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LAND USE COMMISSION
STATE OF HAWAI'I

ACTION)
DR12-47 KIHEI HIGH SCHOOL (Maui))
ADOPTION OF ORDER)
A81-525 Y-O Limited Partnership)
ORAL ARGUMENT AND DECISION-MAKING)
A12-795 WEST MAUI LAND COMPANY, INC.)
KAHOMA RESIDENTIAL, LLC)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at the Courtyard Maui, Kahului Airport, Haleakala Room, 532 Keolani Place, Kahului, Maui, Hawai'i, commencing at 9:00 a.m. on December 6, 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 CHAIRMAN KYLE CHOCK
4 THOMAS CONTRADES
5 CHAD McDONALD
6 LANCE M. INOUYE
7 ERNEST MATSUMURA
8 SHELDON BIGA
9 NICHOLAS TEVES, JR.

10 EXECUTIVE OFFICER: DAN ORODENKER
11 CHIEF CLERK: RILEY HAKODA
12 STAFF PLANNER: SCOTT DERRICKSON

13 DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

14 AUDIO TECHNICIAN: WALTER MENCHING

15 Docket No. 12-47 Kihei High School

16 For the Petitioner: WILLIAM YUEN, ESQ.

17 For the County: JAMES GIROUX, ESQ.
18 Deputy Corporation Counsel

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

21 Docket No. A81-525 Y-0 Limited Partnership

22 For the Petitioner: JENNIFER BENCK, ESQ.
23 Kaloko Heights Assoc. STANFORD CARR

24 County of Hawaii: WILLIAM BRILHANTE, JR. ESQ.
25 Deputy Corporation Counsel

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

1 Docket No. A12-795 West Maui Land, Inc. (Maui)

2 For the Petitioner: JAMES GEIGER, ESQ.
HEIDI BIGELOW
3 West Maui Land Co. Inc.

4 For the County: JAMES GIROUX, ESQ.
5 Deputy Corporation Counsel

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

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9 Intervenor: MICHELE LINCOLN

10 Intervenor: ROUTH BOLOMET

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1 CHAIRMAN CHOCK: Good morning, everybody.
2 I'd like to call the meeting to order. The first item
3 on our agenda this morning is the adoption of minutes.
4 Do I have a motion to approve?

5 COMMISSIONER McDONALD: So moved, Chair.

6 COMMISSIONER MATSUMURA: Second.

7 CHAIRMAN CHOCK: Moved and seconded by
8 Commissioner Matsumura. Is there any objections?
9 Minutes are approved. Executive Officer, our
10 tentative meeting schedule.

11 MR. ORODENKER: Thank you, Mr. Chair. Our
12 next meeting is on January 10th West Maui Land
13 Adoption of Order and DHHL Adoption of Order. The
14 subsequent meeting is January 24th, Waiko Industrial
15 Investment, LLC commence hearings and Ka'ono'ulu Ranch
16 oral arguments and decision-making.

17 January 10th will be in Honolulu at the
18 international airport conference center. January 24th
19 on Thursday we'll be here at the Maui Marriott
20 Courtyard. January 25th we'll also be here at the
21 Maui Marriott Courtyard.

22 February 7, 2013 location to be determined.
23 Potential discussion of the Kaua'i Important
24 Agricultural Lands Petition.

25 Beyond that February 8th, Ko'olina

1 Development status report only O'ahu.

2 CHAIRMAN CHOCK: Thank you very much, Dan.
3 The first item on our agenda is for action this
4 morning is DR12-47 Kihei High School, Maui. This is
5 an action meeting for a declaratory order to waive the
6 requirement contained in HAR 15-15-50 that Petitioner
7 submit a schedule and a map for development of the
8 Project in increments in order that Petitioner may
9 request the Commission to redistrict the entire
10 property as set forth in 15-15-78.

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

13 MR. YUEN: Good morning, Mr. Chairman and
14 Commissioners. My name is William Yuen. I'm the
15 attorney for the Department of Education.

16 MR. GIROUX: Good morning, Commissioners.
17 James Giroux on behalf of the Department of Planning
18 county of Maui.

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

21 CHAIRMAN CHOCK: Good morning. Let me
22 briefly update the record. On November 21st, 2012 the
23 Commission received a petition for Declaratory Order.

24 On November 29 the Commission mailed an
25 amended agenda notice for the December 6th LUC meeting

1 to parties.

2 On December 3rd the Commission received
3 Maui County's Statement in Support of Petitioner's
4 State of Hawai'i's Department of Education's Petition
5 for Declaratory Order.

6 Mr. Yuen, our staff has informed you of the
7 Commission's policies regarding reimbursement of
8 hearing expense, is that correct?

9 MR. YUEN: Yes, Mr. Chairman.

10 CHAIRMAN CHOCK: Does your client have a
11 position with respect to this policy?

12 MR. YUEN: We have no opposition,
13 Mr. Chairman.

14 CHAIRMAN CHOCK: Thank you, Mr. Yuen.
15 Here's our procedure for today. First, we'll call all
16 individuals desiring to provide public testimony to
17 identify themselves. All such witnesses will be
18 called in turn to our witness box where they will be
19 sworn in prior to their testimony.

20 After receipt of public testimony the LUC
21 staff will provide a map orientation. Thereafter I'll
22 give the opportunity for the parties to admit their
23 exhibits to the record.

24 After the admission of exhibits we will
25 hear presentation from the Petitioner, comments from

1 Maui County and State Office of Planning. At this
2 time are there any individuals in our audience who
3 would like to present public testimony? Please come
4 forward. I don't believe there's anyone signed up and
5 nobody in the audience wishing to provide public
6 testimony. Scott, will you please provide the
7 Commission with the orientation.

8 MR. DERRICKSON: No map orientation today.

9 CHAIRMAN CHOCK: No map orientation today.
10 Thank you, Scott. (Laughter). Mr. Yuen, any exhibits
11 you wish to have admitted?

12 MR. YUEN: No exhibits.

13 CHAIRMAN CHOCK: I'm sorry. Hang on for a
14 sec. I think we have a disclosure from Commissioner
15 McDonald.

16 COMMISSIONER McDONALD: Thank you,
17 Mr. Chair. I just want to disclose to the parties my
18 firm has done work with the Department of Education in
19 the past. And we do have current contracts with the
20 DOE. We are, however, not involved with the Kihei
21 Project in any capacity. I do not believe that my
22 involvement here will affect my decision-making
23 abilities in this hearing. Wanted to disclose that to
24 the parties and see if you folks have any objection
25 with my participation.

1 CHAIRMAN CHOCK: Thank you for the
2 disclosure, Commissioner McDonald. Parties, any
3 objections?

4 MR. YUEN: No objection.

5 MR. GIROUX: No objection from the county.

6 MR. YEE: No objection.

7 CHAIRMAN CHOCK: Commissioners, any
8 concerns? Thank you, Commissioner McDonald.
9 Mr. Yuen, exhibits?

10 MR. YUEN: No exhibits.

11 CHAIRMAN CHOCK: County?

12 MR. GIROUX: No exhibits.

13 CHAIRMAN CHOCK: Mr. Yee?

14 MR. YEE: We've no exhibits.

15 CHAIRMAN CHOCK: Okay, Mr. Yuen, are you
16 ready to proceed with your presentation?

17 MR. YUEN: Mr. Chairman, our position is
18 fairly simple. We ask that the Commission waive the
19 requirement contained in HAR section 15-15-50C that if
20 a Petition Area cannot be fully developed within a
21 10-year period that the Petitioner submit both a time
22 schedule and a map showing the development of the
23 Petition Area in increments.

24 What the Department of Education has done
25 is it has acquired a 77-acre property in Kihei for a

1 new Kihei high school. The Petitioner proposes to
2 develop the entire Petition Area by completing site
3 work and installation of utilities for the Kihei High
4 School.

5 Initially the Department of Education is
6 proposing to develop classroom facilities and
7 administrative and athletic facilities for a school
8 population of 800 students. As both funding permits
9 and as the population in Kihei grows, DOE anticipates
10 maximum development of facilities to serve a maximum
11 student population of approximately 1650 students.

12 That development will take place over time.
13 And it is undetermined at this point in time how long
14 it will take to develop the entire facilities for the
15 1650 student population.

16 However, since the Petitioner anticipates
17 doing site work and developing infrastructure for the
18 entire property, it makes sense to designate the
19 entire property in the Urban District and not to
20 require development of the property under incremental
21 redistricting.

22 For that reason we have not submitted a map
23 or a time schedule showing development of the property
24 in increments.

