  
16 developing something on the property.

17 VICE CHAIR HELLER: Anything else,  
18 Commissioners? County, was that your last witness?

19 MR. GIROUX: Yes, that's our last witness.

20 VICE CHAIR HELLER: Okay. Let's take about  
21 a 10-minute break and then we'll come back for OP.

22 (Recess 10:35)

23 VICE CHAIR HELLER: Are we ready? Back on  
24 the record. We apparently have some public witnesses  
25 who didn't understand our schedule and have come in

1 wanting to present public testimony this morning. So  
2 what we're going to do right now is allow public  
3 testimony, which will be limited to three minutes per  
4 person. So please try to present your testimony as  
5 efficiently as possible.

6 Then we'll go back to OP, continue the  
7 evidentiary hearing. (pause) I'm sorry. Maybe  
8 there's a misunderstanding. Are the individuals who  
9 are here to testify named as witnesses in the  
10 Intervenor's Witness List?

11 MS. LINCOLN: Yes. They have exhibit  
12 numbers, yes.

13 VICE CHAIR HELLER: Okay. So they're not  
14 here to be public witnesses.

15 MS. LINCOLN: No, they're not.

16 VICE CHAIR HELLER: Okay. In that case  
17 we'll get to them when we get to the Intervenor's  
18 witnesses. So we are proceeding with OP.

19 MR. YEE: As a preliminary matter the  
20 Office of Planning I believe has already submitted its  
21 exhibits and were admitted into evidence. We note  
22 that Exhibit 5 is the resumé of Rodney Funakoshi who  
23 is our only witness today. We would submit  
24 Mr. Funakoshi as an expert in the field of planning.

25 VICE CHAIR HELLER: Any objections?

1 MR. GEIGER: No objections to his expertise  
2 and no objections to the exhibit.

3 MR. GIROUX: No objection.

4 MS. LINCOLN: No objections.

5 MS. BOLOMET: No objections.

6 VICE CHAIR HELLER: Okay. He will be  
7 accepted as an expert. The exhibit I believe is  
8 already admitted.

9 MR. YEE: Yes.

10 RODNEY FUNAKOSHI  
11 being first duly sworn to tell the truth, was examined  
12 and testified as follows:

13 THE WITNESS: Yes.

14 VICE CHAIR HELLER: Please go ahead.

15 DIRECT EXAMINATION

16 BY MR. YEE:

17 Q Could you please state your name and title  
18 for the record?

19 A Rodney Funakoshi. I'm Planning Program  
20 Administrator for the state of Hawai'i Office of  
21 Planning.

22 Q Mr. Funakoshi, was Office of Planning  
23 Exhibit 2 testimony prepared by you or on your behalf?

24 A Yes.

25 Q Would you please summarize the Office of

1 Planning's testimony in this case?

2 A The Office of Planning recommends approval  
3 of the Petitioner's Kahoma Residential Project to  
4 reclassify 16.7 acres from the State Agricultural  
5 District to the Urban District subject to condition.

6 Relative to issues of concern to the state  
7 concerning agriculture, the site is rated under the  
8 Agricultural Lands of Importance to the state of  
9 Hawai'i, also known as ALISH, as non-prime ag lands.  
10 It is rated as Other Important Lands.

11 Under the Land Study Bureau soil rating it  
12 has a B classification indicating moderate suitability  
13 for agriculture. I would note, however, that the  
14 configuration of the site, narrow site, adjacency to  
15 homes would make it not well suited for commercial  
16 scale agriculture.

17 Water resources. The Petition Area is not  
18 within a Water Management Area. And the State  
19 Commission on Water Resource Management has not  
20 identified any concerns with obtaining sufficient  
21 potable water for the Project. The Project would be  
22 served by the county's water system.

23 OP recommends a condition requiring water  
24 conservation measures in the development of the  
25 Project and Best Management Practices to reduce water

1 demand.

2           Regarding drainage: OP supports the  
3 county's proposed rules for post-construction  
4 stormwater Best Management Practices and water quality  
5 treatment to reduce polluted runoff. OP recommends a  
6 condition requiring the use of low impact development  
7 techniques to mitigate stormwater and drainage  
8 impacts.

9           Concerning biota the Project will not  
10 adversely impact any threatened or endangered species  
11 or critical habitat. OP supports Petitioner's plans  
12 to down-shield exterior lighting fixtures to reduce  
13 impacts on seabirds.

14           Regarding cultural resources. We  
15 acknowledge the concerns raised by the Intervenors,  
16 but we also note the following: An Archaeological  
17 Inventory Survey of the Petition Area including test  
18 trenching found no archaeological or cultural  
19 resources.

20           The assessment was reviewed and accepted by  
21 the State Historic Preservation Division which  
22 concluded no effect on historic sites and that no  
23 further archaeological work is needed.

24           A Cultural Impact Assessment was also  
25 prepared in accordance with Environmental Assessment

1 guidelines which cited the absence of any cultural  
2 sites or artifacts, and concluded there would be no  
3 impact to Hawai'i's culture.

4           Regarding public schools, DOE and  
5 Petitioner have executed a school impact fee agreement  
6 to satisfy educational impacts from the Project. Any  
7 'ohana dwelling development -- I'm sorry. Any 'ohana  
8 dwellings developed would also need to comply with the  
9 impact fee provisions.

10           On traffic the State DOT indicated that  
11 although the Project will add to cumulative traffic in  
12 the area, it is not anticipated to have a significant  
13 impact on state highway facilities. No  
14 traffic-related conditions were recommended by DOT.

15           On public safety. The state Civil Defense  
16 indicated that the Petition Area falls within the  
17 coverage arcs of existing warning sirens. So no  
18 additional sirens are needed at this time. It is also  
19 outside the tsunami evacuation zone and in an area of  
20 minimal flooding.

21           On housing, the Project is consistent with  
22 state housing plans in providing affordable  
23 homeownership opportunities for at least 68  
24 households.

25           OP recommends a condition requiring

1 development in accordance with Maui County Council  
2 Resolution No. 11-126. The development timetable and  
3 performance: To ensure timely development OP  
4 recommends a condition requiring that backbone  
5 infrastructure be completed within 10 years from the  
6 Decision and Order approval.

7 In conclusion, the Project is in  
8 conformance with applicable land use standards, state  
9 and county plans and land use decision-making  
10 criteria.

11 Notably the Project is adjacent to existing  
12 residential areas and surrounded by Urban District  
13 lands. The Project is generally consistent with the  
14 Hawai'i State Plan, in particular the development of  
15 affordable housing and location of new development in  
16 areas with existing infrastructure and facilities.

17 The Project is consistent with infill  
18 development policies in the Maui General Plan. It  
19 lies within the Urban Growth Boundary of the Draft  
20 Maui Island Plan.

21 The area is not consistent with the  
22 Community Plan for West Maui. However, it is exempt  
23 from obtaining a Community Plan Amendment and change  
24 of zoning.

25 Accordingly, we support approval of the

1 reclassification. The details of OP's recommended  
2 conditions of approval are provided in our testimony  
3 OP's Exhibit No. 2.

4 I'd also like to take this opportunity to  
5 commend the Petitioner and its consulting planner and  
6 consultants for their responsiveness to OP concerns  
7 and for their thoroughness in addressing Project  
8 impacts. Thank you for this opportunity to testify.

9 MR. YEE: I have no further questions.

10 VICE CHAIR HELLER: Petitioner?

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

12 CROSS-EXAMINATION

13 BY MR. GEIGER:

14 Q First of all, let me talk to you a little  
15 bit about the agricultural impact. You indicated that  
16 this was classified as "other" I guess other important  
17 lands, is that correct?

18 A Yes.

19 Q And that's the lowest classification that  
20 ag land could receive, correct?

21 A It's really -- that's right. There's three  
22 classifications. So there's Prime, Unique and Other.

23 Q And this would be the lowest one.

24 A Yes.

25 Q You'd indicated that you wanted some

1 conditions on water conservation. As I understand it  
2 that would be like low-flow fixtures, things like  
3 this?

4 A Ah, yes.

5 Q That's what you're recommending in your, I  
6 guess, OP Exhibit 2, correct?

7 A Yes.

8 Q Then finally, let me ask you a little bit  
9 about the review process. As I understand it the  
10 state reviewed this Project initially, various  
11 departments reviewed this Project initially in  
12 connection with the environmental assessment, correct?

13 A Yes.

14 Q And that it also reviewed the Project in  
15 connection with this Petition, correct?

16 A Yes.

17 Q And the various departments such as SHPD,  
18 Transportation, Natural Resources would have reviewed  
19 the Project both of those times?

20 A Yes.

21 Q And with that the state, especially State  
22 Office of Planning is recommending that this Project  
23 proceed?

24 A Yes.

25 MR. GEIGER: Thank you.

1 VICE CHAIR HELLER: County?

2 MR. GIROUX: I have no questions.

3 VICE CHAIR HELLER: Ms. Lincoln?

4 CROSS-EXAMINATION

5 BY MS. LINCOLN:

6 Q Just a couple remarks to begin with on your  
7 testimony you just gave now. You mentioned infill.  
8 The county was not able to answer my question. Would  
9 you be able to answer my question on the definition of  
10 infill Ordinance No. 3818?

11 A I would prefer not to speak for the county  
12 on that. And I'm not sure whether that is defined in  
13 their ordinance. But in general I'm simply  
14 referencing that that is how we and probably the  
15 county itself would generally characterize the  
16 Project.

17 Q Okay. Also you mentioned that there's an  
18 exemption for the Project to proceed without obtaining  
19 a Community Plan amendment.

20 However, since it's over 15 acres and State  
21 Land Use is the ultimate decider, wouldn't that make  
22 it moot unless the State Land Use rezones it, then  
23 that amendment kicks in? Like the amendments aren't  
24 kicking in and the exemptions aren't kicking in until  
25 after it gets rezoned.

1           A        Okay. I'm not sure that it matters that  
2 much. But, you know, from our standpoint this would  
3 essentially be the final discretionary approval.

4           Q        Okay. So just to be clear because it is  
5 important to me, is that because the West Maui  
6 Community Plan is law and they're saying it's open  
7 space, therefore it doesn't change over until it gets  
8 approved by State Land Use to urbanize. Once it gets  
9 rezoned then the county's amendments and exemptions  
10 get put in.

11          A        I'd prefer not to speak on behalf of the  
12 county ordinance.

13          Q        Okay. Did the state make their supporting  
14 decision based on the testimonies of the Petitioner's  
15 witnesses and information?

16          A        Well, based on the totality of information  
17 provided in the environmental assessment, the  
18 Petitioner, exhibits submitted, our consultation with  
19 all of the affected stated agencies.

20          Q        Okay. And their experts that they had,  
21 they were paid experts, is there any chance that could  
22 be biased information?

23          A        I'm sorry? "Paid experts"?

24          Q        The Petitioner had --

25          A        Oh.

1 Q -- paid experts and witnesses to  
2 substantiate their findings. And so would you feel  
3 like the information could be biased in any way?

4 A Not that they would be biased. But what we  
5 do is basically an objective checking of what they're  
6 saying and whether we concur with their assessments.  
7 So we do that very diligently.

8 Q I guess the only example I can make is the  
9 only thing that I was really involved with was the  
10 first community meeting where you're supposed to have  
11 a community meeting for the neighborhood and get their  
12 input.

13 And what I saw in their document for State  
14 Land Use did not fully reveal the neighborhood's  
15 concerns. And it was a hundred percent opposed to it.  
16 And that wasn't put into their community thing.

17 So if they omitted that and that, is there  
18 other areas that they may have omitted information?

19 A Yeah, the submittal requirements are not  
20 specific on community consultation. Generally  
21 developers do that as a matter of prudent course of  
22 action. But it's not a requirement necessarily of  
23 either the environmental assessment process or the  
24 State Land Use Commission proceedings.

25 Q But it is a requirement of the county as

1 part of the process.

2 A Correct, yeah. I'm not -- I'm not  
3 familiar. But, yes, they do have hearings, et cetera  
4 on it.

5 Q Who's responsible to ensure that rules are  
6 enforced when, like, the county is involved?

7 A The county is responsible.

8 Q Okay. In regards to, like, the fill that  
9 was put at the bottom of the property that they're  
10 talking about getting an after-the-fact permit for on  
11 the property, that was something the county did. If I  
12 hadn't called it to someone's attention I don't think  
13 anybody would know about it.

14 So who actually does checks and balances  
15 and is governing the county and making sure *they're*  
16 following the rules?

17 A Typically fill is a function of county  
18 grading ordinances. So, you know, if the county  
19 themselves -- I'm not sure what the facts are on it.  
20 State would be involved if there's water quality  
21 impacts. That's possibly how they would get involved.

22 Q So there's really nobody to govern the  
23 county. If the county does something that is not  
24 legal and no one turns them in, then there's no Big  
25 Brother watching over them.

1           A       As I mentioned there is state water quality  
2 standards as well as some oversight from the federal  
3 government, EPA.

4           Q       Just in particular areas. But other than  
5 that it's self-governance pretty much. Okay. Did you  
6 state that the FEA was based on 68 units but the  
7 Project maximum would be 99 units?

8           A       That's our understanding based on the  
9 county's allowances for 'ohana dwellings.

10          Q       Okay. And did you state that this may  
11 result in an understatement of potential  
12 infrastructure demands and impacts of the proposed  
13 Project?

14          A       Yes. But we've also -- the Petitioner has  
15 acknowledged and, you know, is considering or has  
16 considered this in all of their infrastructure  
17 assessments.

18          Q       So you feel that that was one of your  
19 concerns that got met then. You're satisfied.

20          A       Yes.

21          Q       Okay. Since it is the state's  
22 responsibility to make the decision to rezone this  
23 property, does that make the state financially  
24 responsible in the event of a flood, after-the-fact  
25 road improvements or any other related infrastructure

1 impacts related to this Project?