25 CHAIRMAN CHOCK: Thank you, Mr. Yuen.

1 Parties, any questions for Petitioner? County?

2 MR. GIROUX: No questions.

3 CHAIRMAN CHOCK: State?

4 MR. YEE: No questions.

5 CHAIRMAN CHOCK: Commissioners, any
6 questions? If not thank you, Mr. Yuen. County, any
7 presentation?

8 MR. GIROUX: We have no presentation.
9 We're going to rest on our submittal that we do
10 support the Petitioner's request.

11 CHAIRMAN CHOCK: Thank you, County. State?

12 MR. YEE: The state has no objection to the
13 request in this case. And given the fact that they
14 are a school to be constructed as well as the fact
15 that a time schedule does not seem appropriate for the
16 school use as a basis for looking at incremental
17 districting, we agree with the request.

18 During the actual district boundary
19 amendment proceeding we can examine further what the
20 total buildout will be based on school population so
21 that we can have an accurate examination of the
22 impacts of the Project to make sure there's
23 concurrency.

24 So there's another process I guess is what
25 I'm saying, rather than incremental districting or a

1 time schedule to ensure that impacts are adequately
2 mitigated within the district boundary amendment
3 process.

4 CHAIRMAN CHOCK: Thank you, Mr. Yee.
5 Commissioners, what is your pleasure on this matter?
6 Commissioner Teves.

7 COMMISSIONER TEVES: Mr. Chairman,
8 regarding Docket No. DR12-47 Kihei High School, I make
9 a motion to accept the Petitioner's request to waive
10 the requirement contained in section 15-15-50 that the
11 Petitioner submit a schedule and a map for the
12 development of the project in increments.

13 COMMISSIONER CONTRADES: Second.

14 CHAIRMAN CHOCK: It's been moved and
15 seconded by Commissioner Contrades. Commissioners,
16 any discussion? Have the executive officer poll the
17 Commission.

18 MR. ORODENKER: Thank you, Mr. Chair. The
19 motion is to accept the Petitioner's request to waive
20 the requirement for incremental districting.
21 Commissioner Teves?

22 COMMISSIONER TEVES: Yes.

23 MR. ORODENKER: Commissioner Contrades?

24 COMMISSIONER CONTRADES: Yes.

25 MR. ORODENKER: Commissioner Matsumura?

1 COMMISSIONER MATSUMURA: Yes.

2 MR. ORODENKER: Commissioner Biga?

3 COMMISSIONER BIGA: Yes.

4 MR. ORODENKER: Commissioner McDonald?

5 COMMISSIONER McDONALD: Yes.

6 MR. ORODENKER: Commissioner Makua is
7 absent. Commissioner Heller is absent. Commissioner
8 Inouye?

9 COMMISSIONER INOUE: Yes.

10 MR. ORODENKER: Chair Chock?

11 CHAIRMAN CHOCK: Yes.

12 MR. ORODENKER: Mr. Chair, the motion
13 passes with seven votes.

14 CHAIRMAN CHOCK: Thank you very much.

15 MR. YUEN: Thank you very much,
16 Commissioners.

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1 (A81-525 Y-O LIMITED PARTNERSHIP)

2 CHAIRMAN CHOCK: Going to take a 1-minute
3 recess in place and reset for the next item on our
4 agenda Y-O Limited Partnership. (recess in place)

5 We're back on the record. The next item on
6 our agenda is A81-525 Y-O Limited Partnership to
7 approve the form of the Order.

8 On October 19th the Commission met in
9 Honolulu (sic) and voted to grant docket A81-525 Y-O
10 Limited Partnership, Petitioner's Motion for Extension
11 of Time to Apply for Redistricting of Phase II. Will
12 the parties please identify themselves for the record.

13 MS. BENK: Good morning, Commissioners and
14 parties. This is Jennifer Benck representing
15 Petitioner Kaloko Heights Associates. And with me
16 today is Stanford Carr, Kaloko Heights Associates.

17 MR. BRILHANTE: Good morning, Chair,
18 Commissioners. William Brilhante on behalf of the
19 county of Hawai'i planning department.

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

22
23 CHAIRMAN CHOCK: Thank you, everyone. Let
24 me briefly update the record. On November 29th the
25 Commission mailed an amended agenda notice for

1 December 6th, LUC meeting to parties and statewide
2 mailing lists. Is there anyone in the audience who
3 wishes to provide public testimony on this matter?

4 Having seen no one in the audience wishing
5 to provide testimony, I'd like to remind the
6 Commissioners that before you is the Form of the Order
7 granting the Petition in this docket. Chair will
8 entertain a motion to approve the Form of the Order
9 on this matter. Commissioners, what is your
10 pleasure?

11 COMMISSIONER TEVES: Mr. Chairman,
12 regarding this docket I move to accept the Order for
13 Approval.

14 COMMISSIONER MATSUMURA: Second.

15 CHAIRMAN CHOCK: Moved by Commissioner
16 Teves seconded by Commissioner Matsumura. Any
17 discussion? Executive Director, please poll the
18 Commission.

19 MR. ORODENKER: Thank you, Mr. Chair. The
20 motion is to approve the Form of the Order for Y-0
21 Limited Partnership Docket No. A81-525. Commissioner
22 Teves?

23 COMMISSIONER TEVES: Yes.

24 MR. ORODENKER: Commissioner Matsumura?

25 COMMISSIONER MATSUMURA: Yes.

1 MR. ORODENKER: Commissioner Biga?

2 COMMISSIONER BIGA: Yes.

3 MR. ORODENKER: Commissioner McDonald?

4 COMMISSIONER McDONALD: Yes.

5 MR. ORODENKER: Commissioner Contrades?

6 COMMISSIONER CONTRADES: Yes.

7 MR. ORODENKER: Commissioner Makua is
8 absent. Commissioner Heller is absent. Commissioner
9 Inouye?

10 COMMISSIONER INOUYE: Yes.

11 MR. ORODENKER: Chair Chock?

12 CHAIRMAN CHOCK: Yes.

13 MR. ORODENKER: Mr. Chair, the motion
14 passes by 7 votes.

15 CHAIRMAN CHOCK: Thank you very much,
16 parties.

17 MS. BENCK: Thank you very much.

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1 CHAIRMAN CHOCK: We're going to take
2 another brief recess in place to reset for our next
3 item on our agenda: West Maui Land Company.

4 (Recess in place 10:00)

5 CHAIRMAN CHOCK: We are back on the record.
6 This is oral argument on A12-795 West Maui Land
7 Company, Incorporated -- Kahoma Residential, LLC to
8 consider the reclassification of approximately
9 16.7 acres of land from the Agricultural District to
10 the Urban District at Lahaina, Maui for a residential
11 subdivision to provide 68 single-family affordable
12 housing units to families earning less than 160
13 percent of the median family income of families in
14 Maui County. Will the parties please identify
15 themselves for the record.

16 MR. GEIGER: Good morning, Chair,
17 Commissioners. James Geiger appearing on behalf of
18 the Petitioner, West Maui Land Company. Present with
19 me is Heidi Bigelow representative of West Maui Land
20 Company.

21 MR. GIROUX: James Giroux on behalf of the
22 Department of Planning county of Maui.

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

25 MS. LINCOLN: Michele Lincoln, Intervenor.

1 MS. BOLOMET: Good morning. Routh Bolomet,
2 Intervenor.

3 CHAIRMAN CHOCK: Thank you, Parties. Let
4 me briefly update the record regarding this hearing.
5 The evidentiary portion of this docket was concluded
6 on October 5th, 2012. The parties timely filed their
7 respective proposed findings of fact, conclusions of
8 law and decisions and orders on October 31st and the
9 respective comments, responses, joinders, objections
10 and replies.

11 From October 4th to November 20th the
12 Commission received written correspondence from one
13 individual whose name is on file.

14 On October 29th the Commission mailed an
15 Amended Agenda Notice for the December 6th, 2012
16 meeting to parties -- November 29th.

17 Let me briefly run over our procedure for
18 today. First I'll call anyone wishing to provide
19 public testimony to this docket to identify
20 themselves. All such individuals will be called in
21 turn to our witness box where they will be sworn in
22 prior to their testimony.

23 Secondly, the Chair will allow each party
24 no more than 25 minutes to present oral argument in
25 support of its proposed Decision and Order and/or its

1 exceptions to those proposed by other parties. The
2 Petitioner may reserve a portion of his time for
3 rebuttal.

4 At the conclusion of oral argument and
5 after questions from the Commissioners the Commission
6 will conduct formal deliberations on this matter. Are
7 there any questions regarding our procedure today,
8 parties?

9 MR. GEIGER: No questions, Chair.

10 MR. GIROUX: No questions from the County.

11 MR. YEE: No questions.

12 MS. LINCOLN: No questions, but I did have
13 an issue I wanted to bring up before we proceed.

14 CHAIRMAN CHOCK: Okay.

15 MS. BOLOMET: No questions.

16 CHAIRMAN CHOCK: Anyone in the audience
17 wishing to provide public testimony at this time
18 please come forward. We have no one signed up.
19 Ms. Lincoln, did you have an issue you wanted to
20 raise?

21 MS. LINCOLN: I did. Going to the findings
22 of facts I noticed, I sent a letter to you saying that
23 there was some transcripts that were missing. It was
24 on that day that Cammie Gillett was the court
25 reporter. And I had her look into it. She said she

1 was not "on the record" which I don't know exactly
2 what that means.

3 According to your ruling 15-15-72 for
4 transcript corrections it has to be done within 7 days
5 after the transcripts, but I didn't have access to
6 them 7 days after. So I guess I'm asking two things:
7 One, if that gets waived and two, if anybody here
8 recalls that portion of the transcripts. If they
9 don't, it wasn't necessary for the findings of facts
10 for this but in the event of an appeal it may be of
11 importance for that.

12 CHAIRMAN CHOCK: Parties, any objections?

13 MR. GEIGER: Chair, it's difficult for me
14 to respond because I'm not sure what it is that is
15 allegedly not in the transcript. It was not clear
16 from the comments that Ms. Lincoln just made, at least
17 to me, as to what is missing.

18 CHAIRMAN CHOCK: What's missing,
19 Ms. Lincoln?

20 MS. LINCOLN: It was the cross-examination
21 of me with Rory Frampton. And it is when I was asking
22 him questions. And I said, "So the Petitioner wants
23 to condemn this land." And Mr. Geiger says, "I object
24 to the word "condemn." And I said, "Why?" I said,
25 "You're the ones that are saying it's not ag worthy."

1 And he goes, "I'm just objecting to the word
2 "condemn". And I say, "Well, is that because if it's
3 condemned the state could declare eminent domain?"
4 And then it was quiet. And then I said, "You do know
5 what eminent domain means." And then Rory answered,
6 "Yes, but at a fair price." So it's basically that
7 whole section about that.

8 CHAIRMAN CHOCK: So your cross-examination
9 of Mr. Frampton is what you're saying is missing.

10 MS. LINCOLN: Just that little section
11 right there is missing and it's not in the
12 transcripts. So if everybody here says they don't
13 remember any of that exchange the I'll just let it go.

14 MS. BOLOMET: I remember.

15 MS. LINCOLN: It happens.

16 MR. GEIGER: Chair, I don't remember the
17 exchange. I really don't. I think that the proper
18 way for Ms. Lincoln to do this would be to submit a
19 written motion with the questions and answers that she
20 wished or believes was not in there so that all the
21 parties can understand exactly what it is.

22 Because right now we have something on the
23 record, but I'm not sure it's clear enough for the
24 purpose of the record. So if there was something
25 missing that was stated I have no problem adding it to

1 the transcript. I just am not, again, not clear
2 exactly what it was or where it was supposed to go in
3 context.

4 CHAIRMAN CHOCK: State, any comments,
5 Bryan?

6 MR. YEE: I think only -- I believe
7 Ms. Lincoln said that the information was not
8 necessary for this argument or for the findings of
9 fact. So based upon that -- but her concern was more
10 related to the timing requirement to correct or
11 clarify transcripts.

12 So to the extent that she wants additional
13 time to clarify the transcripts prior to appeal, I
14 think perhaps a filing sometime so that we could hear
15 it at the next time we're meeting on this matter would
16 be acceptable to the Office of Planning.

17 So to the extent she needs more time that's
18 okay. We are obviously not waiving our right to
19 examine substantively what she says. We can deal with
20 that at a later time.

21 CHAIRMAN CHOCK: Okay. Ms. Lincoln, I
22 think based on your comments and the comments from the
23 other parties I'm going to take into consideration
24 what your request is. You still have time after this
25 hearing to clean that up as it's not pertinent to the

1 discussion today. And given that your motion was not
2 filed in a timely basis Chair's going to deny.

3 Mr. Geiger, are you prepared to proceed
4 with your closing argument?

5 MR. GEIGER: I am.

6 CHAIRMAN CHOCK: Go ahead.

7 MR. GEIGER: Chair, I would like to reserve
8 10 minutes of my time for rebuttal, if I could.

9 CHAIRMAN CHOCK: Proceed.

10 MR. GEIGER: Well, good morning again. And
11 I want to thank each of you having sat through this
12 process, both the Chair, Commissioners and the staff.
13 I know that at least when I got started on this four
14 and-a-half months ago I certainly didn't expect we'd
15 be making closing arguments in December.

16 When we showed up in here in this room and
17 started this back in July, what I told you was that my
18 client, West Maui Land, wanted to do an affordable
19 housing Project on land that was agricultural land.

20 We looked at the map that was prepared for
21 this docket by the Commission staff. You can see --
22 we've got a copy of it up there -- you can see that
23 this particular property is entirely surrounded by
24 urban use. It's Ag land presently classified under
25 State Land Use but it's surrounded by Urban use.

1 There's residential on three sides and
2 there's light industrial on the fourth. So we came in
3 here because, No. 1, Hawai'i has a need for affordable
4 housing. Maui, as you've heard, has the greatest need
5 in the state for affordable housing. And West Maui,
6 where this particular Project is in, has the greatest
7 need on Maui.

8 So my client came in and believed that this
9 was the right property, the right Project and that it
10 just made sense for this board, this Commission, to
11 change the land use classification from Agriculture to
12 Urban.

13 We took this to the Maui County Council
14 which reviewed the Project. And the Maui County
15 Council said, "Yes. We don't want this property as
16 Ag. It's zoned Ag. We don't want it zoned Ag. We
17 don't want it open space. We don't want it park. We
18 want an affordable housing project there." And they
19 adopted a law that said: We want this Project.

20 The county Planning Department supports the
21 Project. And so here we are. You've heard from over
22 26 witnesses or from 26 witnesses rather. You've had
23 over 1100 pages of oral testimony. You've had about
24 the same amount of written documentation on this
25 particular docket.

1 And as a result what we did was we all
2 submitted a number of proposed findings of fact, a
3 number of conclusions of law and a decision and order.
4 We've submitted over 250 proposed findings, 18
5 particular conditions that we think should be imposed
6 in connection with your Decision and Order.

7 We took a look at all of the comments and
8 carefully considered all of the comments of all of the
9 parties including the Intervenors. And if we felt
10 that there was merit to some of the comments we made a
11 change to our proposed findings.

12 And that proposed findings, those proposed
13 findings which we ask you to adopt, were attached to
14 our Reply to the State Office of Planning's objections
15 and comments.

16 We think that these proposed findings are
17 appropriate. We think they're fully supported by the
18 record. And we think that this Project should go
19 forward under a Decision and Order with those proposed
20 findings and conclusions.

21 Now, I'm not going to go through all 250
22 plus of the findings or the conclusions. You folks
23 have heard the testimony. You've seen the exhibits.
24 This is an affordable housing project where there's
25 going to be 68 lots created. There's going to be

1 house/lot packages. Some of the lots will have
2 'ohanas but all of the Project will be 100 percent
3 affordable under the Maui County guidelines. And
4 that's what's important.

5 I am, since this was spread out over four
6 months, going to go through a couple of the highlights
7 that I think you folks should remember in connection
8 with this Project.

9 First, as I mentioned, the Petition Area is
10 entirely surrounded by urban. This Project, there is
11 a great common sensical approach here. It just makes
12 sense that if you've got residential all the way
13 around, you've got light industrial all the way
14 around, you've got urban uses all the way around, that
15 this Project should have urban use.

16 You will note that this is Ag land. But
17 it's marginal Ag land. You've heard the testimony of
18 the agronomist who said that given the shape of the
19 parcel, the stoniness of the soils, the proximity to
20 residential, that this property really is not viable
21 for agricultural use anymore. It is viable and should
22 be used for affordable housing.

23 Are we saying that the land couldn't be
24 farmed? No. If you're willing to throw enough
25 resources at a piece of property you can farm that

1 property. But that's not what the decision-making
2 criteria is for you folks.

3 The question is: Does it make sense for
4 this property to continue to be classified as
5 agriculture from the state Land Use Commission point
6 of view? And the answer is no. And why is that?

7 It's because when you have marginal Ag land
8 and you have an affordable housing project there's a
9 state policy that says we would want to use marginal
10 Ag land for affordable housing projects.