2 A Liability is a question I would not want to  
3 answer.

4 Q Are you aware that the elementary school in  
5 that district, Princess School above this property  
6 which would be in the district, is currently using  
7 janitors' closets as offices?

8 A I'm not aware of that.

9 Q Okay. Are you aware the Princess was  
10 overcapacity last year and has an additional 80  
11 students this year?

12 A No, I'm not aware of that.

13 Q Are you aware that just one portable unit  
14 is estimated to cost \$341,713?

15 A I do know it's very expensive. I would  
16 like to add, though, that when we -- when the DOE  
17 Facilities Planning reviews proposed projects, they do  
18 look at the capacity of existing schools in the area  
19 factoring in the number of students generated and  
20 whether there would be available capacity.

21 So, you know, those considerations are very  
22 fully considered before they comment to us. But the  
23 educational agreement is intended to mitigate those  
24 impacts in terms of both facilities needed.

25 Q Okay. Well, if each household just has one

1 child with potentially 99 units, would that mean up to  
2 four portables may be needed if schools are at or over  
3 capacity? Could that be a necessity in the event  
4 there's 99 children adding into our school systems?

5 A They do have specific generation rates.  
6 And they do have long-term enrollment projections. So  
7 I'm not familiar with those statistics for this school  
8 district.

9 But even in the event that that particular  
10 school is at capacity, I'm sure they're looking at  
11 other nearby schools which could accommodate the  
12 enrollment.

13 Q There's only one other elementary school  
14 and it is at capacity as well. So if they ended up  
15 having to provide, say, four more portables, it could  
16 end up costing \$1.4 million.

17 Who would be responsible to pay for that if  
18 it's needed because of the extra children, and that's  
19 just saying one per household? We're not in China  
20 but...

21 A That would be somewhat speculative because  
22 there's different options that can be done such as,  
23 like I mentioned, even though it may be further away,  
24 to bus children, you can do more multi-year type  
25 enrollments.

1           And like I mentioned, even if it's at  
2 current capacity, if it's 6 to -- 6 years down the  
3 road, they have projections along those lines. So I  
4 would hesitate to speculate. But in general the DOE  
5 would be responsible for providing new facilities if  
6 they're warranted.

7           Q       Thank you. We're finished with those  
8 questions. Now, the next line here: How does a  
9 43,000 square feet lot meet the State Recreational  
10 Functional Plan criteria for improvement and expansion  
11 of recreational facilities in urban areas and local  
12 communities?

13          A       We're talking about basically a 1-acre park  
14 that in general the state does not speak to these  
15 types of parks. It's pretty much a county  
16 responsibility relative to their park ordinance.

17          Q       But I'm referring to the state recreational  
18 functional plan, not the county.

19               VICE CHAIR HELLER: Ms. Lincoln, when  
20 you're reading from your cards if you could try to  
21 take it a little slower it will help our reporter.

22               MS. LINCOLN: Okay.

23               THE WITNESS: Again, the State Recreational  
24 Plan does provide that as an objective or some  
25 guidance, but it does not get down to the level of

1 detail of the standards of the park. The number of  
2 parks that need to be provided, those are the  
3 responsibility of the county.

4 Q Okay. Are you familiar with statute HRS  
5 226-13?

6 A Yes, generally.

7 Q Okay. How does this Project promote  
8 effective measures to protect Mala's reef?

9 A Okay. You know, 226 is a very broad  
10 ordinance that covers all varieties of resources. And  
11 so speaking specifically to Mala's reef I'm not -- I'm  
12 not sure, I'm not sure even if the EA directly  
13 addressed that.

14 But, yeah, the state guidelines are fairly  
15 general in nature and would not speak directly to.  
16 But in general, you know, the state is concerned about  
17 protection of coastal ecosystems. And as needed we  
18 try to ensure mitigation of impacts.

19 Q Okay. In regards to the same statute, how  
20 does it reduce the threat to life and property being  
21 built by a flood retention wall?

22 A Similarly, it's a fairly general ordinance  
23 that would not respond specifically to specific  
24 instances of flood control.

25 Q How does the Kahoma Subdivision encourage

1 physical qualities of Hawai'i's communities with this  
2 plan?

3 A I'm not sure what you're referring to. In  
4 general I mentioned it does address a need for  
5 affordable housing in the area. And so we do consider  
6 that a community benefit.

7 Q But as far as the removal of acres of open  
8 space and that community concern because there's,  
9 under the HRS 26-13 there's different criteria. And  
10 providing open space and parks and whatnot *is* the  
11 state's responsibility as well.

12 A Yes. What we do is really balance the  
13 different resource area categories into what, there's  
14 economic development types and housing, and  
15 conservation type guidelines and objectives. But  
16 those basically are a balancing and they're not  
17 necessarily to allow or prohibit one particular use.

18 Q Okay. Are you familiar with the statute  
19 15-15-77 criteria for boundary amendment?

20 A Yes.

21 Q How can the Commission find after all the  
22 evidence that the proposed boundary amendment is  
23 reasonable and not a negative impact to preservation  
24 of natural resources and a healthful environment to  
25 the existing community?

1           A       I believe that analysis has been done but  
2 essentially it is reasonable because we do consider it  
3 to be already surrounded by urban development. It's  
4 in an area characterized by a city-like concentration.

5                    There are a variety of infrastructure and  
6 access surrounding to and surrounding and provided to  
7 the site. So we consider it appropriate.

8           Q       But how does it speak to the preservation  
9 of *natural* resources?

10          A       Maybe not necessarily to that, but at the  
11 same time there would be the question of whether it is  
12 warranted for preservation over development. So we  
13 would consider it not warranted for preservation over  
14 development.

15          Q       Okay. The state's testimony refers to the  
16 Hawaiian Constitution Article XII Section 7. But I  
17 did not see Article XI Section 1, 9 and 10. Are you  
18 familiar with those?

19          A       You might have to remind me of their  
20 provisions but ...

21          Q       They're right behind you. (indicating  
22 posters)

23          A       Generally I'm familiar.

24          Q       Okay. The highlights are on the exhibit  
25 behind you if you need to reference it. Or do you

1 want me to give you a copy?

2 A No, but what was your question?

3 Q Okay. Is it constitutional for the state  
4 or county to endorse the removal of open space in a  
5 Community Plan for housing on privately held land?

6 A Well, we don't consider this to be a  
7 violation, any particular action here to be a  
8 violation. That would be a matter for other bodies to  
9 decide. But, you know, what we do know is that -- and  
10 note is that the constitution is further expanded upon  
11 by other ordinances, statutes, rules and ordinances.  
12 So in totality we think they are consistent.

13 Q Okay. From the way I read it doesn't the  
14 only housing provision in the State Constitution apply  
15 just to public lands? That would be Article XI  
16 Section 10. So in response to that it's, like, you  
17 really only have -- explain that to me.

18 A But the constitution doesn't address  
19 everything too. And so maybe they maybe have wanted  
20 to speak only to public housing possibly would be my  
21 guess. But as opposed to housing overall I'm not  
22 sure.

23 Q Okay. Are you aware that the State  
24 Constitution does provide for conservation and  
25 environmental sections to all lands private and

1 public?

2 A Yes.

3 Q So why does the state feel that this  
4 housing Project outweighs the rights of the people  
5 under the Constitution of the state of Hawai'i?

6 A I believe I've answered that. That  
7 essentially it is a balancing of different guidelines  
8 and priorities. And I think this area is appropriate  
9 over conservation or preservation objectives.

10 Q Final question: Who is responsible to  
11 ensure that all citizens' rights are protected under  
12 the state of Hawai'i's constitution?

13 A Actually I'm not sure, but I would imagine  
14 there're laws and people challenge them. Certainly  
15 that is the course of action to take.

16 Q Would you say the state, then, as -- and  
17 appointed officials -- would be the ones that would  
18 ultimately where the buck stops here sort of?

19 A I would see pretty much everyone is  
20 responsible. But, you know, certainly the state, the  
21 counties are the primary focal points for  
22 implementation of the constitution.

23 Q Okay. I guess I'm concerned. Because when  
24 I read true through the county's information I didn't  
25 really see the constitution referred to. It was in

1 Office of Planning from your department that I  
2 actually saw any kind. So it seems like your  
3 department may be a little more aware of the  
4 constitution.

5 And since the county workers couldn't even  
6 answer questions about the constitution it seems like  
7 state, is that -- would you say that state's?

8 A Normally the counties are enabled by state  
9 statutes primarily. So a lot of their stuff is more  
10 tied back to state statutes rather than backup to the  
11 constitution.

12 MS. LINCOLN: Okay. Thank you. Appreciate  
13 that.

14 VICE CHAIR HELLER: Ms. Bolomet.

15 CROSS-EXAMINATION

16 BY MS. BOLOMET:

17 Q Yes. Hello. So I just want to be real  
18 clear. You said that the HRS, Hawai'i Revised  
19 Statutes and ordinances are superceded by the Hawai'i  
20 State Constitution?

21 A No. They are subordinate to the  
22 constitution, but they define or elaborate on the  
23 basic principles outlined in the constitution by and  
24 large.

25 Q Okay. But if there's a conflict between

1 the detailed guidelines and the Hawai'i State  
2 Constitution, would the constitution be the ultimate  
3 deciding factor over the rules, ordinances or the  
4 Hawaii Revised Statutes?

5 A Yeah. Certainly the constitution provides  
6 the overall guidance, but as to whether one supercedes  
7 or -- that's really a legal question that's probably  
8 resolved more in the court system rather than  
9 administratively I would say.

10 Q Do you work regularly with attorney  
11 general?

12 A Yes.

13 Q So the attorney general is helping you  
14 define what your, whatever you're doing is legal  
15 according to the State Constitution and then going  
16 down to the subordinate rules?

17 A Yes.

18 Q Okay. So when you were going over your  
19 process, what are the steps the State Office of  
20 Planning, what did you use to do your diligent work  
21 checking through the report to make sure the criteria  
22 was met?

23 A What criteria? You mean the land use  
24 criteria?

25 Q Well, you said that you did diligent

1 checking.

2 A Okay.

3 Q So what did you do? What are the steps  
4 that you used?

5 A Okay. Of course we start at the earliest  
6 stage. So that typically is preparation of an  
7 environmental assessment or impact statement. So we  
8 reviewed those routinely. And especially if we know  
9 that there will or may be a Land Use Commission  
10 proceeding ensuing, so we pay more or close attention  
11 to it. So we comment in that process.

12 Once the Petition is filed we determine  
13 what state agencies may have potential, may be  
14 potentially affected by the proposal and refer it to  
15 them for comment. And we follow up on it to make sure  
16 they comment. And we meet with them if necessary.

17 There's also pre-consultation with the  
18 Petitioner to try to ensure that some of the  
19 preliminary concerns that we have and have expressed  
20 either in the environmental assessment are addressed.

21 And so we coordinate and compile those, the  
22 information that we receive, into our, the state's  
23 position and subsequent testimony to the Commission.

24 Q Okay. So who, who is the person  
25 specifically that reviewed the EIS?

1           A       I think it's -- well, first of all, it's an  
2 EA. But originally it was another staff person from  
3 our office. I believe that she's no longer with the  
4 land use division. But there was another staff  
5 several years ago who did review the EA.

6           Q       What was her name?

7           A       Debra Mendez.

8           Q       Does Debra Mendez have a degree in  
9 Environmental Studies?

10          A       She has a Master's in Urban and Regional  
11 Planning from the University of Hawai'i.

12          Q       Does that include environmental studies  
13 like the impacts on the environment?

14          A       Yes.

15          Q       Okay. Who did you use for the cultural,  
16 the cultural practitioner to review the Archaeological  
17 Inventory Survey?

18          A       The Office of Planning does not have a  
19 cultural practitioner on staff. What we rely on is  
20 the recommendations and position of the State Historic  
21 Preservation Division.

22          Q       Okay. So I looked at some of the report at  
23 the State Historic Preservation Division. Can you  
24 tell me who looked at Jenny Picket's field notes?  
25 Jenny Picket is the person that's on -- what is it,

1 the Archaeological Survey, the AS? She's the person  
2 that's noted as doing the digs.

3 A I'm not sure. But normally in the  
4 acceptance letter from the State Historic Preservation  
5 Division the staff reviewer is cited. Offhand I'm not  
6 sure, but it should be in their letter of acceptance  
7 as to who reviewed and approved the inventory survey.

8 Q So you -- nobody in your office would do  
9 that specifically.

10 A No.

11 Q Okay. Would it surprise you to know that  
12 in Jenny Picket's field notes, when she went below the  
13 fill she found archaeological findings. And that is  
14 filled at the SHPD office.

15 A I'm not aware of that or the specifics of  
16 what may have been filed with, with that office.

17 Q Knowing that there are, in these notes  
18 there are archaeological finds below the fill, would  
19 that now change your approving that this AS is  
20 complete?

21 MR. YEE: Objection. The witness just  
22 testified he was not aware of these notes or the  
23 contents of these notes. So her question is assuming  
24 saying, "Now that you're aware" is assuming facts that  
25 are just untrue.

1           VICE CHAIR HELLER: I'm going to sustain  
2 the objection. It calls for speculation and/or is  
3 argumentative.

4           Q       (By Ms. Bolomet): Okay. So can I say it  
5 this way: If you were to find out that there were  
6 archaeological finds in the field notes that are filed  
7 at SHPD by Jenny Picket, who is on the archaeological  
8 study, what would the state Office of Planning do  
9 about this current archaeological study?

10           THE WITNESS: Well, if you're asking that  
11 the inventory survey be revisited, then that question  
12 probably should be directed to the State Historic  
13 Preservation Division. You would certainly need to  
14 have a qualified archaeologist support such a  
15 contention. But then that could trigger a revisiting  
16 of that by that office.