11 And that's what we're asking you to do.
12 It's as straight forward as that.

13 Now, are you going to be taking a large
14 tract of land out of use for Ag use? No. This is
15 16.7 acres. If you look at the map that was prepared
16 for this docket, all of the white is agricultural
17 land. And that's just in West Maui. We're talking
18 about a very, very, very small part of Ag land in Maui
19 and a very small part of Ag land in West Maui.

20 Is there any reason to keep this land in Ag
21 use? No, not under the existing reasonably
22 foreseeable conditions. It's just not likely that
23 somebody's going to try to farm this property given
24 the stoniness of the soils, given its location and
25 given the availability of other Ag lands for rent for

1 use.

2 You've heard that the Maui County
3 Department of Planning supports this Project. And
4 you've heard the State Office of Planning testify that
5 they support this Project. And the facts and the
6 evidence clearly support the Project.

7 Now, you're going to hear some very
8 passionate argument from the Intervenors. We've heard
9 it throughout these proceedings. And they're very --
10 they hold their beliefs very dearly. But you also
11 have to remember that you need to rule and act upon
12 not argument, not upon beliefs, but upon facts.

13 And what are the facts that we know? Well,
14 No. 1 you heard from a traffic engineer. The traffic
15 engineer came in and told you, and he had reports,
16 that any impacts of this Project on traffic are going
17 to be mitigated by the conditions that are being
18 imposed. You didn't hear any traffic engineer provide
19 any contrary evidence.

20 You heard the agronomist and the soils
21 engineer tell you that this property is not good for
22 agricultural use in the future. You didn't hear any
23 agronomist. You didn't hear any soils engineer to the
24 contrary.

25 You heard the archaeologist tell you that

1 there was no evidence of any archaeological features,
2 archaeological structures. You also know that during
3 the course of these proceedings there were some claims
4 about archaeological features, archaeological
5 structures.

6 And you've also heard that we went out
7 there again during the course of these proceedings to
8 investigate and attempt to determine whether such
9 things existed. And you heard that they did not.

10 You've heard that the state Historic
11 Planning Division has looked at this Project three
12 times and they've said, "You don't need to do anything
13 further from an archaeological standpoint."

14 You heard from the civil engineer. He told
15 you that water's available, wastewater's available,
16 and that the impacts of any stormwater runoff are
17 going to be mitigated in accordance with county,
18 federal and state guidelines.

19 And you heard that we examined the new
20 rules that were being adopted by the county for water
21 quality, for stormwater runoff, took 'em to the
22 engineers. And the engineers told us that our plan
23 will provide compliance with those guidelines. That's
24 the facts. That's what you've heard.

25 And you're going to hear a lot of argument.

1 You've heard a lot of argument already. But those
2 aren't facts. Those aren't experts in here telling
3 you that they've examined this Project, they've looked
4 at the information that's out there and that the
5 information is inaccurate in any fashion. That just
6 hasn't happened.

7 The facts provided to you not only support
8 the change in the land use classification, but as I
9 said, common sense tells us that this land should be
10 used for housing. It really isn't appropriate for use
11 for agriculture anymore.

12 With that I'm going to conclude my initial
13 remarks. I look forward to addressing you after the
14 other parties have had an opportunity to speak to you.
15 Thank you.

16 CHAIRMAN CHOCK: Thank you, Mr. Geiger.
17 County, 25 minutes.

18 MR. GIROUX: Thank you, Chair. I'm not
19 going to use my whole 25 minutes, besides saying ditto
20 to what Mr. Geiger said. I do want to highlight some
21 very important things that are on top of our list as
22 far as the county. We believe that this Project will
23 create affordable housing and meet some of the need
24 that Maui has.

25 Our concerns are that within the Order are

1 included the modifications that were put forth during
2 the 201-H project and are included in the resolution
3 11-126 which is Exhibit 11.

4 The concern on the county side is the 201-H
5 does not give us a clear enforcement process. What we
6 do want is to make sure that the county is able to
7 enforce some of those modifications through the Land
8 Use Commission powers because we are given clear
9 powers to enforce the Orders of the Land Use
10 Commission. So that's the big concern.

11 The other concern was that the condition on
12 timing be a part of that. Because we do feel that the
13 faster the affordable housing is put on the market the
14 more useful it will be to the citizens. Just as a
15 follow up that the Maui Island Plan is up for first
16 reading tomorrow and that this land is still in the
17 Urban Growth Boundary. It's not expected to be
18 labeled as agriculture through the Maui Island Plan.

19 So that being the County's position that we
20 do support the Petition, and we do see this property
21 as being very, very adequate and important for us to
22 mitigate our housing issues on Maui. And we believe
23 that it meets all of the legal requirements according
24 to 205 and your rules.

25 CHAIRMAN CHOCK: Thank you, County. State?

1 MR. YEE: The Office of Planning supports
2 the Petition for reclassification with conditions
3 because it meets the standards for Urban District
4 boundaries. The bottom line really for us is this is
5 a 17-acre affordable housing Project.

6 If they had cut 2 acres from this Project
7 they would never have needed to come to the Land Use
8 Commission and could have had all of their approvals
9 done at the county level.

10 But they did not try to gerrymander the
11 Project. They did not try to cut out the roadways and
12 parks and instead properly came to the Land Use
13 Commission for its approval.

14 Based upon our review of the facts in
15 evidence in this case we believe that reclassification
16 is appropriate. I will note that in our view the
17 conditions are clear as it's currently stated, as it's
18 been clear in all cases.

19 I'm going to separate my discussion into
20 two parts. One is a review of the Petitioner's
21 proposed Decision and Order. And the second is a
22 response to the Intervenors' proposed Decision and
23 Order.

24 With respect to Petitioner, the Petitioner
25 and the County filed a joint 60-page proposed Decision

1 and Order, D&O in October of 2012. OP filed its
2 15-page comments and objections in mid-November. And
3 Petitioner filed a 2-page reply with a revised D&O in
4 late November.

5 So as you can tell from this the issues
6 separating the Petitioner and the Office of Planning
7 have significantly narrowed from 60 to 2 pages. So I
8 think as I go through some of my comments they are
9 fairly minor, actually, in many respects, but we just
10 wanted to highlight them for your information.

11 As an initial matter we note that there
12 seems to be some formatting differences between the
13 Petitioner's proposed Order and the other Orders
14 issued by the Land Use Commission. OP did not focus
15 on these issues on formatting and deferred to your
16 staff for these questions.

17 With respect to Findings of Fact 157 -- all
18 these will be with respect to the revised D&O by
19 Petitioner. With respect to Finding of Fact 157 we
20 just wanted to note for the Commission that there is a
21 record cite with respect to Rory Frampton's written
22 testimony. So just in case, and if you were wondering
23 what the basis of that finding was.

24 With respect to Finding of Fact 209 we do
25 recommend that the first sentence be amended to use

1 the term "commercial agriculture" rather than simply
2 "agriculture" for purposes of accuracy. Although this
3 is a small change we're going to go into a little bit
4 of discussion because it affects our analysis of
5 Intervenor's proposed D&O.

6 As indicated by Petitioner, with enough
7 money farmers can farm almost any piece of land. But
8 for our purposes here for reclassification the
9 decision to keep land in the agricultural
10 classification includes consideration as to the ease
11 by which land can be used for commercial agricultural
12 production.

13 Section 205-17-3C sets forth one of the
14 criteria that you look at. And that criteria is the
15 "maintenance of natural resources relevant to
16 Hawai'i's economy including agricultural resources."

17 The evidence in this case demonstrates that
18 there are significant problems with commercial
19 agricultural production with respect to the
20 feasibility given the size and configuration which
21 really prevents an efficient use of mechanized
22 agriculture.

23 The cost of making water available to the
24 site. There's no irrigation water available.
25 Although the potable water might be made available,

1 potable water is always more expensive.

2 Further, there's no existing infrastructure
3 for irrigation of the site. That would have to be
4 provided for any type of commercial agricultural
5 growth, or at least for most commercial agricultural
6 operations.

7 There are limitations from the type of soil
8 and also the nearby residential units. When you have
9 residential units nearby you're limited in many of
10 your commercial activities such as pesticide use, use
11 of animals and things which, frankly, cause
12 incompatible uses between the commercial agricultural
13 operation and the residential uses.

14 So given all off of these facts as the
15 record has demonstrated, we don't think that
16 commercial agriculture seems like a likely use at
17 least as a feasibility matter for this. Certainly you
18 are not limited to only lava lands which may be
19 reclassified.

20 So that's a long explanation of why we're
21 suggesting to use the term "commercial agriculture" in
22 Finding of Fact 209.