17           Q       Would it surprise you to know that Jenny  
18 Picket herself was the one that made me aware that her  
19 notes were in the office that stated she found  
20 archaeological findings below the fill line?

21           MR. YEE: I'm going to object on the basis  
22 that it's argumentative. We've sort of covered this  
23 area. He's already testified he's not aware of this  
24 information.

25           VICE CHAIR HELLER: Ms. Bolomet, you're

1 calling for speculation on areas that the witness has  
2 already indicated he has no knowledge of. So I will  
3 sustain the objection.

4 Q (By Mr. Bolomet) I'm trying to find a way  
5 to understand how is it that the state can continue to  
6 accept a report that's incomplete when there are notes  
7 and the archaeologist that brought the notes to our  
8 attention? I don't know how to bring that out.

9 And then what would the state do, you know  
10 if they knew about this? What do they do at this  
11 point? Do they not accept this archaeological report?

12 VICE CHAIR HELLER: I'm not going to tell  
13 you what questions you should ask. What I'm saying  
14 right now is that it is not productive to ask this  
15 witness those questions because he's indicated he  
16 doesn't know.

17 Q (By Ms. Bolomet): Okay. Do you ever  
18 consult with a cultural practitioner for reviewing any  
19 of these reports other than the SHPD, State Historic  
20 Preservation Division people?

21 A Usually not directly. Those are normally  
22 consultants or sub-consultants to a project.

23 Q Are you saying that you have in the past?

24 A No. I said "not normally".

25 Q "Not normally". But sometimes?

1           A       Not in the course of our official duties,  
2 yeah. So in my former life as a consultant I did, but  
3 not in my current state capacity.

4           Q       Okay. You talked about the A-List (sic)  
5 and other classifications for agricultural lands.  
6 What does it mean -- what's the definition of other  
7 important agricultural lands?

8           A       Normally the state is concerned only with  
9 those that are the most suited for agriculture and  
10 those are your "prime" and "unique" agricultural  
11 lands. So the "other" typically refers to those in  
12 the lower soil classifications or, you know, may have  
13 some other, may have some other constraints relative  
14 to agriculture.

15                   So that's really what that "other" is sort  
16 of a because the state's only concerned about those  
17 that are "prime" agricultural lands.

18           Q       So you're saying because of the soil  
19 quality at this time that is why this is considered  
20 not an A quality property?

21           A       Actually I'm not sure exactly why there is  
22 -- there actually is, it's rated as B. And A and B  
23 lands could be considered prime agricultural lands.  
24 The reason why this was rated as "other" I'm not sure.  
25 But it's really just a rating system that was done a

1 long time ago.

2 Q So I'm confused. So is this a B or an  
3 "other"?

4 A It's two different separate, two different  
5 systems of agricultural classifications. So the Land  
6 Study Bureau, you know, was one effort. And the  
7 Agricultural Lands of Importance to the state of  
8 Hawai'i was a different one, but it's based on some of  
9 the information there, although they did take a  
10 different look at it.

11 In terms of what they're trying to do was  
12 similarly to what the IAL or Important Agricultural  
13 Lands processes now. That was an older system  
14 intended to kind of lay the groundwork for that.

15 Q Okay. So I'm trying to understand exactly  
16 what a B and an "other" classification is. Can you  
17 give very specific definitions of what a B  
18 classification is? Is it, like, soil quality?

19 A Yes. So, you know, A and B lands typically  
20 are your -- the lands that would be best suited for  
21 agriculture. So they would include that in terms of  
22 the soil texture, permeability, rainfall. Those kinds  
23 of considerations would help in that rating.

24 And, again, though, this was done 50 years  
25 ago maybe now. So they're very old classification

1 systems but are still used in wide use now.

2 Q Okay. Well, I'm confused. If this was  
3 done 50 years ago and this was classified as a B, or  
4 an "other", wasn't Pioneer Mill growing on that land  
5 sugarcane effectively all the way through, the '70s or  
6 '80s?

7 A The B rating shows good soils.

8 Q So you can grow on the soils.

9 A Yes, yes.

10 Q So food can be produced on this soil.

11 A Yes.

12 Q Okay. So another thing that confuses me is  
13 that you say that A classification properties are  
14 important ag properties that by the State Constitution  
15 you are supposed to protect? I think it's Article XI  
16 section 3.

17 A Well, what I was referring to is a little  
18 more complicated explanation. But there is an  
19 Important Agricultural Lands designation process that  
20 has been adopted, maybe five years ago, that outlines  
21 a process for pretty much identifying and preserving  
22 Important Agricultural Lands. That was what I was  
23 referring to.

24 Q Okay. Because this is a mandate of the  
25 State Constitution this is something no matter what,

1 you need to protect if it's an A, is that correct?

2 A The constitution does not by itself protect  
3 these particular lands. It more establishes the  
4 overall objective. And as I mentioned it's spelled  
5 out in more detail by state statute.

6 Counties are already beginning to implement  
7 the IAL designation process as are developers. So  
8 it's more the process. It's not -- it's not just a  
9 blanket prohibition or anything like that.

10 Q But didn't you testify that the State  
11 Constitution, even though it's general and broad, it  
12 supercedes the HRS statutes, the ordinances and all  
13 other subordinate rules?

14 A Yes. In this particular case it also  
15 directs that the Legislature spell out the details for  
16 this protection. So that's also what I'm referring  
17 to. Amendments to IAL have been made. And that  
18 process, you know, is much more detailed than what the  
19 constitution provides.

20 Q So you're mandated to protect all A  
21 properties, is that correct?

22 A Not automatically. The process allows for  
23 a designation of Important Agricultural Lands that may  
24 or may not include A or B lands. So it's really a  
25 process. There are a number of criteria that -- and

1 one of 'em is, for example, whether the county has it  
2 planned for urban development or not.

3 So actually one of the criteria is actually  
4 non-agricultural, although most of the others are in  
5 terms of soils suitability, irrigation, are, you know,  
6 more ag related.

7 Q Okay. Can you explain to me why an A  
8 property like Ho'opili on O'ahu, which is prime ag  
9 properties in work, was approved for rezoning?

10 MR. YEE: I'm going to object on the  
11 grounds it's not relevant on the rationale of what was  
12 going on in another case. Quite frankly, when we  
13 start getting to those issues we go into a whole new  
14 area that's broad and not relevant to this case.

15 VICE CHAIR HELLER: Right. Ms. Bolomet, we  
16 are not going to go in this case into why decisions  
17 were made in other cases. Objection is sustained.

18 MR. BOLOMET: Okay. Let me get clear. I  
19 can't talk about why Ho'opili or anything outside of  
20 this case, that would maybe affect this case in  
21 clarification? 'Cause I'm trying to learn and  
22 understand the process so that I can ask effective  
23 questions.

24 VICE CHAIR HELLER: If you have questions  
25 regarding OP's rules and procedures, those are fine.

1 MS. BOLOMET: Okay.

2 VICE CHAIR HELLER: If you have questions  
3 about why a decision was made in some other case,  
4 that's not relevant.

5 MS. BOLOMET: So I can't ask why an A  
6 property is allowed to be rezoned? Because that would  
7 tell me that this property no matter what I do will  
8 get rezoned. That's what I'm trying to get to is: Do  
9 we even have a chance here to keep this Ag if an A  
10 property's getting rezoned?

11 MR. YEE: The witness has already testified  
12 with respect to the constitutional provision that it  
13 does not prohibit the reclassification of A rated  
14 lands.

15 He's already testified that the distinction  
16 between ALISH and LSB ratings. He's already testified  
17 on a number of these issues. So I don't think -- I  
18 understand Ms. Bolomet's trying to be educated on it  
19 but that's not the purpose of this cross-examination.  
20 It's to provide information to the LUC, not to educate  
21 the parties.

22 So I don't believe -- the questions are now  
23 cumulative if that's the area she wants to get into  
24 and adds nothing further to these proceedings.

25 MR. GEIGER: Move to join in the cumulative

1 objection.

2 VICE CHAIR HELLER: And I'm going to  
3 sustain it on that basis. Ms. Bolomet, we are getting  
4 cumulative and repetitive here. And also I think  
5 there may be some confusion about the law. Without  
6 trying to go into it in detail right now, you might  
7 want to try and figure out the difference between  
8 Important Agricultural Land as defined in state law  
9 and an A rating.

10 Those are different concepts. And I think  
11 the confusion is causing you to ask questions that are  
12 not productive here.

13 MS. BOLOMET: I apologize. I thought I  
14 read it and I understood it. But as I'm hearing this  
15 I'm thoroughly confused. Because my understanding of  
16 what I read is not what's being said.

17 And ultimately, you know, what I'm seeing  
18 the check and balances here for the constitution is  
19 the people. And the people asking the questions  
20 because our courts aren't, aren't being the check and  
21 balance. There aren't check and balances within the  
22 system itself is what it appears to be. So I'm trying  
23 to find out where the check and balances.

24 If I and Michele have to be the check and  
25 balance by asking the questions I think it's fair for

1 us to be able to get an answer. And we keep getting  
2 witnesses that can't answer questions. And yet based  
3 on them not answering the questions you're going to  
4 make a decision that's going to take Important Ag  
5 Lands that all of us in this room will benefit from  
6 when there's food grown.

7 This is a mandate of the LUC and the  
8 constitution for the state to protect all of us, that  
9 we have food.

10 VICE CHAIR HELLER: Ms. Bolomet, we  
11 appreciate what you're trying to do. But it is not  
12 productive to repetitively question the witness about  
13 matters where he can't give you answers.

14 MS. BOLOMET: Okay. I'll move on.

15 Q Okay. You mentioned, and I'm sorry I  
16 didn't write it all down, but 226, an ordinance 226  
17 regarding the protecting the waters or the reefs?

18 A It's the Hawai'i State Plan is the  
19 reference that has a variety of -- it covers virtually  
20 all of the areas of importance to the state.

21 Q Okay. So the reefs are considered an area  
22 of importance to the state?

23 A Yes.

24 Q Okay. And is this also part of the marine  
25 life this is covered in the State Constitution? I

1 think it's also Article XI?

2 A I believe so.

3 Q So now we have in the State Constitution  
4 that kanaka ma'oli rights are protected, the cultural  
5 practices are protected. We have that the waters are  
6 protected and that we have the reefs are protected.

7 Can you tell me how this plan that you've  
8 approved, that your office has approved, protects my  
9 rights as a cultural practitioner to the coral, and  
10 the limu that will be affected by the runoff of this  
11 property with all of the additional oils that will be  
12 in the waters as it goes down to the reefs?

13 MR. YEE: I won't object to the question of  
14 how this Project affects coral and limu. With respect  
15 to the rest of the statements those are clearly  
16 argumentative and we'd object to those statement.

17 MR. GEIGER: We would join in the  
18 objection, also object on the grounds it's assuming  
19 information that is not in evidence.

20 VICE CHAIR HELLER: Sustained.  
21 Ms. Bolomet, if you just want to ask a question as to  
22 whether this Project would affect coral and limu  
23 without assumptions built into it, that that would  
24 avoid some of these objections.

25 Q (By Ms. Bolomet): Okay. So could you tell

1 me how this Project will not affect the limu and the  
2 coral down at Mala?

3 A Well, specifically I'm not sure, but there  
4 are approvals and permits in place. I'm not sure, for  
5 example, to what extent the environmental assessment  
6 covers it. But whether it did or didn't there are  
7 other permits that are required.

8 And, you know, for example, the DOH water  
9 quality permits such as NPDES that would help to  
10 address water quality impacts downstream and, you  
11 know, help to address those kinds of concerns.

12 Q Okay. But didn't you say you diligently  
13 checked that all these things were met?

14 A Yes. But --

15 Q I'm just asking you how --

16 A We didn't make a determination necessarily  
17 that, you know, coral reefs would or would not be  
18 affected, if that's what you're asking.

19 Q Okay. So you checked a box saying "okay.  
20 It's here" but nobody checked the work to actually see  
21 that the state constitutional mandate that says these  
22 have to be protected is actually being protected, is  
23 that correct?

24 A I would not want to speak to the  
25 constitutional -- the Constitution on it. We believe

1 that all of the environmental review processes were  
2 followed. And we did do our appropriate referrals to  
3 areas that we thought were of statewide interest and  
4 concern. The Project, you know, was recommended  
5 accordingly.

6 Q Okay. But I looked at this in the  
7 Petition. Maybe I just missed it. I just want to  
8 know where in this Petition that you reviewed and your  
9 office approved, where does it say how the corals are  
10 being, and the reefs, are being protected?

11 A I don't know. And I'm not sure that we  
12 specifically covered that particular impact.

13 Q Okay. Are you aware that the silt that  
14 will come down will kill the corals and the limu?

15 MR. GEIGER: I'm going to object. Again,  
16 it's assuming facts not in evidence. It seems to be  
17 cumulative at this point and it's argumentative.

18 VICE CHAIR HELLER: Sustained on the  
19 grounds of argumentative and cumulative.

20 Q (By Mr. Bolomet): Okay. What is the  
21 receiving water for the storm runoff from the Project?

22 MR. GEIGER: Again, I'd object because  
23 there's an assumption that's not in the record that  
24 there will be stormwater runoff. In fact the drainage  
25 plan prevents stormwater runoff. So objection

1 cumulative; objection, argumentative.

2 VICE CHAIR HELLER: Sustained as  
3 argumentative. If you can put it in the form of a  
4 question that would be better.

5 Q (By Ms. Bolomet): Okay. So rain will come  
6 from the sky and will hit the road. And the rain from  
7 the running on the road will go down the storm drain.  
8 Can you please tell me what is the receiving, the  
9 receiving water for the storm drain runoff?

10 A The Kahoma drainage channel is the  
11 receiving body.

12 Q Okay. What receives the Kahoma Channel's  
13 water?

14 A I'm not sure what the name of that bay  
15 downstream is.

16 Q Mala?

17 A Mala. Okay.

18 Q So Mala will receive the water that runs  
19 off the streets that have the oils in it, the bubbles  
20 from cleaning the cars for car washes, and will go  
21 down Kahoma Channel into Mala Wharf; is that correct?

22 A I believe so.

23 Q And part of the receiving life down there  
24 that's in the ocean, would you agree is the reef and  
25 the corals and the limu?

1           A       Yes.

2           Q       Okay.  What is the current status of the  
3 water quality in the Kahoma Stream?

4           A       I don't know.

5           Q       Who checks that?

6           A       Normally it's triggered by some permit or,  
7 you know, environmental assessment kind of a study  
8 that would trigger that kind of evaluation.

9           Q       So the state regularly doesn't check the  
10 quality of the water from the Kahoma Stream?

11          A       I don't believe it's -- it's not a  
12 perennial or stream that they routinely monitor for  
13 water quality.  It intermittently flows.

14          Q       What would cause the state to investigate  
15 the water quality?

16          A       Well, normally when there's a violation of  
17 water quality standards, then the state does go out  
18 and take measurements.

19          Q       What kind of violations are you talking  
20 about?

21          A       Well, violations to state water quality  
22 standards and in response to public complaints, for  
23 example.

24          Q       So the public would have to complain before  
25 the state would do anything?

1 A Not always, but that's one trigger.

2 Q Okay. So there isn't a regular, somebody  
3 regularly checking the water quality?

4 A No, they do. Yeah, I'm not sure where  
5 exactly, but the state does have regular water quality  
6 sampling done.

7 Q Okay. So for what reason?

8 A It's a routine, routine exercise that they  
9 do.

10 Q What is the current status of the water  
11 quality in the Kahoma Stream?

12 A I don't know.

13 Q Do you know what they look for when they do  
14 their tests?

15 A Typically, yeah, standard parameters like  
16 temperature, salinity, sedimentation, turbidity.

17 Q Do they look for heavy metals in there?

18 A Not normally. It would be more a function  
19 of, like, a permit.

20 Q When they're testing the water they're  
21 checking for permits?

22 A No, no, no. It would be a function of a  
23 permit application such as that would trigger water  
24 quality in more depth to analyze those types of  
25 constituents because they're a more expensive

1 analysis.

2 Q Okay. I guess what I'm asking is you said  
3 that regularly there's, they check the water. So I'm  
4 trying to find out what do they check for? Do they  
5 check for bacteria, heavy metals, lead?

6 A There's a list of 'em of what they check in  
7 the Department of Health water quality standards.  
8 Offhand I'd rather not guess.

9 Q Okay. So do you know what the current  
10 quality of the coastal water is that's receiving the  
11 runoff of the storm waters in this area?

12 A Not offhand, no.

13 Q Are you able to retrieve that type of  
14 information?

15 A There are Department of Health maps, but --  
16 and I'm not sure whether they're reflected in the  
17 environmental assessment or not. They could be but  
18 even if not there are standardly available maps that  
19 rate water quality.

20 Q Wouldn't this be some of the information  
21 that you would need to use to assess if the  
22 environmental impact study or EA was accurate or  
23 complete?

24 A Well, if we thought that, you know, the  
25 Project warranted that analysis we certainly would.

1 But in this case it's a relatively small development  
2 in the big picture of development things. It is  
3 fairly well inland.

4 And so what we try to do as a state is make  
5 sure that to the extent possible that the impacts are  
6 kept outside of the receiving water body and mitigated  
7 to the extent possible.

8 The developer has represented that, you  
9 know, they are providing a basin for not only  
10 controlling the volume of stormwater runoff but also  
11 the quality. They've indicated that they will adhere  
12 to the proposed new water quality standards to be  
13 issued by the county, which is very good.

14 So I think that together should make it  
15 much better than what it is now.

16 Q Okay. Can you tell me if the stream or  
17 ocean receiving the waters, this would be Mala Stream,  
18 the Kahoma Channel, are on the list of impaired waters  
19 that the Department of Health reports to EPA and  
20 Congress under the Clean Water Act 303D?

21 A Yeah, I'm not sure. It could be. I'm not  
22 sure. I don't have --I haven't reviewed that list  
23 recently.

24 Q Well, if it is then you need to make sure  
25 that there's enough in there to make sure that the

1 waters are protected, is that not correct?

2 A Yes. But as I mentioned, the first  
3 priority is really to assure that the existing  
4 conditions are not worsened by the proposed  
5 development. And, you know, by virtue of that the  
6 downstream water quality should not be impacted  
7 greater than what it is currently.

8 Q So if the current water, if the total  
9 maximum daily load is already superceding the  
10 requirements and so long as it doesn't make it  
11 supercede more, it's okay to approve this Project? Is  
12 that what I'm understanding?

13 A The process is very lengthy to get into.  
14 And, you know, I'd prefer not to, but that's a very  
15 lengthy process to establish that impairment and the  
16 mitigation required for it. But that really is a  
17 completely separate process.

18 Q So do you know what the total maximum daily  
19 load is? Has one been done for this area recently?

20 A Not to my knowledge.

21 Q Do you think it's important that one be  
22 done?

23 A The state is constrained fiscally. They're  
24 have only been a couple off streams that have been so  
25 assessed.

1 MS. BOLOMET: Okay. Thank you. That's all  
2 my questions.

3 VICE CHAIR HELLER: OP, any redirect?

4 MR. YEE: Yes.

5 REDIRECT EXAMINATION

6 BY MR. YEE:

7 Q Ms. Bolomet, you were asked about impacts  
8 to coral and limu. As part of the process did you  
9 send requests for comments to DLNR?

10 A Yes.

11 Q Did you notice in the EA that comments were  
12 provided by Fish and Wildlife?

13 A Yeah, I don't recall.

14 Q Based upon the comments that were received  
15 by other agencies with responsibilities over areas  
16 such as coastal waters and fish and biota, were you  
17 able -- did anyone identify impacts to coral and limu  
18 as being an issue of concern for the Office of  
19 Planning?

20 A Not to my recollection.

21 Q As part of your general review, though, is  
22 the Office of Planning recommending low impact  
23 development processes and Best Management Practices  
24 for this Project?

25 A Yes.

1 MR. YEE: I have nothing further.

2 VICE CHAIR HELLER: Parties, anything  
3 further? Commissioners, any questions? Well, maybe  
4 this would be an appropriate time to take the lunch  
5 break. If we can, let's try to get back promptly at  
6 1:00 and get as far as we can this afternoon.

7 (Recess was held. 12:00)

8 VICE CHAIR HELLER: (1:00) Okay. Let's go  
9 back on the record. Thanks to everybody for getting  
10 back promptly so we could keep the lunch recess short.  
11 Just in terms of scheduling so everybody knows, we  
12 have several Commissioners who are expecting to catch  
13 a 3:30 flight. So we're going to go 'til about 2:15  
14 and then adjourn for the day. Mr. Yee, do you have  
15 any further witnesses?

16 MR. YEE: No. At this time the Office of  
17 Planning rests.

18 VICE CHAIR HELLER: Ms. Lincoln, do you  
19 have any witnesses to call?

20 MS. LINCOLN: Oh, I'm up. (laughter)  
21 Okay. I would like to call my first witness Jane Imai  
22 just because she has a time constraint as well. And I  
23 just want to honor her time.

24 VICE CHAIR HELLER: We can take the  
25 witnesses in whatever sequence you prefer.

1 MS. LINCOLN: Okay. Thank you. Jane?

2

3

JANE IMAI

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

6 THE WITNESS: Yes.

7 VICE CHAIR HELLER: Please go ahead.

8 MS. LINCOLN: I would like to submit Jane  
9 Imai's testimony as Exhibit 11.

10 VICE CHAIR HELLER: Was that previously  
11 marked?

12 MS. LINCOLN: Yes, it's in my exhibit.

13 MR. GEIGER: I thought it had been  
14 previously received, but I could be wrong.

15 MS. LINCOLN: Oh, it has been. Everything  
16 in my docket, so I don't have to ask that question?  
17 Is everything in my docket?

18 VICE CHAIR HELLER: The exhibits that you  
19 moved in previously are already in the record.

20 MS. LINCOLN: All in. Okay. Sorry, I just  
21 wanted to make sure.

22 VICE CHAIR HELLER: They're all in.

23 MS. LINCOLN: Okay.

24 VICE CHAIR HELLER: You don't need to move  
25 them in.

## 1 DIRECT EXAMINATION

2 BY MS. LINCOLN:

3 Q Okay, Jane. I wrote your testimony after  
4 interviewing you. Are there any corrections or  
5 changes to your written testimony?

6 A No, no. I don't think so.

7 Q How long have you lived in the  
8 neighborhood?

9 A Born and raised there all my life.

10 Q And how long, how many years is that?

11 A Eighty.

12 Q Where did you play as a child there?

13 A Right along the stream or in the stream.  
14 And then there used to be a flume right alongside the  
15 stream. And that's where our playground was.16 Q Can you share some of the memories that you  
17 had about playing out by the Kahoma Stream?18 A Well, a lot of you would know bento, you  
19 know, we used to make rice balls like a picnic and go  
20 into the stream when it was dry and have lunch or  
21 whatever snack, and play in there.22 And we picked the fruits like mangos and  
23 plumbs, those wild plums. They were so good. And  
24 'cause the tamarind is still there but the rest of the  
25 trees because no water, you know, they died. But the

1 tamarind still there. We still pick them.

2 Q Okay. Thank you. Can you tell the  
3 Commissioners how we met.

4 A Well, years back I used to walk my dog up  
5 Lahainaluna. But the cars there, the sidewalk is sort  
6 of narrow and the cars just zooming by, pretty scary.  
7 So I found this spot in the back where I used to live.  
8 So I walked there. And Michele and her friends and  
9 her dogs, that's how we met.

10 Q Okay. Your answered all my questions  
11 'cause I was going to ask why do you prefer to walk  
12 without out there. So you would say for safety  
13 reasons.

14 A Safety, yes.

15 Q Okay. All right.

16 MS. LINCOLN: That's all my questions.

17 VICE CHAIR HELLER: Petitioner?

18 MR. GEIGER: Yes.

19 CROSS-EXAMINATION

20 BY MR. GEIGER:

21 Q Good afternoon, Ma'am. My name's Jim  
22 Geiger. I have a couple of questions. I didn't catch  
23 it. Where do you live presently?

24 A Kilauea, about -- well, it's the next  
25 village, yeah. But I was born in Kahua right

1 alongside the stream.

2 Q Just so we're all on the same page, Kilauea  
3 is up above where the Lahaina Bypass is going in or  
4 below?

5 A Below.

6 Q Just the one right below.

7 A Yes.

8 Q Okay. How far, how close do you live to  
9 Lahainaluna Road? Is it closer Lahainaluna Road or  
10 closer to the back?

11 A Where I live now?

12 Q Yes.

13 A About the same.

14 Q About mid-way. Now, as I understand it you  
15 testified concerning this Project before the Maui  
16 County Council, correct?

17 A Yes.

18 Q And you told the Maui County Council the  
19 same thing that you've told the Land Use  
20 Commissioners, is that essentially correct?

21 A Well, I didn't testify then. This is my  
22 first.

23 Q Oh, I see. I apologize. I believed -- I  
24 thought you had testified in November when there was a  
25 site inspection. Didn't you provide testimony at the

1 site inspection at the council?

2 A Not then. Not then.

3 Q Okay. It is correct, though, that the  
4 reason you're opposing this Project is because you  
5 just don't want it in your backyard, correct?

6 A Yes.

7 MR. GEIGER: Nothing further.

8 VICE CHAIR HELLER: County?

9 MR. GIROUX: No questions.

10 VICE CHAIR HELLER: OP?

11 CROSS-EXAMINATION

12 BY MR. YEE:

13 Q You met because you liked to walk in  
14 someplace -- you met Ms. Lincoln because you wanted to  
15 find a place that was safe to walk in?

16 A Yes.

17 Q So you wanted a place like either a park or  
18 place with sidewalks, is that right?

19 A Ah, not necessarily. The back, it's wide  
20 open so....

21 Q But a street with sidewalks would be one  
22 place that you could walk and it would be safe.

23 A But where we live there's no sidewalks, no  
24 sidewalks. And the road's narrow. And so many people  
25 rent their places so the cars parked on the street.

1 It's very dangerous. So I prefer walking in the back.

2 Q So if there could be a place with sidewalks  
3 that would be a safe place to walk in.

4 A Could be.

5 MR. YEE: Thank you. Nothing further.

6 VICE CHAIR HELLER: Ms. Bolomet.

7 CROSS-EXAMINATION

8 BY MS. BOLOMET:

9 Q So, Ms. Imai, you said that you've lived in  
10 this area for 80 years.

11 A Yes.

12 Q Is that correct? Could you tell me on Mill  
13 Street -- is the street below this Project called Mill  
14 Street?

15 A Well, there's Kahua Street and then below  
16 that would be the Mill Street.

17 Q Okay. There's railroad tracks right now.

18 A Yes, yes.

19 Q What street is it on? Or what are the  
20 closest?

21 A I guess Kahua and Mill, you know, they  
22 merge. And then so on both actually.

23 Q Okay. And this is at the bottom of the  
24 property, the Project, proposed Project site?

25 A Yes, yes.

1 Q In the 80 years that you've lived in this  
2 area do you know of any other railroad bridge that was  
3 going up the river mauka either on the Kanaha side  
4 below Lahainaluna or on the Kahoma side?