23 Finding of Fact 210 we recommended in our
24 reply that that finding, which relates to whether the
25 land is likely to be designated as IAL, would that

1 finding be attributed to the county planning director?
2 And the reason we're saying this particular finding
3 should note specifically the planning director made
4 the statement -- is that the selection of IAL lands is
5 initially done by the county.

6 So if the county never selects it for IAL
7 it will never even come to you for consideration as to
8 whether or not it should designated. So we thought it
9 was important that you note that it was specifically
10 the county planning director who had the opinion that
11 these lands were not suitable for IAL designation.
12 And we have the language in our reply.

13 With respect to Finding of Fact 256 this is
14 really in our mind simply the conclusion of law that's
15 already included as Conclusion of Law 1. So we
16 thought it was redundant.

17 And, then finally, in our reply we had
18 recommended a new finding of fact regarding civil
19 defense. In some sense perhaps you might think it's
20 unnecessary because what we proposed finding was that
21 the Petition Area is currently covered by existing
22 sirens. So that no additional sirens were needed for
23 public safety.

24 The reason we recommended this is because
25 issues of civil defense are typically done in most

1 Land Use Commission hearings. And there is a common
2 condition that's inserted that the developer will
3 construct a siren of a particular type as recommended
4 by the state civil defense system.

5 That's not in this case because it's simply
6 unnecessary. So, really, we're only suggesting a
7 finding of fact to explain in case anybody wanted to
8 know why a similar condition was not included in this
9 case.

10 Again, it demonstrates the Land Use
11 Commission did its job. It's reviewed the question
12 and found that there was no need for a defense siren.
13 And, again, it's fairly minor but we included the
14 language in our reply. But basically that's the gist
15 of our comments regarding the Petitioner's proposed
16 D&O.

17 With respect to the Intervenors it's a much
18 more fundamental disagreement. I'm just going to
19 highlight a few of the issues. I've already discussed
20 agriculture, the issue of commercial agriculture and
21 why that seems to unlikely to be feasible for this
22 Project.

23 I also want to address the question of open
24 space. We said in our reply that Petition Area did
25 not have unique characteristics that differentiated

1 the Petition Area from any other vacant parcel.

2 Ms. Lincoln correctly pointed out that
3 there's a smoke stack from the Pioneer Mill nearby.
4 And some of the houses in the area are quite old,
5 although not necessarily identified on the Historic
6 Registry.

7 I just want to be clear that the Office of
8 Planning did not mean to imply that there are not
9 special characteristics to the neighborhood. Every
10 neighborhood has something special about it, something
11 that its occupants value.

12 Our point is that the Petition Area isn't
13 unique with respect to being an open area. It's not
14 in a watershed or ecosystem. It's not part of a
15 seaside or mountainside recreational area. It's,
16 frankly, an oddly shaped, overgrown piece of land
17 surrounded by commercial and residential uses. And
18 the county's shown no or little desire to purchase the
19 land for a park.

20 So in the context of other land use cases
21 there's no valid reason of keeping this land in
22 agriculture simply to prevent development and keep the
23 land use as open space.

24 With respect to water and wastewater
25 Intervenors have argued that there was no showing that

1 potable water will be made available and raised
2 questions with respect to the Lahaina Wastewater
3 Treatment Plant.

4 We discussed these issues in more detail in
5 our response. But basically I just want to remind you
6 this is a 17-acre Project. It is not in a water
7 management area. The development does not
8 significantly impact existing potable water supplies.

9 Given its size the development of the
10 Petition Area does not impact any regional solution,
11 if any is needed, regarding the Lahaina Wastewater
12 Treatment Plant. That's set out in testimony that
13 we've cited in our reply.

14 So there is sufficient capacity currently
15 and no basis to believe that this Project will create
16 future capacity problems for these county facilities.

17 Finally, with respect to archaeology let me
18 just briefly note they raised issues regarding whether
19 there's -- Intervenors raised issues as to whether
20 there is an archaeological complex identified in the
21 Connolly Report within the Petition Area.

22 You may remember there was a lot of back
23 and forth regarding trying to read the map that was
24 presented. And Mr. Frampton testified that when he
25 went out and looked he found indicia of location of

1 the archaeological complex outside of the Petition
2 Area.

3 So based upon the record that we have we
4 don't believe there's a basis to believe there's an
5 archaeological complex within the Petition Area.

6 There was further argument that there was a
7 he'iau, libation stone and burial within the Petition
8 Area. As you may recall that was specifically
9 reviewed by the archaeologist, by Petitioner's
10 archaeologist in September of 2012 in which he also
11 did additional trenching.

12 You may recall the testimony that when you
13 look at some of these objects, trying to distinguish a
14 stone from another stone, what is native Hawaiian
15 archaeological feature and what is simply a geologic
16 formation can be difficult. You often look at it in a
17 context.

18 In this case the context was it was within
19 the a push pile of stones. There was no other basis
20 to believe that this was a he'iau. Actually when we
21 say "he'iau" I believe it was a single stone rather
22 than a series of wall formations which you sometimes
23 seep for he'iaus.

24 So without getting into all the detail,
25 while we certainly acknowledge the sincerity of the

1 contrary beliefs, we just don't think the facts in the
2 record are sufficient to believe that the State
3 Historic Preservation Division and the Petitioner's
4 archaeologist were incorrect in their, in their
5 conclusions.

6 Then, finally, they raised, Petitioners
7 raised the issue regarding a karst cave system on the
8 property. As you may recall karst cave systems can be
9 important because they refer to voids under ground
10 which if they open up to the surface, as they
11 sometimes do, native Hawaiians have used these karst
12 cave systems for burials.

13 So it could have a significant issue or
14 question with respect to native Hawaiian issues. But
15 in this case, although they did provide a fairly old
16 map that indicated there might be some karst system,
17 there was no evidence that there were any karst cave
18 burials on the site.

19 There were not even any evidence of surface
20 openings into a karst cave system or a void. There
21 was no, nothing along the natural stream, the Kahoma
22 natural stream or evidence of any openings in the
23 stream channel that were identified from a karst cave
24 system.

25 So given the opinion of the Petitioner's

1 archaeologist that there was no karst system in the
2 Petition Area, and all of these sort of a lack of any
3 information about some surface opening, which is what
4 makes these karst cave systems important, we don't
5 think this forms a valid basis to disbelieve the
6 archaeologist and the State Historic Preservation
7 Division's conclusions that there are no native
8 Hawaiian archaeological sites or features in the
9 Petition Area for preservation.

10 For all of these reasons the Office of
11 Planning supports the Petition for Reclassification
12 and concurs with the specific conditions in the
13 revised D&O submitted by Petitioner. Thank you.

14 CHAIRMAN CHOCK: Thank you very much.
15 Ms. Lincoln.

16 MS. LINCOLN: I knew when I took this thing
17 on that I wasn't just up against the Petitioner. I
18 was up against the County Planning Department and the
19 Office of Planning Department. And it's very evident
20 that I'm not an expert. But my whole point here was
21 to bring out truth and what's right. Just because the
22 county and state endorse something, and just because
23 lawyers and experts agree it does not make it the
24 right thing to do or the best thing to do.

25 Just because I'm not an expert it doesn't

1 mean I'm not right. I'm going to share a story about
2 my life that not very many people know about me, but
3 it's the only story I have that includes the state,
4 the county, a lawyer and experts.

5 I'm going to make it brief. But it just
6 proves my point that I don't have to be an expert to
7 shed light on important issues that are before you.

8 In January of 2010 my husband told me that
9 we were in serious financial trouble. Our debt was so
10 great that if we sold all three houses on Aki Street,
11 if I cashed in any retirement funds I had, sold
12 everything we had we would not have enough to pay our
13 debt.

14 So I told my husband, "I love you. You're
15 a good man but I'm taking over the finances." And by
16 me I mean I'm giving it to God 'cause it's not like
17 there's anything I can do here. I can't pick up a
18 second or third job and make a difference.

19 So I started by contacting a reputable 800
20 number, explain our situation, one of those debt
21 hotline things. They said, "Ms. Lincoln, the scope of
22 your debt is beyond what we do, but your state offers
23 free debt counseling." So I made an appointment with
24 the state. The state looked at our situation and they
25 said, "You need to stop paying your mortgages so you

1 can afford to pay your bills and eat. And you need to
2 file bankruptcy."

3 I said, "Well, I'll file bankruptcy as a
4 last resort but not as a first option." I said, "I
5 want to try to make this thing right." I said, "I'll
6 try to sell off assets." She says, "It's not going to
7 work."

8 And she said, "So I'll write an action
9 report for you that says that this is what you want to
10 do but you have to understand you need to file
11 bankruptcy. And I'm going to recommend that you see a
12 lawyer 'cause I don't know how you can do it."

13 So she gave us a list of county lawyers.
14 And I went and paid for an appointment with a lawyer.
15 And he looked at our thing and he said, "You need to
16 file bankruptcy." And he said -- and he gave us a
17 lesson on asset protection. I said, "Well, I may end
18 being" I told my husband after that, "We may end up
19 being homeless after this. I don't even know if we'll
20 have a car to sleep in. But I can live with that
21 person. I can't live with a person that does this
22 asset protection thing. So I have to live with me.
23 We're not going to do that.

24 So next we met with a tax man. He's a
25 genius of a tax man. And he knows tax law, doesn't

1 practice it but he knows it. We went and explained
2 our situation. He basically said, "You're idiots for
3 doing what you want to do." He goes, "Most of your
4 debt is unsecured debt. By doing what you want to
5 do," he said, "the government's gonna come after you.
6 They're gonna take everything *and* they're gonna
7 garnish your wages."

8 He said -- he started the asset protection.
9 I said, "Yeah, I know. I got that story already." I
10 go, "Can you just tell me what percentage do I send to
11 the Feds and what do I send to the state after I cash
12 in my accounts and sell my houses? What do I need to
13 send? And when I run out of money who do I want to
14 work with as far as picking everything, garnishing my
15 wages." And he gave me that advice.

16 Well, I'm before you today. I have two Aki
17 Street mortgages. And other than that I am debt free.
18 I did not cash in any of my retirement accounts. I
19 did not get a loan from anybody. No one gave us any
20 money.

21 The tax lien was taken off my house in
22 August of 2011. So that's why I'm not afraid to
23 stand up to lawyers and experts and the county and the
24 state. And I don't have people tell me what's right
25 or wrong. You have to decide what's right or wrong.

1 So I may not have done everything right in this
2 Petition but my point was to bring out truth.

3 So just because the county and state
4 endorse something, and just because lawyers and
5 experts agree, it does not make it the right thing to
6 do or the best thing to do.

7 The county council, when they approved this
8 thing, I was at that meeting. And I put in some of
9 the minutes to my exhibits so you can see it wasn't
10 just an, "Oh, we really want this housing." They did
11 it because they knew it had to come to you. You were
12 going to make the decision. And they made sure that
13 their amendments got put in there. And that is how it
14 got through the county council.

15 When I found out I had to do a findings of
16 fact, conclusions of law and decision and order I
17 thought I was done with the last presentation. I
18 didn't know I had to do that. I didn't even know that
19 that was part of this process.

20 And so I started looking up, okay, what is
21 the Land Use Commission? What are the laws you have
22 to look at? So I read through the constitution. I
23 read through the HRS 226's, the 205's and the Coastal
24 Zone Management and all the things you guys have to
25 do. And I don't know why you do this but thank you.

1 But I read through all this.

2 This Petition does not measure up. When I
3 went through each one I went through all the exhibits.
4 I went through all the testimony. And it does not
5 measure up. If this Petition was worthy it would not
6 need to leave out important facts like the 2008
7 meeting that I attended in May they didn't tell you --
8 they didn't tell the county council that the Hawaiians
9 and the neighborhoods were a hundred percent opposed
10 to this.

11 If this is a Project that is worthy they
12 should be able to do full disclosure at every step of
13 the way, and it should be able to stand up to that
14 kind of scrutiny.

15 To say that this property is not rich in
16 history, their own cultural assessment people when you
17 did the interviews, said this is a very important
18 piece of land. This is where the water was. This is
19 where they raised food.

20 They're showing you no one even
21 addressed -- they said that there's rural history.
22 The state functional plan said rural history is
23 important. It is in a rural history area. They're
24 showing that but no one really addressed that. That
25 never got addressed by any of the things.

1 So as far as culturally I don't know much
2 about culture but I found out a lot of things about
3 that property, there was really no cultural assessment
4 that went with it as far as each decision-making
5 process and how does that affect the Hawaiian people
6 and their aumakua and all those different aspect and
7 the plants that grow there.

8 Is it ag worthy? Of course it's ag worthy.
9 The soil was in the highest rating. The slope of the
10 cut -- their expert said the slope was great for
11 farming. The climate is wonderful for growing things.
12 There *is* water available. The only thing that's
13 missing is the farmer.

14 And as far as being commercially viable it
15 is right now the rage to do ecology tours and to have
16 green, you know, exhibits. And people go to pay to
17 look at plants and learn about them. They can learn
18 about plants and history. We are in one of the top
19 tourist areas in the island.

20 And it would be a great commercial place to
21 go and grow things and take people and charge them to
22 go and look at them and learn history at the same
23 time.

24 So it is culturally and commercially viable
25 for economic purposes. You just need someone who

1 actually knows about those sorts of things.

2 Housing needs? Jo-Ann Ridao from the
3 county housing director when I asked her questions
4 said, "This Project is not necessary for all those SMS
5 and all the different reports that they said it wasn't
6 necessary to meet those needs." She said the other
7 preapproved projects would do it.

8 So to say that -- there's always going to
9 be a need for affordable housing. I work in the
10 tourist industry. People ask me all the time, "What
11 does a house cost here?" When I tell them that's one
12 of the things that stop 'em from coming here. So,
13 yes, if you build affordable housing they will come.

14 We're bringing in people every day to this
15 island and all these islands. And they're finding it
16 beautiful. And, yeah, they want to move here. If
17 it's affordable you bet they're gonna move here. So,
18 yeah, if you need affordable housing you build it it
19 will get taken up.

20 But that particular property is not needed
21 and that was confirmed by the County's housing
22 director to meet the needs here.

23 The facts that they said that schools are
24 overcapacity, that's one of the criteria. They're
25 paying an impact fee. That impact fee does not pay

1 for the infrastructure. So just because you say that
2 you're going to pay an impact fee, what the State Land
3 Use is looking at is their information: The schools
4 are overcapacity. So, oh, just 68 more homes. Well,
5 then there's going to be other projects that are
6 sending kids there. Princess has over a hundred
7 students more overcapacity what they did last year.

8 Water. Water in the Petitioner's and the
9 County's Water Department exhibit says there's no
10 guarantee of water. If there is a conflict with water
11 meters it could be with other preapproved projects
12 that would be in line ahead of them. It's not a race
13 for the water meters. It's is there water or is there
14 not water?

15 And they're not showing you that there's
16 adequate water meters for this Project and not be in
17 conflict with other preapproved projects.

18 As far as the capacity of the Lahaina
19 Wastewater Treatment Plant. There's no -- the fact
20 that they have to put in conditions that say they will
21 have to pay their portion of the cost to make
22 improvements there, that's already telling you that
23 there's a good chance there's not enough room for
24 enough capacity there. They have to show that there
25 is capacity for all these things.

1 The fact that the county and state whether
2 it has to do with the water runoff to Mala or the
3 school impact or the sewage treatment plant, the fact
4 that the county and state had to implement conditions
5 means that they fall short. They're not going to
6 necessarily up to the criteria therefore they have to
7 do this.

8 That does not necessarily mean that it's
9 acceptable. It just means it will be acceptable if
10 they do this. Well, that Land Use needs to look at
11 this and can go, "It doesn't meet the criteria."

12 How come no one's talking about flood zone
13 X? Flood zone X, maybe you need to talk to some
14 people in New York who experienced the flood. And we
15 have serious storms that like that come through here
16 too.

17 Flood zone X is next to the Kahoma Flood
18 Channel. There's a retention basin wall. It was
19 never addressed if that wall was compromised -- and it
20 could be compromised -- what would happen. Let's put
21 that aside. Let's pretend that could never happen.
22 It could. Let's just pretend it couldn't.

23 The fact that it's in flood zone X just in
24 its current condition without even taking that into
25 consideration, one-third of our disaster relief goes

1 to that. That's -- I got that off the FEMA. I got
2 that off of the floodgovsmart.gov. So it is a third
3 of the disaster relief goes to flood zone X, 20
4 percent of flood insurance claims. We're not even
5 talking about if the wall failed. We're just talking
6 about it as is.

7 That's not putting people in a safe
8 environment. That's why they have open spaces next to
9 flood channels. And it's addressed over and over
10 again.

11 Bedrock. No one really -- we never got any
12 hardcore plans of this thing. All we got was the
13 little cream pie that was served to us. We saw this
14 beautiful subdivision. But we didn't get any hard
15 core plans. We don't know what it's going to cost to
16 build this thing. They never showed any expenses
17 there.

18 But as far as bedrock? They're showin'
19 it's 5 to 6 feet. They're gonna build a retention
20 basin that's 8 feet and all the infrastructure for
21 that property would go below that.