5 A No, I think that's the only one with the  
6 railroad going over the bridge.

7 Q Okay. Thank you. The ponds. Do you  
8 remember ponds being on this property?

9 A Yes. Further where Michele lives, just in  
10 the back side of her, there was a pond where we used  
11 to dive into.

12 Q Oh. Were there fish in there?

13 A Sometimes and frogs, you know, tadpole,  
14 used to catch the tadpole.

15 Q You said that you used to pick the mangos  
16 and the plums and the tamarinds. So those are the  
17 same tamarind trees that were there?

18 A Yeah. The tamarind tree's still there. I  
19 think it's over a hundred years old. 'Cause when I  
20 was growing up there the trees were too big for us to  
21 climb.

22 Q Okay. Have you seen any owls?

23 A I've seen some.

24 Q Okay. All right. Recently?

25 A I haven't been watching, you know, at night

1 so...

2 Q Well, thank you.

3 VICE CHAIR HELLER: Ms. Lincoln, any  
4 redirect?

5 MS. LINCOLN: I do.

6 REDIRECT EXAMINATION

7 BY MS. LINCOLN:

8 Q Jane, I hope I don't confuse you. But the  
9 project that they're proposing, to access the  
10 sidewalks within the Kahoma Project you'd have to walk  
11 up to Lui Street to be able to get onto those  
12 sidewalks.

13 From where you live would you have to walk  
14 on more of the existing neighborhood to get to that  
15 site?

16 A Yes. Yes.

17 Q Okay. And so that would pose a safety  
18 issue just having to walk along there rather than  
19 where you access by your sister's house?

20 A Right, right.

21 Q Is your sister's house right on this  
22 property?

23 A Right off, yeah, yeah.

24 Q So you access through her yard at this  
25 point.

1           A       Yeah.

2           Q       Okay. And then also because you do walk  
3 with Mana -- (showing poster) this is her dog Mana,  
4 it's a pit-bull. Is that your pit-bull right there?

5           A       Actually it's my grandson's who lives with  
6 me, both of us. That's his dog but he's adopted me.  
7 Not me adopting him. (Laughter) But he's the  
8 friendliest dog.

9           Q       Okay. I've seen by the size of him I go,  
10 I'm thinking, I'm looking at the size of you. You  
11 just walk out there together and you don't have him on  
12 a leash and you feel safe with him?

13          A       I feel safe. I meet a lot of people.  
14 Sometimes, you know, like I'm walking late. I meet a  
15 lot of people maybe going home from work. And they  
16 see Mana and I have to tell them, "Oh he's okay. He's  
17 okay. He just wannabe petted." But I feel safe,  
18 really.

19          Q       Okay. So to walk through an existing  
20 neighborhood crossing 68 driveways with your dog may  
21 be problematic even though there's sidewalks. You'd  
22 be walking across 68 driveways with potentially 99  
23 homes. So that would be a possible safety issue for  
24 you?

25          A       Yes.

1 Q Thank you. That's it.

2 VICE CHAIR HELLER: Anything further,  
3 parties? Commissioners, any questions?

4 MR. GIROUX: Chair, I've got one quick  
5 question.

6 VICE CHAIR HELLER: Okay.

7 CROSS-EXAMINATION

8 BY MR. GIROUX:

9 Q Ms. Imai, in the 80 years you've been  
10 living there, after the flood control channel came in,  
11 have you seen any farming going on on that parcel of  
12 land?

13 A Not on that land but maybe portion of it if  
14 I walk further up. I see people, you know, planting  
15 you know, vegetables.

16 Q But that's about 16 acres. But you don't  
17 see a majority of that land being used as farming,  
18 just small parcel, small areas, small like home  
19 gardens?

20 A Yeah.

21 Q But that's further up, not only this  
22 parcel.

23 A Yes.

24 Q Okay.

25 A But it's all connected, though, you know.

1 It goes all the way up to the bypass.

2 VICE CHAIR HELLER: Commissioner Biga.

3 COMMISSIONER BIGA: Good afternoon,  
4 Ms. Imai. My question is this: Being living and born  
5 and raised in Lahaina for 80 years, what does this  
6 place do for you? What significance do you have or  
7 why do you care for this place so much?

8 THE WITNESS: Well, for me I love to walk.  
9 I walk every day. And that's the safest place for me  
10 and, of course, Mana. And I would like to have it  
11 that way. If they do develop there, then I gotta find  
12 elsewhere to walk. Hopefully I'm still living.

13 COMMISSIONER BIGA: Okay. Thank you. I  
14 mean if I do come, be able to come your age I  
15 hopefully would be as strong as you.

16 THE WITNESS: Thank you.

17 VICE CHAIR HELLER: Commissioners?

18 THE WITNESS: Keep on walking. (Laughter)

19 VICE CHAIR HELLER: Thank you.

20 Ms. Lincoln, your next witness?

21 MS. LINCOLN: I'd like to call Herman  
22 Naeole.

23 HERMAN NAEOLE  
24 being first duly sworn to tell the truth, was examined  
25 and testified as follows:

1 THE WITNESS: Yes, sir.

2 VICE CHAIR HELLER: Please go ahead.

3 DIRECT EXAMINATION

4 BY MS. LINCOLN:

5 Q Herman, I wrote your testimony after  
6 interviewing you. Are there any corrections or  
7 changes to your written testimony?

8 A No, ma'am.

9 Q I submitted part as my DVD a photo of  
10 petition. Can you tell the Commissioners about that  
11 Petition?

12 A (off mic) I made the petition back in  
13 November. It was for the county council meeting that  
14 they were having. The reasonable I made it was to  
15 speak for the people that was not able to attend these  
16 meetings.

17 The reason the meeting was held -- I'm  
18 sorry (on mic) I made this Petition to speak for the  
19 people of my community. I come from Kilauea Mauka on  
20 the corner of Kahena and Lui Street.

21 I was speaking for the people who for  
22 reason that the meeting of the council had held was  
23 during the weekday. And these people were not able to  
24 make it because some of 'em go to work. Seniors  
25 couldn't drive that far to get across to where the

1 meeting was.

2 That's why I made the petition. And I got  
3 over 200 names from not only my area, which is Kilauea  
4 Mauka, but also names from Mill Camp which is close  
5 right below me.

6 Q When you did the Petition and you would  
7 walk around and talk story with the neighborhood, can  
8 you tell some of the responses that you got in that?

9 A Well, doing the petition I met a lot of  
10 senior citizens, call myself a senior citizen too.  
11 However, I've noticed they weren't walking the  
12 community anymore like I used to see them 'cause I  
13 live on a corner street. I'm my lanai see a lot of  
14 these people walking in the past.

15 So I asked them. I said, "I haven't seen  
16 you walking the area anymore." The answer I got from  
17 them, a lot of 'em, was that since they closed Ikena  
18 Street traffic is coming down to Kahena Street. And  
19 even with some of the speed bumps we have in the area,  
20 it's not helping. These people just fly over the  
21 speed bump.

22 So it's scared, these senior citizens.  
23 They don't even want to walk their own block let alone  
24 walk the community like they used to do.

25 It's on my corner, yes, I have seen traffic

1 fly to and from. They don't use stop sign. I don't  
2 know why they put stop sign there 'cause people just  
3 fly through it. It's really unsafe. And I can see  
4 why these seniors don't wanna walk in the area of  
5 their community because of traffic.

6 Q So you have a heart for seniors and their  
7 concerns for safety. Could you highlight maybe some  
8 of the other main concerns in your testimony?

9 A Well, I have the heart for all living life.  
10 I see children walking to school from Keawe Camp  
11 through Kahoma, through Kaena, no...sidewalks.  
12 Traffic as it is now is unsafe the way they drive  
13 through.

14 And I care for all these people, little  
15 children playing on the street, because we have no  
16 place for them to play at. Why? We don't have a  
17 park.

18 These are like 2, 3- year-old children  
19 running out in the street and their driveway's right  
20 on the street there. And I've seen children from  
21 intermediate school to high school walk the traffic,  
22 close calls, cars go passing them so close. So I care  
23 for these people, for all life.

24 Q Okay. There's a picture over there with  
25 you. Is that taken in your yard?

1 A Yes, it is.

2 Q Okay. And just to confirm to everybody  
3 your home is right on the corner by Lui Street. So  
4 when they come out of Lui Street and they come down to  
5 Kalena they're actually the lights will hit towards  
6 your property, their cars and then they'll go around  
7 you.

8 A Yes.

9 Q So you're going to have the impact from Lui  
10 Street --

11 A Onto Kahena Street.

12 Q Okay. All righty. I think that's it. I  
13 think we have covered everything. Thank you, Herman.

14 A Thank you.

15 VICE CHAIR HELLER: Petitioner?

16 MR. GEIGER: Thank you.

17 CROSS-EXAMINATION

18 BY MR. GEIGER:

19 Q Good afternoon, sir. How are you?

20 A Good afternoon, sir. Good.

21 Q Just a couple of quick questions. Have you  
22 reviewed the conceptual plans for this subdivision?

23 A Yes.

24 Q You understand that the plans have a park  
25 in the middle of the subdivision?

1 A A small park.

2 Q An acre size.

3 A Not enough for children to play with --  
4 play at, excuse me.

5 Q Do you understand that the streets that are  
6 going to be in the subdivision are wider than the  
7 streets that are in front of your property?

8 A I'm sorry? Question?

9 Q Do you understand that the streets in front  
10 of the subdivision or in the subdivision are going to  
11 be wider than the streets by your property?

12 A Yep.

13 Q You understand that there're going to be  
14 sidewalks on both sides of the street?

15 A How far is it going to go? All the way  
16 through Lahainaluna?

17 Q It's going to go all the way through the  
18 Project. Do you understand that?

19 A Yeah. But is it within the Project? I'm  
20 looking after you come out of the Project what happens  
21 then? This is where the childrens are walking to.

22 Q Your concern is children walking on the  
23 street.

24 A All lifes.

25 Q All life walking on the streets. You would

1 agree with me, wouldn't you, that in this subdivision  
2 you're going to have broader streets, you're going to  
3 have sidewalks on both sides, you're going to have  
4 bike paths on both sides. It's going to be a lot  
5 better than what's in front of your house, right?

6 A I'll say this: We already have a congested  
7 area that is unsafe as it is now with the amount of  
8 traffic that we have there. With that subdivision  
9 opening traffic coming from there onto Kahena Street  
10 is gonna cause more traffic and unsafe to me.

11 Q Okay. Have you reviewed the traffic  
12 impacts studies that were done for this project?

13 A No, I haven't.

14 MS. LINCOLN: My witness is -- I object.  
15 My expert -- my witness is not an expert on traffic.

16 MR. GEIGER: I didn't ask him a question  
17 about traffic. I asked him if he'd reviewed the  
18 reports.

19 VICE CHAIR HELLER: It's been asked and  
20 answered in any case.

21 Q (By Mr. Geiger): So the point, though, is  
22 that you're not a traffic expert --

23 A No, sir.

24 Q -- so you're not here trying to tell the  
25 Commission what's safe or unsafe as far as traffic

1 concerns.

2 A All because of what I see. I'm talking  
3 what I see right now.

4 Q And we're also -- well, I'll leave that go.  
5 As I understand it you've testified before the county  
6 council on this Project.

7 A Yes, sir.

8 Q And you've told them the same thing you  
9 told the Land Use Commission, have you not?

10 A Yes, sir.

11 MR. GEIGER: Nothing further, thank you.

12 VICE CHAIR HELLER: County?

13 MR. GIROUX: No questions.

14 VICE CHAIR HELLER: OP?

15 MR. YEE: No questions.

16 VICE CHAIR HELLER: Ms. Bolomet?

17 MR. BOLOMET: I just have a few.

18 CROSS-EXAMINATION

19 BY MS. BOLOMET:

20 Q Do you think you have to be an expert to be  
21 able to witness what's going on in your front yard?

22 A I don't think so.

23 Q Okay. This Project does not bring -- to  
24 your understanding this Project does not bring  
25 sidewalks into your street, is that correct?

1 A Yeah, doesn't.

2 Q So would you agree that a traffic study is  
3 just a snapshot of time and you see it every day?

4 A Yes, ma'am.

5 Q How long have you lived in this area?

6 A Since 1972.

7 Q Okay. I thank you have some history. Do  
8 you have an aumakua?

9 A Yes, I do.

10 Q Can you explain to everybody what your --

11 A Our aumakua is Hawaiian Pueo which is the  
12 white owl known as the hawk. Back in the '70s my  
13 daddy used to have a little farm down by the river in  
14 the back of where I live. We raised a few chickens.  
15 My daddy raised three cows.

16 And we'd sit there in the evenings and  
17 watch my aumakua come by at about 5:30, 6:00 in the  
18 evening and perch right in front of us under these dry  
19 trees.

20 Yes, as was stated earlier there were many  
21 trees in the area, plum trees, guava trees, mango  
22 trees, tamarind trees. All is gone except for the  
23 tamarind trees. All the years that I have lived there  
24 where was able to have the farm, the pueo used to come  
25 every evening and we watched it.

1           I asked my daddy. I said, "What is the  
2 pueo?" He said, "That is our aumakua." That's how I  
3 learned it's part of our family. And some evenings in  
4 my backyard, and I have seen it many times at about 10  
5 o'clock at night, the pueo used to perch right on my  
6 backyard on my, the old Keawe tree that we cut down.

7           But since they closed the stream down and  
8 the trees are all gone, I haven't seen my pueo since  
9 then. So I don't know because maybe not having the  
10 vegetations, whether they were able to come and be  
11 safe. Because the pueo come there and they leave in  
12 the morning.

13           And, of course, we all know they feed on  
14 mice. And when the mountain is dry the mices come  
15 down to the community, more pueos come in the area.  
16 But I haven't seen my pueo since the river have been  
17 closed.

18           Q       Is an aumakua a guardian spirit?

19           A       Yes, it is.

20           Q       So there was more significance than it just  
21 being a pet bird?

22           A       Yes.

23           Q       Could you tell us the spiritual  
24 significance to your family?

25           A       Well, my great great-grandfather got lost

1 one time and was found by the owl. And ever since  
2 then there have been many incidents throughout history  
3 of my family that whenever they travel on land the  
4 pueo was always within the air to protect them. When  
5 we go to the mountains, to the ocean the pueo is there  
6 to protect us.

7 Q You were there since the '70s. And you  
8 witnessed the stream flowing --

9 A Oh, yes.

10 Q -- on the property?

11 A We swam there in it.

12 Q You swam in the stream?

13 A Yes, we did. The water flowed down  
14 through, right by our farm. And what we did we didn't  
15 have any boat or anything.

16 So what we did was we got cardboard,  
17 good-sized cardboard. We got the ti leaves, which  
18 serves many purpose for our native culture. And we  
19 stapled the ti leaves on both sides of the cardboard  
20 and we just jumped on it right on the water and  
21 *chhhhhppp* we were gone. That's our sport. We made  
22 our own fun in those days. I miss all of that. But I  
23 guess things do change. Life goes on.

24 Q Okay. So did you play up, only up in that  
25 or did you go down to the wharf?

1           A       All the way down to the wharf area. Of  
2 course, obviously when the water is down low we were  
3 able to do that. We walk along the stream. I walk  
4 all the way up to Lahainaluna in that stream there.  
5 But I don't do it anymore for reason my condition.  
6 Secondly, like the greens are not there for me to  
7 enjoy.

8                       But I like to see the area to become an  
9 open space so the people can enjoy themselves within  
10 the area without being afraid of traffic.

11           Q       Did you or any of your family members ever  
12 eat the limu down at the Mala area?

13           A       Oh, yeah. Down at Mala Wharf from Chart  
14 House all the way to the wharf we used to have limu  
15 called chop chop limu. It's not there anymore. What  
16 happened I don't know. I'm not a scientist. But it's  
17 not there. The ogo limu. A lot of seaweed.

18                       Just recently I've gone down to Mala Wharf.  
19 Forgive me for saying this but it stinks. The seaweed  
20 somehow just smells bad, just for the wharf area. I  
21 don't know if the water just sits there because of  
22 that. I hardly go there anymore.

23           Q       When you were swimming in the stream did  
24 you see 'o'opu?

25           A       They had 'o'opu. They had this freshwater

1 shrimp. We had lot of 'o'opu. And we used to go  
2 catch 'em.

3 Q Did you see 'ele'ele?

4 A Oh, yeah.

5 Q Did you eat it?

6 A Yeah. Because everything -- my daddy  
7 taught us, you know if it's not going to kill you it's  
8 edible (audience laughter) I believe. So I'm still  
9 alive. I didn't believe my daddy. (Laughter).

10 Q Can you explain what 'ele'ele is to  
11 everybody?

12 A 'Ele'ele is a green seaweed. It's like  
13 Maiden's hair. It's a little slimy when you pick it  
14 but then you wash it in Hawaiian salt...it's good.  
15 People like that with raw fish. Try that with raw  
16 fish it's good. Sorry. (Laughter).

17 Q So if you -- since the stream has been  
18 diverted, since it's been diverted do you still go up  
19 into the where the stream is still going up in the  
20 upper Mauka Area?

21 A Well, I haven't done that for a while  
22 because there's an owner that owns the property down  
23 below us there. And I just don't want to go through  
24 somebody else's property without having consent. And  
25 I don't go there because they have a gate out there

1 now that tells me, like, you don't belong in there.  
2 That's private property.

3 But, no, since they've closed down the  
4 stream I haven't walked all the way up to the top  
5 anymore. More so now because of my condition.

6 Q Do you know if 'ele'ele still exists?

7 A I don't.

8 Q Okay.

9 A I hope so.

10 MR. BOLOMET: Okay. I think that's it for  
11 me. Thank you.

12 VICE CHAIR HELLER: Ms. Lincoln, any  
13 redirect?

14 REDIRECT EXAMINATION

15 BY MS. LINCOLN:

16 Q Herman, I want to confirm the picture of  
17 you over there and your beautiful green yard. Do you  
18 feel like if this property could get water to it it  
19 could be restored to its former glory?

20 A My heart is there for it and I believe it  
21 could be.

22 MS. LINCOLN: Okay. Thank you.

23 VICE CHAIR HELLER: Anything further from  
24 the parties? Commissioners, any questions?  
25 Ms. Lincoln, do you have another witness?

1 MS. LINCOLN: I'd like to call Cynthia  
2 Catugal.

3 CYNTHIA CATUGAL

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: Please go ahead.

8 DIRECT EXAMINATION

9 BY MS. LINCOLN:

10 Q Okay. Is there anything in your testimony  
11 that you want to change at this time?

12 A No.

13 Q Okay. Could you briefly describe your  
14 family's history with the Kahoma Stream area?

15 A Four generations of the Catugal family have  
16 been residents of the Kahua Village also known as Mill  
17 Camp since 1929.

18 In 1956 Mr. Antonio Catugal, our father,  
19 bought his residential property located at 363 Keoni  
20 Street, Lahaina bordering the Kahoma Stream. For many  
21 years our family members grew up playing in the stream  
22 and surrounding areas.

23 The tamarind tree that the two other  
24 witnesses talked about is in our backyard. We know  
25 it's over a hundred years old. The family members for

1 generations swung from it, played in the stream. So  
2 those are very happy memories for us.

3           However, we also clearly remember the  
4 stream overflowing for, you know, decades because we  
5 lived there a long time. And those were scary times  
6 because the water would be very fast flowing, the  
7 walls were very low and would overflow to our property  
8 'cause again we were bordering the old stream.

9           A number of times it overflowed. The  
10 flooding was so bad that we had to evacuate. I  
11 remember Antonio, our father, carrying his mother on  
12 his back or carrying her off the property to safety.

13           So when the stream was rerouted or  
14 realigned, whatever term you use, I think 1988, the  
15 family was relieved. But we also missed, you know,  
16 the sound of the stream, the ability to play, you  
17 know, around there like we always did, the beauty of  
18 the natural land we missed.

19           And the children in the neighborhood still  
20 play in the dry riverbed or streambed, whatever you  
21 want to call it. We used to walk all the way up and,  
22 you know, that was really our history with the Kahoma  
23 Stream.

24           Q        You mentioned Mr. Antonio Catugal. Is he  
25 in the picture right there?

1           A        Yes. He's right there. He's 87 years old,  
2 one of the longtime families in Lahaina. He's still  
3 with us. He attended a number of the council meetings  
4 with us, couldn't be here today. He's not well but...

5           Q        Many multi-generational families have lived  
6 in this historic community. What is the Catugal  
7 family's understanding of the plans for the Kahoma  
8 land use?

9           A        Because we have been there for decades we  
10 have tried to keep abreast of what's going on in the  
11 community. Particularly when the Kahoma Stream was  
12 rerouted the community was told that the land would be  
13 undeveloped.

14                    It would be kept in its natural state, and  
15 that the rerouting was to ensure the safety of the  
16 property owners and the residents.

17                    In 1995 that understanding was reconfirmed  
18 again by the Maui County Council. Our understanding  
19 from this meeting, which has been documented, was that  
20 this area would remain open space and would not go  
21 into any other urban use. That's on Page 23 of the  
22 Maui County Council meeting in 1995.

23                    So we understood that this would be open  
24 space. It would be minimally developed, perhaps a  
25 bike path is all that we heard about.

1           In 2011 our family attended two of the Maui  
2 County Council meetings where the Petition to  
3 reclassify the Kahoma agricultural land use to urban  
4 land use was discussed. We urged the county council  
5 to deny it.

6           On Page 17 of the November 16, 2011 Maui  
7 County Council meeting minutes Mr. Hokama, a Maui  
8 councilmember, had cited at the time that the Lahaina  
9 community expressed very vocally to maintain this as  
10 open space during the Kahoma Stream Project and its  
11 realignment.

12           Mr. Hokama also cites the Ka'anapali 2020  
13 plans for maintaining mauka and makai corridors. And  
14 the designation of this property as open area is  
15 reflected in those plans as well.

16           In addition, our understanding of the land  
17 use for Kahoma is further reconfirmed by the Maui  
18 County map showing this area as Kilauea Mauka 3 Park.  
19 So a number of the communication meetings, again over  
20 decades, have basically reconfirmed what our  
21 understanding and sort of the history behind this  
22 particular Project and the land itself.

23           Q       Okay. What is your final take-away for the  
24 State Land Use Commission?

25           A       I think just two, two key messages. I

1 think what's important to the community -- and we talk  
2 about many multi-generational families that have lived  
3 here that continue to live here, my family being one  
4 of the older residents.

5           What we want is for the Kahoma land to  
6 revert to and remain as open space in its entirety as  
7 was originally intended for decades.

8           I think the second thing I think that's  
9 important for me to share with you, is that the  
10 residents on the west side overwhelming do not want  
11 this housing development Project not because they  
12 don't want housing, not because they don't want  
13 something in their backyard. Because their primary  
14 need is for an open space greenway that has meaningful  
15 light recreational use for the community. Thank you.

16           Q       Thank you. That's it for my questions.

17           VICE CHAIR HELLER: Petitioner?

18                           CROSS-EXAMINATION

19 BY MR. GEIGER:

20           Q       Good afternoon, Ma'am. Just a couple  
21 questions to follow up on that. I just want to make  
22 sure I'm understanding. Your family's property was at  
23 the lower end or the makai end of the Project site,  
24 correct?

25           A       That's correct.

1 Q So that the Commissioners have some idea,  
2 are we talking a couple houses from the bottom? We  
3 talking about a third of the way up? What are we  
4 talking?

5 A Actually there are two homes at the bottom  
6 and we are the one at 363 Keoni Street.

7 Q So you're at the bottom.

8 A Yes.

9 Q One of the very bottom houses.

10 A Yes.

11 Q Okay. And were you living there when the  
12 Kahoma flood control project was put in?

13 A Our family was living there.

14 Q You were there on occasion?

15 A Absolutely.

16 Q When we say "your family" I wasn't sure if  
17 you included yourself.

18 A Yes.

19 Q Okay. I'm sure you remember that that  
20 Project site, the parcel that we're talking about here  
21 was used as, effectively a baseyard for the  
22 construction of that Project, correct?

23 A Hmm-hmm.

24 Q You also remember that Pioneer Mill used to  
25 farm that site?

1           A       Yes.

2           Q       I'm sure you recall that there's been no  
3 farming up the Project since the flood control  
4 channel.

5           A       No commercial farming, yes.

6           Q       Now, one final question. Just want to make  
7 I understand this. Effectively what you've told the  
8 Commissioners today is the same thing that you told  
9 the county council.

10          A       That's correct.

11          Q       Okay. And were you aware of the Maui  
12 Island Plan?

13          A       Yes.

14          Q       Did you participate in that process?

15          A       Not -- when you say "participate" I'm aware  
16 of it.

17          Q       Were you aware that this Project was  
18 discussed in that process?

19          A       I was aware that it was discussed, but I  
20 was not present.

21          Q       Were you aware that this Project was  
22 designated as an urban Project in that Maui Island  
23 Plan?

24          A       No.

25               MR. GEIGER: Nothing further. Thank you.

1 VICE CHAIR HELLER: County?

2 MR. GIROUX: No questions.

3 VICE CHAIR HELLER: OP?

4 MR. YEE: No questions.

5 VICE CHAIR HELLER: Ms. Bolomet?

6 MR. BOLOMET: Yes.

7 CROSS-EXAMINATION

8 BY MS. BOLOMET:

9 Q Yes. What year was that Maui Island Plan  
10 that's being talked about?

11 A I'm not -- I'm not remembering exactly, no.

12 Q When you became aware of it approximately  
13 what year was that?

14 A I would say maybe, I don't know, maybe 10  
15 years? I'm not sure.

16 Q Okay. Are you aware that Kahoma Land  
17 Company purchased the land in 1996?

18 A I'm aware of that.

19 MR. GEIGER: I'm going to object because  
20 that is an incorrect statement. It was not 1996. It  
21 was 1999.

22 MS. BOLOMET: Okay.

23 Q 1999?

24 A I'm aware they purchased it.

25 Q Okay. And from 1999 when Kahoma Land

1 purchased ag land, did you say that there was no  
2 farming, no commercial farming at that time?

3 A That's my understanding and my  
4 recollection. There was no commercial farming at that  
5 time.

6 Q And would that make you believe that Kahoma  
7 Land never had any intention of buying this land?

8 MR. GEIGER: I'm going to object. It would  
9 call for speculation unless she has some basis as to  
10 what Kahoma Land intended or didn't intend. There's  
11 no foundation for this question.

12 VICE CHAIR HELLER: I think there's a lack  
13 of foundation and calls for speculation. So the  
14 objection is sustained.

15 Q (By Mr. Bolomet) Okay. You said your  
16 family used to swing on the trees into the pond area.

17 A Hmm-hmm.

18 Q So there was a pond down below?

19 A And even a stream, yes.

20 Q And can you kind of just paint a picture of  
21 what that whole area used to look like?

22 A Well, the area I mean definitely was much  
23 greener than it is today. There was water from the  
24 stream obviously running. There was a pond that we  
25 recall. And I wouldn't say it was pristine, but it

1 was natural, beautiful land.

2 Q And so next to the pond or the running  
3 stream, was it open space on the, say, where the  
4 channel is now and where the stream was?