22 So what is the impact not just
23 expense-wise, we're not talking drill bits at Ace
24 Hardware here -- what are the expenses that go with
25 that? They didn't show us that. And the other is:

1 What is the impact of the flood channel there?

2 Is there any chance of the dynamite or the
3 drilling that they're going to have to be doing, the
4 pounding, could that in any way structurally impact
5 the flood channel? What about the existing
6 neighborhood?

7 A lot of this they're showing because it
8 was formerly a stream bed has a lot of those issues.
9 And it is surrounded by houses. That really was never
10 addressed because we never got any hard core
11 engineering plans.

12 Habitat for Humanity is a partner in this
13 thing. They did not provide any financials
14 whatsoever. They're a charitable organization. They
15 already told us they have limited resources.

16 If one of the criteria for approving a
17 petition is that they show that they have adequate
18 funding, they didn't show that.

19 They showed you unaudited balance sheet.
20 And unaudited balance sheet means it's not been
21 verified. Is that the same balance sheet they showed
22 their tax man? We don't know because it's not been
23 verified.

24 They told you they need money. They told
25 you they don't have enough money for this Project;

1 that they need to get loans. But they told you:
2 Don't worry about it. We're confident we're gonna get
3 a loan.

4 They were confident it was going to get
5 through state Land Use a lot faster too. Confidence
6 is not a criteria for securing a loan. They're
7 telling you, "We're not going to tell you how much
8 this Project's going to cost. We're not going to tell
9 you where we're gonna get our funding. But we've got
10 the funding."

11 That's not a criteria. They're not meeting
12 the criteria. That falls short of what your guideline
13 is is showing that they have the adequate funding.

14 Now, when I went through the State of
15 Hawai'i's constitution, the HRS 226's and 205's, the
16 Coastal Zone Management, the State Functional Plan,
17 the countywide, the West Maui Community Plan, over and
18 over and over open space, recreational areas, they use
19 words like 'vital' and the "right to clean and
20 healthful environment."

21 No one's really talking too much about the
22 West Maui Community Plan. The West Maui Community
23 Plan is law. The Petitioner acquired this land
24 knowing that designation. And the county council
25 exempted it *only* if you look at the West Maui

1 Community Plan and State Land Use says, you know what?
2 Housing is more important than that so we're gonna go
3 ahead and waive this. All they're saying is that if
4 you approve it as housing that the Petitioner does not
5 have to go back to them for a Community Plan
6 Amendment. But they did not take it out of the
7 community plan. If you deny them their Petition it is
8 still in the community plan as open space.

9 So I'm going to read a few highlights
10 because I know you know the laws but sometimes we
11 forget what they are. So I'm going to read to you
12 from the Community Plan just a few highlights about
13 the law. Quote, "Land use controls and community plan
14 implementation. The integrity of the community plan
15 in the existing system of land use controls must be
16 preserved and enhanced in order to ensure sensible
17 levels of development and growth in the region.

18 "The implementation of the community plan
19 has been lacking. And community input should be
20 actively solicited prior to each proposed amendment to
21 the community plan. Projects have been permitted that
22 were inconsistent with the community plan, and
23 agriculturally designated lands are being used for
24 other than agricultural purposes.

25 "Other specific problem areas include the

1 inconsistency of zoning and that development has
2 preceded infrastructural improvements. Inadequate
3 infrastructure and the failure of existing
4 infrastructural systems are seen as a major problem
5 for the region. Infrastructural improvements need to
6 be constructed prior to the issuance of building
7 permits in order to prevent the lag time needed for
8 infrastructure to catch up with development.

9 "Affordable housing? There's an ongoing
10 need to provide affordable housing in the region.
11 However, care should be taken not to repeat mistakes
12 made in the past. Any interpretation of the policies
13 of this plan or any amendment proposed to this plan
14 shall be based in large part to the specified intended
15 effects of this plan.

16 "These are No. 1. Allocate adequate open
17 space for public recreational activities especially
18 within the urbanized area of the region and along the
19 shoreline.

20 "2. Slow the rate of growth and stabilize
21 the economy.

22 "3. Protect the natural resources of the
23 region and promote environmentally sound uses and
24 activities.

25 "4. Exert more control in the timing and

1 patterns of development within the region through the
2 community plan zoning and permitting process.

3 "5. Encourage infill in order to protect
4 agriculture and protect mauka open spaces. Land use
5 goal? An attractive well-planned community with a
6 mixture of compatible land uses in appropriate areas
7 to accommodate the future needs of residents and
8 visitors in a manner that provides for stable social
9 and economic wellbeing of residents. And the
10 preservation and enhancement of the region's open
11 space areas and natural environment resources.

12 "Integrate stream channels, gulches and
13 other areas deemed unsuitable for development into the
14 region's open space system for the purpose of safety,
15 open space relief, greenways for public use and visual
16 separation.

17 "Existing development of these stream
18 channels, gulches and other areas shall be maintained
19 and shall not be expanded. Drainage channels and
20 siltation basins should not be considered for building
21 sites but used rather for public open space.

22 "The following major streams and gulches as
23 named on the United States Geologic Survey Topographic
24 Maps are to be kept as open space. No. 1. Kahoma
25 Stream." Unquote.

1 This is the law. I just read to you law.
2 The county council only gave them an exemption if you
3 look at this law and you deem that this is not to be
4 upheld. Then they're saying you don't have to go back
5 and get it from them. But this is the law. And this
6 is part of your decision-making criteria.

7 There's a Joni Mitchell song, "You don't
8 know what you've got until it's gone." You don't know
9 what you've got until it's gone. They paved paradise
10 and put up a parking lot. That's what's happening in
11 our islands. That's what will happen if we lose this
12 open space.

13 They are adding 24 acres below this
14 property is going to be housing. The Villages of
15 Leiali'i are going to have 4,000 homes above and below
16 the bypass. They're starting a different process.
17 Mr. Geiger brought it up. They've only got a couple
18 hundred houses done. And there's 4,000 more to go.

19 Our area is going to be saturated with
20 homes. We have commercials on T.V. telling our kids
21 to go out and play outside for an hour every day.
22 Where are they supposed to go? We're taking away open
23 spaces and parks. You're telling Jane Imai she has to
24 get in the car with her dog to go walk someplace safe.

25 You're telling people like me that we have

1 to go drive in our car to go someplace to be able to
2 just enjoy a park and open space area? If we're not
3 going to go with the community plan then why waste our
4 time doing it? They put in parks and open spaces.
5 New York City has a need for affordable housing, yet
6 they have an over 800-acre park called Central Park,
7 not to mention all the other parks.

8 Parks and recreation in all of our statutes
9 and laws that I read through that you have to abide by
10 show them as vitally important. You don't know what
11 you've got until it's gone. Once you put houses on
12 this land there there's no going back.

13 I like this song from Wayne Watson and the
14 lyric. The name of the song is, "For Such A Time As
15 This." And it goes, "For such a time as this you were
16 placed upon the earth. You can't change what's
17 happened till now but we can change what will be."

18 And who knows? But that you have come to
19 this position as Commissioners for such a time as
20 this.

21 For such a time as this you are appointed.
22 I don't know why you took on this position, but you
23 did. And you are the ones that are deciding Hawai'i's
24 history. When you look at the history of Hawai'i
25 there's the pre-contact era. Then there's the

1 missionaries with the golden age of whaling in the
2 1800's. And in the 1850's and '60s the plantation era
3 started and went into the 1990s.

4 In the 1970s the tourism industry started
5 taking off. Now the mills are closing up. The
6 pineapple industries are closing up and we're sitting
7 with all this ag land. This ag land is not being
8 bought up by farmers. It's being bought up, acquired
9 by developers.

10 And it's the State Land Use that's going to
11 determine our future. It's not the county council.
12 It's not the Office of Planning. If you keep rezoning
13 ag land to urban use, then that is the direction
14 Hawai'i's going to go. But our future is in your
15 hands. You're going to decide are we going from ag to
16 urban or ag to sustainability?

17 We have a unique place in the world. We're
18 2500 miles from the nearest continent. There are
19 global financial crises happening. There are global
20 droughts going on. We live in a place that we can
21 grow our own food. We have the water. We have the
22 land. We have the climate. We don't need to worry
23 anymore about growing an exported crop. We import
24 people every day. It's called tourism.

25 If we protect our farmers, and you can go,

1 "Well, that's not our thing. We're state Land Use."
2 But, yes, if you protect the *land* that protects the
3 farmers. If it can be grown here it shouldn't be
4 flown here. And we're flying people in. We'll let
5 them pay the expense of getting over here rather than
6 shipping an exported crop.