5 A Pretty much.

6 Q Okay. So the land went all the way across  
7 where the channel is now?

8 A Yes.

9 Q Essentially shrinking the space?

10 A Hmm-hmm.

11 Q Do you recall how many ponds or swimming  
12 areas there were on this property at any time?

13 A The only thing I recall is the one pond and  
14 then the stream.

15 Q Okay. And that was at the lower part?

16 A Yeah.

17 Q Are you of Hawaiian descent?

18 A No, I'm not.

19 Q I think that's it. Thank you.

20 VICE CHAIR HELLER: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. LINCOLN:

23 Q After being cross-examined do you have  
24 anything else you want to share? Or are you  
25 comfortable?

1           A        No, I think I'm done.

2                    MS. LINCOLN: Thank you.

3                    VICE CHAIR HELLER: Commissioners, any  
4 questions? I just had one. A couple of different  
5 witnesses have mentioned the tamarind trees. Did I  
6 hear you say those were in your family's backyard?

7                    THE WITNESS: It's in the backyard  
8 directly. There's two trees. And we know it has to  
9 be over after hundred years old.

10                   VICE CHAIR HELLER: So are those on your  
11 family's land?

12                   THE WITNESS: No. I think it's on the  
13 property, that strip behind our property and where the  
14 Kahoma Land Project will be, just on the side of it.  
15 So I don't know if that's part of the Kahoma Land. I  
16 don't know, but it's there.

17                   VICE CHAIR HELLER: Thank you. Anything  
18 else? Thank you. Ms. Lincoln, do you have another  
19 witness?

20                   MS. LINCOLN: Elle Cochran was not able to  
21 make it so that's why we asked if she would have her  
22 statement put on record, but not be able to be  
23 cross-examined.

24                   MR. GEIGER: I believe the Commission  
25 already acted when we withdrew one exhibit,

1 substituted another exhibit for it. So I believe  
2 that's already in.

3 VICE CHAIR HELLER: Right. That was the  
4 new exhibit we put in this morning.

5 MS. LINCOLN: I guess. I'm just making  
6 sure that -- because she won't be able to be here to  
7 testify that the others parties have agreed to waive  
8 cross-exam.

9 VICE CHAIR HELLER: Well, the exhibit has  
10 been received in evidence.

11 MS. LINCOLN: Okay. So then it's my turn.  
12 Would you mind if I just stepped out for a minute  
13 before I start? Like not even a minute?

14 VICE CHAIR HELLER: Okay. We won't all  
15 leave. We'll just take a short... Ready.

16 (Recess in place was held.)

17 VICE CHAIR HELLER: Okay. Back on the  
18 record.

19 MICHELE LINCOLN  
20 being first duly sworn to tell the truth, was examined  
21 and testified as follows:

22 THE WITNESS: Yes, I do.

23 VICE CHAIR HELLER: Go ahead.

24 MS. LINCOLN: I first want to state thank  
25 you to the Commissioners for allowing me to testify

1 and be part of these proceedings. I want to also  
2 thank the staff and the lawyers for putting up with  
3 me. And thank you to the state and county workers for  
4 all your explaining and extreme patience with me.

5           It was through the county that I found out  
6 I could even do this process. I don't think I need to  
7 state for the record that I'm *not* an expert. I was  
8 calling regarding some issue regarding this land and  
9 someone in one of the county offices I was talking to  
10 said, when I was telling them about it said, "You  
11 could be an Intervenor." I'm like, no, I can't be an  
12 Intervenor. I'm not educated. I can't afford a  
13 lawyer. We don't have a homeowners association.

14           And he goes, "No, *you* could be an  
15 Intervenor." And I'm, like, "what would qualify me?"  
16 He goes, "You live in the neighborhood and you can  
17 speak to those issues." And I'm like, "That's true."  
18 So that's how I came to be an Intervenor.

19           With that being said I didn't necessarily  
20 want to do this position. And I know I'm doing  
21 everything wrong, but I'm doing the best I can and  
22 hope you'll bear with me.

23           There was a day in March before the  
24 intervention letter was due in April. And I came home  
25 from work on a Monday. And it had been a hard day at

1 work. And I was running late. And on Monday nights I  
2 have a club at my house for kids. We have about 35 to  
3 50 kids that come over. I make 'em dinner. And I  
4 came home this particular day and I was not in the  
5 mood for that. I had this storm brewing in me. I was  
6 like I just wanna go to bed. I don't wanna deal with  
7 this. But that doesn't matter. I'm committed.  
8 They're going to show up at 7:30 don't be late.

9           So I went out to walk my dogs. As I'm  
10 walking out here I'm thinking Wednesday's my day off  
11 and great I've gotta work on my intervention letter.  
12 I haven't typed since high school. This has been like  
13 a chore for me. I never had an email before. So this  
14 has been a very overwhelming situation.

15           And I'm walking out there and I'm like,  
16 "God, what is the big deal with this land? Why do I  
17 have to do this?" And I walked out there. The sky  
18 was so magnificent and the ocean looked beautiful and  
19 the mountain looked beautiful. And it just took my  
20 breath away. And all that anxiety and all that storm  
21 in me went away. I was rejuvenated. And the  
22 scripture that came to mind was: "He leads me by still  
23 waters. He restores my soul."

24           I looked over at the flood channel, there's  
25 a little trickle going down. I'm like, those are very

1 still waters. But I get it. It's like if this land  
2 can do this for me it can do it for other people. And  
3 people are going through a lot worse things than I'm  
4 going through. So that's why I'm here even though  
5 very not qualified.

6           The other thing is on June 6th I found out  
7 I had to do a paper, this thing that you guys got  
8 which I'm sorry going to be referring to, so have it  
9 handy. I thought that by being an Intervenor I just  
10 got to ask questions. I didn't know I had to do this.

11           And Dan and Scott made it very clear we  
12 couldn't ask them, like, what to do. So I was headed  
13 out of town for a week. And I stopped by Isaac Hall's  
14 office and said, "When I get back from my trip can you  
15 tell me how to do this presentation, what I gotta do?  
16 I can't afford to hire you to help me do it. But I  
17 can afford one hour. Can you tell me what I gotta  
18 do?"

19           So, I said, "And since I gotta pay for  
20 that hour could you just look into it and see if I  
21 have a legal case." And I was hoping not.

22           So anyway got back from my trip, met with  
23 him. And after talking with him I didn't feel I like  
24 I needed to hire him. I think West Maui Land did a  
25 really great job doing all their due diligence and

1 going through all the different hoops they had to go  
2 through, which was a lot.

3           So I just made a decision that I didn't  
4 have to worry about raising funds to hire a lawyer but  
5 still wanted to proceed. Of course, doing this  
6 because I don't know anything I call people for  
7 advice. I tried to call other people who I knew had  
8 been to State Land Use meetings. And, of course,  
9 people -- this is a sample of the list of people that  
10 I was told I should contact: Maui Tomorrow. Earth  
11 Justice, Sierra Club Maui, Kahea, and the Maui Coastal  
12 Land Trust.

13           But I didn't really want to contact those  
14 people because I just want to make sure that you have  
15 a clear picture of this land so that you're making a  
16 decision that's the best. You're getting the  
17 Petitioner's point of view, the county's point of  
18 view, the state's point of view.

19           I'm so grateful to Ruth because I didn't  
20 know anybody who I could ask to make sure that the  
21 cultural and the Hawaiian and bonus that she knows so  
22 much about soil and agriculture. And I'm sharing with  
23 the community and brought some people in to give you a  
24 picture of what this land has been and what it's used  
25 for today.

1           So I didn't feel it was necessary to call a  
2 group. I know I'm not qualified. At least you're  
3 getting the information. I think that's the important  
4 thing. Because you're making a decision for our  
5 neighborhood and our community. It's gonna be a  
6 decision that affects this community forever.

7           I'm concerned about the lack of community  
8 input. I only went to that one meeting. Just the  
9 fact that it was not represented clearly that's  
10 disturbing to me.

11           The whole fast track process, and skipping  
12 over the Community Plan amendments and other impact  
13 assessments, who's supposed to watch out for people  
14 like me? I don't know about this stuff. Probably the  
15 greatest thing is the lack of consideration for  
16 constitutional rights. I didn't even know I had any  
17 before this started, but who's supposed to watch out  
18 for them?

19           You're making a permanent decision on what  
20 is a temporary situation. My opinion it's land  
21 suicide. You're taking away space forever to build  
22 houses when the overall proposed housing exceeds the  
23 demand for West Maui. There's Villages of Leialil'i.  
24 There's Pualehua. There's Ka'anapali 2020. There's  
25 Waiane'e. There's Olowalu. I'm just going to show

1 you on this map here a minute.

2 Just so you know they're little boxes on  
3 here but they remind me, those are houses. There's a  
4 lot of people living in those houses. And all these  
5 down here do not have sidewalks. And they're  
6 ridiculously narrow roads.

7 Right along here, this is the land we're  
8 talkin' about. Right there are the two townhouses.  
9 This the Opukea. This the townhouses they're just  
10 kinda of completing right now. This is full of  
11 people. This is Weinberg property. This is right  
12 next to the Cannery Mall. This was supposed to be --  
13 when you read the minutes of the Planning Department  
14 from 1995 and they refer to the lower part of the  
15 park, that 24 acres was supposed to be a park and it's  
16 housing now. That's all we got left.

17 This was supposed to be park. This was  
18 supposed to be left open space. That's supposed to be  
19 like a little small park is what they were suggesting  
20 with bypass. But this was supposed to be our park.  
21 It's gone now.

22 What do we have? There's plenty of housing  
23 and there's plenty pre-approved housing. The  
24 preliminary approval for 16,000 new units in West Maui  
25 has just been approved in the General Plan committee.

1 So there are houses slated to come.

2 I don't understand why people are going to  
3 want to spend thousands of dollars and fly thousands  
4 of miles to look at hillsides covered with houses and  
5 concrete and shopping malls and strip malls. We need  
6 to beautify our island. At the same time we need to  
7 be sustainable and grow food.

8 I think we should start by saving the last  
9 of the open space in the Lahaina District. If you  
10 read the enclosed minutes from the county council, the  
11 issues are pointed out by Ricky Hakoma on page 16 and  
12 17 of my exhibit. Location is one of their concerns.  
13 Need for green corridors, pricing of the Project. And  
14 of course the DVD my flood issues that he brought up.

15 On the Page 25 of my Exhibit 1, the county  
16 council states, quote "The tax maps still shows the  
17 stream channel as county property," unquote.

18 If there was a land exchange that seems  
19 like they would have been resolved in the 1980s when  
20 the stream was realigned. The only activity on record  
21 available on the county tax map records shows a fee  
22 conveyance in November 1993. So it seems like that  
23 information would have been available in May of 1995  
24 when the council checked into it.

25 It just seems to me like before any

1 decision can be made, some of these issues that we  
2 have been talking about need to be resolved. There's  
3 too many open-ended things that haven't been answered.

4           The county council of 1995 acknowledged  
5 that the property belonged to the county. So their  
6 remarks on Page 28 speak to a decision based on that.  
7 I'm going to read that. That's on Page 28 of your  
8 exhibit. "That you would almost like a bank for the  
9 future people in the future. I know that we have  
10 limited resources. Sometimes it might be best to have  
11 a park either purchased or, or designated park areas  
12 for good planning purposes. But maybe we need to  
13 spend our money in the county to purchase another  
14 piece of land rather than to beautify a park at this  
15 time. But our intent was for it to become a public  
16 open space for either present or future use, whatever  
17 you choose or the community choose."

18           So this comment states the intent of this  
19 property. They made a decision at that point not to  
20 beautify it and put the paths through it, but to spend  
21 it on more park space and come back to it later.

22           The Petitioner states that the county is  
23 not interested in a park because they approved the  
24 Project. But comments made by the council do not  
25 support that assumption. Never assume.

1           The comment by Don Couch just before the  
2 vote on Page 19 and 20 of your exhibit -- I'm just  
3 going to read the end part, quote "Just remember that,  
4 Members, when you vote we don't want it to go with no  
5 modifications," unquote, referring to it going to the  
6 State Land Use.

7           So if they had denied it there and the  
8 Petitioner had come to you without the county  
9 council's approval, then they would not have gotten  
10 all their modifications in there, which a lot of 'em  
11 are good, making them keep the price low and keep it  
12 in the affordability for a longer time. So a lot of  
13 the things they did were good. And I understand why  
14 they had to make that decision because the buck  
15 doesn't stop with them. It stops with you.

16           So another issue is I do not think that the  
17 funding for this open space needs to be by the county.  
18 But someone like Department of Land and Natural  
19 Resources legacy lands and Trust for Public Lands they  
20 only like to work with willing landlords. Obviously  
21 we don't have a willing landlord which leads us to the  
22 worst case scenario of eminent domain.

23           And as the properties at Launiupoko have  
24 sold in the last nine months under \$1,400,000 we can  
25 establish a fair price based on that. Open space

1 speaks to our constitutional rights. I hope you'll  
2 consider the benefits of open space with regard to  
3 constitutional rights as a matter of safety and impact  
4 the existing community.

5 (pointing to photos on easels) There's  
6 Herman right there. That's in his yard. Each person  
7 has a right to a clean and healthful environment  
8 including protection and enhancement of natural  
9 resources.

10 (Photos on easels) This is the Catugal  
11 family. This is Cindy's husband and his father and  
12 her grandson. The constitution states "For the  
13 benefit of present and future generations the state  
14 *shall* conserve and *protect* Hawai'i's natural beauty."

15 I'm just going to make -- I'm not going to  
16 read through everything. You guys have read it  
17 yourself. I'm just going to highlight a couple of  
18 things referencing the minutes from the community plan  
19 in 1995 on Page 29. The quote, "I think that for that  
20 location my opinion is that that it should be like you  
21 described. It should have trees, bicycle paths,  
22 walkways and everything along the stream down over  
23 there where all the community and the people can enjoy  
24 that. Because the views from there is pretty."  
25 Unquote.

1 Native plants and planting of mango and  
2 plum trees would beautify has helped restore the days  
3 of old. There are flood control diversions designs  
4 that could reroute the flood channel to water and  
5 irrigate this property. I researched it online and  
6 they look pretty simple to install.

7 We know that there are permits in place to  
8 be able to divert flood water for irrigation or  
9 whatever purpose the community would need it for.

10 On Page 31 I'm going to just quote a short  
11 length from Councilmember Nakamura. Quote, "Regarding  
12 trees and stuff like that, to make it look kinda what  
13 it used to look like," unquote. That's what Herman's  
14 vision is for this property. He lives right by it.

15 On Page 32 Mr. Apana, quote, "I'll be  
16 voting in favor of open space because I think we have  
17 a lot of park designation in this area," unquote.  
18 Which you can see we don't have anymore. They took  
19 out the Weinberg property. So he was referring to at  
20 that time they thought that was going to be park.

21 So back to my quote: "There's going to be  
22 park at the bottom. But how nice if we had a park at  
23 the bottom, a park somewhere on top and left this  
24 rural how it used to be back when that, you know, we  
25 have different types of atmospheres. We're driving

1 along in our community instead of just seeing green  
2 parks, buildings, green parks, buildings, we can see  
3 some bushes. Because as a child I used to hide in  
4 bushes and play in bushes. And I think that's  
5 something a new generation should have an opportunity  
6 to do.

7 "Many times we see bike paths along major  
8 streamways because on the one side it's unstable land.  
9 Nobody's gonna wanna build a house next to it or  
10 anything. So I would rather see it left in open space  
11 where the new, the next generation can see the  
12 different types of --I don't say season but just like  
13 seasons in Hawai'i," unquote.

14 On Page 34. Mr. Draper states, quote,  
15 "Just being left open space I feel like maybe some of  
16 you will look at some other use for it in the next  
17 plan; decide put buildings upon it where that's not  
18 really our intention."

19 Page 36. Quote, "Open space can mean a  
20 number of things. It can mean something just to look  
21 at in its absolute untouched situation, or you could  
22 put minimal development on it such as a bikeway,  
23 picnic tables, that kinda thing for a passive  
24 recreational purpose."

25 The council had a vision and a future. And

1 they had time to consider the impact for future  
2 generations. I hope State Land Use does too.

3 In regards to Ag, the agricultural land may  
4 not be commercially viable, but it would support a  
5 community garden. And profit would be: Exercise,  
6 food, family fun, companionship and natural beauty and  
7 a clean and healthful environment. So perhaps it must  
8 be condemned for agriculture purposes if commercial ag  
9 is the only criteria. But to jump to the conclusion  
10 that therefore to urbanize it is a false assumption.

11 No one would deny that a Project like this  
12 is gonna provide jobs and stimulate the economy.  
13 That's not even up for debate. But it's not  
14 sustainability. It's not industry. And it's not long  
15 term.

16 Regarding affordability: Why isn't common  
17 sense more common? Just because the Project meets HUD  
18 guidelines doesn't mean we have to stop thinking that,  
19 hey, those prices are more like fair market or even  
20 higher.

21 Or the fact that Habitat could be creating  
22 an infill, according to the county's exhibit project  
23 with 10 or less projects that have no time limit on  
24 their development. This is why the entire community  
25 has to give up open space and give up their rights to

1 a natural and healthy environment?

2           201H Statute: The West Maui Community Plan  
3 of 1996 is a law and so is the Constitution of the  
4 state of Hawai'i. We had a discussion about that  
5 earlier. I still haven't figured out who's supposed  
6 to watch out for our constitutional rights. But that  
7 is the one that trumps all.

8           It is within the Petitioner's purview to  
9 provide affordable housing elsewhere. The county  
10 could allow for higher density. Habitat stated they  
11 would be willing to work with them on a future  
12 project. And their potential occupants prefer  
13 Launiupoko to Lahaina for affordable housing. So do  
14 I.

15           Regarding traffic: We're taught as  
16 children and we teach our children "Look both ways  
17 before you cross the street." So when did we throw  
18 out conventional wisdom? Just to look at that ingress  
19 and egress on Keawe and not take into consideration  
20 the seven other ingresses and egresses, a railroad  
21 track going right parallel with this property. The  
22 bypass not completed. None of the entities over  
23 there, the townhouses aren't complete. The Gateway is  
24 not to occupancy. The industrial area is not built  
25 yet.

1           So to not look both directions and think,  
2 "What's this gonna look like in the future and how  
3 many traffic lights can you put in a 200-foot area?"  
4 There has to be some wisdom that goes with governance.  
5 And by not looking at the full assessment and what  
6 it's going to look in the future is not good  
7 governance.

8           We took a site tour in the van. And that  
9 ended up at a smoke stack. That particular road is  
10 the one they're talking about making connectivity and  
11 the county getting it. But that's a private road.  
12 That's the first time in 30 years I've ever been  
13 completely through that road. That's not open to the  
14 public.

15           So by doing that the Commissioners missed  
16 out on an opportunity for a left-hand turn from Mill  
17 Street onto Keawe Street. So Mr. Pontinel, the  
18 councilmember, if you look at my DVD, he did an onsite  
19 visit and he had the privilege to do a left-hand turn  
20 from Mill onto Keawe Street, no bypass done, none of  
21 all the entities filled yet. And he had difficulty  
22 navigating the left-hand turn with the conditions the  
23 way it is now.

24           Any my best thing I can just say if you  
25 could please watch that and watch the end of the

1 traffic. Clearly his face says it all and what his  
2 thoughts are on the traffic expert's opinion about the  
3 level of difficulty of a left-hand turn at that  
4 intersection.

5           The neighborhood is not only concerned with  
6 Highway 30 and Lahainaluna. We realize 68 houses is  
7 not going to be a huge impact on Highway 30. But the  
8 existing neighborhood streets starting on Lui, it's  
9 only going to add to an already a safety issue.

10           On Page 10 of my exhibits, it's the one  
11 where the kids are walking down the street and it  
12 says, "Where's the park?" When you're walking up  
13 Lahainaluna, the kids stay obviously on the sidewalk  
14 because you don't walk down the middle of Lahainaluna.  
15 But once you get off Lahainaluna onto Kali Street,  
16 it's been my house on Aki Street, there's no  
17 sidewalks. So when you watch the kids they're walking  
18 down the middle of the street.

19           So in our family and anybody who hangs out  
20 at my house all you have to do is yell the word, "car"  
21 and the kids know to split, get off the property, get  
22 off the street and go onto people's property so cars  
23 can go by. Raising my children there that was the  
24 thing too. We had one mom looking one direction while  
25 we're visiting, one mom looking the other direction

1 and when you see cars coming you yell, "car" and the  
2 kids know with their little bikes or scooters to get  
3 off the road.

4           In our neighborhood in the evenings I see  
5 elderly people walking. Recently there's this new  
6 family in our neighborhood. The dad's pushing the  
7 stroller, the mom's walking the little boy and their  
8 dog. They take up the width of the street. And right  
9 now they can still do that because there is traffic  
10 coming through in our section, but it's not to the  
11 point where you can hear 'em coming and you can get  
12 out of the way.

13           When you add more connectivity it sounds  
14 like a great word. Seems like, oh, we're unifying the  
15 whole neighborhood. But what you're doing is you're  
16 allowing another route for people to get from point A  
17 to point B. And if there's more cars that come down  
18 our streets it's just adding more to a safety issue  
19 that's already there. So that's, as you can tell by  
20 Herman's testimony, that is a major concern.

21           When they went to county council and  
22 they're saying, "traffic", they kept addressing the  
23 issues of Lahainaluna or Highway 30. That's not our  
24 concern. Our concern is the safety in our  
25 neighborhood.

1           As to far as water is concerned, water  
2 reliability study is not complete. So to keep adding  
3 houses on the west side on outdated studies it's not  
4 good governance. Water is the source of life. You  
5 can't just keep building it and go, "We'll build the  
6 infrastructure for it." There still has to be water  
7 for it. If we use all the water for that, then, of  
8 course we're not going to be able to do ag because you  
9 need water for ag too. So there has to be a balance  
10 there.

11           Our schools, they're overcapacity. And the  
12 impact fees, though helpful, they will be inadequate  
13 to improve any infrastructure that may be needed.

14           I'm going to referencing the two pictures  
15 here just to kind of give you a feel when we did our  
16 tour. We drove up at the top and you guys looked  
17 inside that empty basin. Do you guys recall that when  
18 we went on the drive? We went up that kinda steep  
19 grade right here, turn around and then the van turned  
20 around and we came back down here.

21           So this is where housing will start. This  
22 is the flood channel. You can see on this picture. I  
23 obviously wasn't there when it was going over the top,  
24 but you can see how much higher the water was. You  
25 can see there are logs -- that's not a stick. That's

1 a log. Those are logs on top of that. So the water  
2 was coming over and it has been higher than this. I  
3 just don't always have my camera out there.

4 But I was actually looking for a picture of  
5 the owl that I had on the property, couldn't find it  
6 and I found these. So now you get the benefit of what  
7 Lahaina looks like in the winter.

8 VICE CHAIR HELLER: Ms. Lincoln, let me  
9 just remind you have about five more minutes to go  
10 today.

11 MS. LINCOLN: Okay. This Project may look  
12 good on paper. But people aren't paper and floods  
13 aren't paper. And it doesn't make it the right thing  
14 to do or the best thing to do. The county, with  
15 permission from West Maui Land, has been dumping on  
16 the land various things to keep the Kahoma Flood  
17 Channel to regulated flood safety issues.

18 The silt basin behind the wall must be  
19 maintained to keep this area a flood-free zone. But  
20 that also implies that if it's not maintained properly  
21 or if it's compromised by an event like, say, an  
22 earthquake, this could pose a danger to the nearby  
23 neighborhood.

24 The DVD that I had shows Ricky Hokama at  
25 the county council had concerns. And the Army Corps

1 of Engineers is not able to put into writing a  
2 guarantee due to regulations with changes with  
3 Katrina. So the Army Corps of Engineers has already  
4 stated on record at the county council meeting that  
5 they can't put something into writing.

6           Ricky Hakoma in that DVD quote, "Someone's  
7 going to pay the price later." Unquote. He wanted,  
8 quote, "Written verification or we'll end up in court.  
9 We could be authorizing houses to be built in a flood  
10 zone." Unquote.

11           The 500-year storm of 100-year storms that  
12 is purely a business and insurance term. It's so that  
13 they know how to write insurance policies for areas.  
14 It is not a reality and it is not a safety issue. No  
15 one knows when a 500-year storm is going to be. We  
16 don't know. Are we on year 497? Nobody knows that.  
17 It's more of insurance in a business term.

18           So, if this does get approved for urban  
19 use, and I feel like the county and the state needs to  
20 put into writing who is liable in the event of a  
21 flood. Our neighborhood learned the hard way. That  
22 when the Kahoma Stream was realigned and the people  
23 were told it would remain open space, words don't  
24 really mean anything. You've gotta get it in writing.

25           So here we are today. So my question is:

1 that would be a major concern of mine. If everybody  
2 says, "Well, floods not gonna happen," then it  
3 shouldn't be a problem for anybody to put it in  
4 writing that they're going to guaranty that it's not  
5 going to happen and that there's no liability  
6 involved.

7           Also on my picture of natural absorption  
8 right there, that means less runoff and natural water  
9 and not treated water that would go into the flood  
10 channel.

11           You can see how much water's in the flood  
12 channel. See how green it is and a little river right  
13 here, kinda like running down? This is where runoff  
14 goes right now. You've got the flood channel here.  
15 It's going down there.

16           You can see this is green because it's  
17 going down in here and irrigating it and extra water  
18 is running down on this road. And any extra water  
19 that's going in there is not treated. It's rainwater  
20 with dirt.

21           Mala hasn't seen any negative impacts so  
22 obviously the runoff from natural absorption has shown  
23 us that that is okay. They also mentioned the  
24 retention basin does not pose a mosquito risk.

25           I work in a store that sells shark's teeth

1 and shark's jaws. When people come in they'll make a  
2 comment like, "Oh, I wouldn't want to be bit by that."  
3 I'm, like, I don't even want to be bit by a mosquito.  
4 More people die of mosquito bites than shark attacks.

5           So the idea that there are other retention  
6 basins in Lahaina and therefore it's not a risk or a  
7 safety issue to put one there, that just because  
8 something's done before doesn't make it right. It's  
9 still a safety issue.

10           If you've got water percolating and sitting  
11 there it's one more source. They do cleanups where  
12 they don't allow appliances and tires and stuff. We  
13 have dengue fever and other things with  
14 mosquito-related.

15           So it can be a safety issue. And it is by  
16 a flood channel. So we know that things go that way.  
17 Is this a good time to stop?

18           VICE CHAIR HELLER: If you're at a  
19 concluding point, yes, we have about one more minute.

20           MS. LINCOLN: I won't be able to finish in  
21 a minute. I'm sorry.

22           VICE CHAIR HELLER: Okay. Then let's  
23 adjourn for today. Anybody have anything further they  
24 need to raise before we adjourn? We can check with  
25 the staff about when this will be scheduled. We are

1 looking at potentially October 4 at the outset. I  
2 would suggest check with the staff.

3 MR. GEIGER: Okay. Thank you.

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5 (The proceedings were adjourned 2:20 p.m.)

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C E R T I F I C A T E

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

That I was acting as court reporter in the foregoing LUC matter on the 7th day of September 2012;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

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

DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2012

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HOLLY M. HACKETT, CSR #130, RPR