7 Let's grow food to feed our people and to
8 feed the tourists that come here. It's more healthy
9 and nutritious. It provides not just the farmers but
10 all of the products that you make from the things that
11 we grow and the cattle that you raise. But it's in
12 your hands.

13 You're getting constant, all these land
14 changes. They're wanting to take ag land. This
15 Petition, this I understand this is just a little
16 strip of land. But this little strip of land could be
17 made productive. The Petitioner has hundreds of other
18 acres. What have they grown so far? And agriculture
19 subdivision that when you drive along the west side
20 now, you look up all they have to do is plant palm
21 trees and that's considered agriculture.

22 That's not right. It's legal but it's not
23 right. We at some point have to stop and go, "What do
24 we want? Are people paying thousands of dollars and
25 flying thousands of miles to come and look at strip

1 malls and subdivisions? Or are they coming to see a
2 beautiful island?"

3 If we plant the island will be beautiful.
4 But it's in your hands. Because it doesn't matter, I
5 can go to all the county council meetings. I can go
6 to all the other kind of things and write in letters.
7 But it really, our future's in your hands and where
8 the islands are gonna go. If you keep continuing to
9 rezone ag land to urban use, then that's the direction
10 Hawai'i's going to go.

11 Then we'll have to import our food. That's
12 doable. But in this uncertain time and where we live
13 I think it's more prudent to make sure that we're
14 sustainable. We only have four or five days worth of
15 food on our shelves. Then what happens? We can't
16 grow it fast enough.

17 If you cover all this land with homes and
18 all this urban development you're not going to have
19 enough place. Yes, do we need housing? Sure. You
20 build a house and people will come because they come
21 here all the time and fall in love with our islands.
22 But it's up to you to determine what the course of our
23 history is going to be.

24 CHAIRMAN CHOCK: Ms. Lincoln, five minutes.

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

1 For such a time as this you're making Hawai'i's
2 future. Hold landowners accountable. They've been
3 given farmland. They're entrusted with farmland.
4 They need to farm the farmland. This Petition falls
5 far short of the criteria required. And it does
6 justify the denial of reclassification.

7 All Hawai'i ag land should be protected and
8 farmed for our sustainability. I hope you'll make
9 this pledge: That I will make today's decisions with
10 tomorrow's impact in mind and consider my current
11 choices in light of future generations." Thank you.

12 CHAIRMAN CHOCK: Thank you, Ms. Lincoln.
13 We're going to take a 10-minute recess for our court
14 reporter. We're going to come back. Ms. Bolomet,
15 you'll be up for 25 minutes then rebuttal, Mr. Geiger.
16 Then we'll go into deliberations. So 10 minute
17 recess. (gavel)

18 (Recess was held. 11:00 to 11:15)

19 CHAIRMAN CHOCK: We are back on the record.
20 Ms. Bolomet, ready to go?

21 MS. BOLOMET: Yes.

22 CHAIRMAN CHOCK: 25 minutes.

23 MS. BOLOMET: I'll try not to be Portagee
24 today. Good morning. And thank you for allowing me
25 to be here. I know all of us got up early to be here.

1 And it's sometimes hard to stay awake during all the
2 testimony.

3 But I'll tell you why I came here. And
4 it's because it started 12 years ago when my neighbor
5 sprayed Round-Up on our border. And the mist of the
6 Round-Up came into our house and got all of our family
7 members sick. And I got the worst of it. I ended up
8 with ovarian cancer. And there was a mass the size of
9 my head that had to be taken out of me which was
10 filled with agricultural chemicals.

11 As a result I'm highly sensitive to
12 chemicals which, coming into this room, is sometimes
13 live endangering to me where it's off-gassing. But I
14 do it because I'm so committed to having people have
15 good food and good quality agriculture.

16 There were four women in our church that
17 had cancer all at the same time. Of the four women
18 three of 'em took radiation and chemotherapy and the
19 traditional medicines.

20 I, on the other hand, did not take any of
21 those because I couldn't. And I had to learn how to
22 grow food that was chemical free. I had to learn how
23 to grow soils that would make food healthy and make my
24 food medicinal.

25 I had to learn how to use plants to be my

1 medicine. And out of the four of us in a year
2 and-a-half I was the only one alive. Now it's been 12
3 years. In my 12-year journey I've learned how to use
4 food as medicine and how to grow in small spaces, how
5 to maximize the spaces.

6 I'm not coming to you as somebody who's
7 telling you that I think you should use this for and
8 keep this as ag land because I think it will be a good
9 thing. I'm coming to you because I've done it. I
10 know what can be done with this land. And 16 acres is
11 a lot of land to do commercial farming when you do
12 diversified farming.

13 I have an acre of land. And within that
14 acre when we were doing or experiments we were taking
15 10,000 square feet of the acre, and we were generating
16 more money than people that had multiple acres because
17 I learned how to pick crops that would make more money
18 per square foot which would not affect my neighbors.

19 And in all the years that we farmed we've
20 never had a complaint from neighbors except when we're
21 burning they suggest that I do an imu so they could
22 throw their kalua turkeys and pigs in at the same
23 time.

24 But other than that I don't use chemicals.
25 And we've never had to worry about affecting other

1 people. And my neighbors were all on one-acre
2 properties and they're all right around me. So you
3 can have agriculture, commercial agriculture, within a
4 residential area.

5 With that said I'd like to thank you all
6 for your patience and assistance through this process.
7 I know it was grueling for all concerned, but I hope
8 that through the grueling questions you were able to
9 learn what myself and my family has learned or already
10 knew.

11 And that there are numerous reasons why
12 this Petition should be denied on constitutional and
13 legal grounds as well as procedural grounds. And
14 because by keeping this land zoned ag it will provide
15 more benefits to the community as a whole and meet
16 State, County and West Maui community plans.

17 Though we in modern day tend to forget that
18 all nature is interconnected, my ancestors did not. As
19 a matter of fact, they were so successful at treating
20 the mountains to the sea as a whole that western
21 visitors were in awe of the very vision of Lahaina
22 which was described by Captain Vancouver in 1796 as
23 the Venice of the Pacific.

24 The Petition Area is rich in culture and
25 history. The recent construction activities either

1 covered up or destroyed archaeological features but
2 nothing that can't be restored that will bring back
3 the culture and historical richness that makes Lahaina
4 and this area, in particular, so unique.

5 Was it because there were springs
6 everywhere from the mountain to the sea or was it
7 because my ancestors were allowed to take the
8 resources and successfully use them to the fullest
9 extent and most complete capacity?

10 This knowledge is what made my ancestors in
11 the Hawaiian culture not only sustainable for hundreds
12 of thousands of people, but so attractive to
13 westerners. Yet today we continue to do what is
14 proven to be detrimental to our environment and making
15 our people dependent on imports to survive.

16 It is for this reason that the State
17 Sustainability Plan 2050 was laboriously created. I
18 know. I worked on this with many other volunteers.
19 Building homes that are affordable is needed.

20 Building a subdivision that only provides a
21 minimal amount of homes that are affordable to the
22 average 77,000 annual salaries in Lahaina -- \$77,000
23 annual salaries in Lahaina while taking out Important
24 ag Lands which has the potential to provide
25 sustainability through food security, jobs and

1 employee housing, should be considered a crime that
2 affects all the residents of Lahaina outweighing the
3 few that would be lucky enough to get a home in this
4 proposed community that does not even guarantee that
5 these home prices will remain affordable in the
6 future.

7 Through grueling testimony we learned that
8 the Petitioner's archaeology report that was accepted
9 by SHPD either overlooked gross mistakes such as the
10 report not being specific to the area, but rather a
11 part of a report that was made about Makila some 7
12 and-a-half miles away.

13 We also learned how the mistake or
14 purposeful deletion of the boundary notes that
15 described burials in the Petition Area and the
16 archaeological features, were hidden simply by digging
17 away from the archaeological features that were
18 described in the boundary notes and within the fill
19 areas that are down to and below the original grade.

20 Some of the grade was 8 to 12 feet,
21 admittedly, by the Petitioner, and by the
22 archaeologist. And they didn't even go that low to
23 the original grade to look for features, some of which
24 were walls that Intervenor Michele Lincoln used to
25 walk on up to the early 2000's before the bulldozers

1 were brought in to knock them down before the
2 Archaeological Assessment was made.

3 Or how even when flaws are pointed out in
4 the archaeology report to SHPD nothing is done on a
5 timely basis to remedy the problem so much so that the
6 Office of Hawaiian Affairs had to get involved to
7 request why the discrepancies are not being addressed.

8 I further had a public testifier named
9 Lucienne DeNaie dispute Michael Dega's claim that only
10 10 percent of his reports needed minor changes.
11 Ms. DeNaie, who had read approximately 40 AIS's that
12 Mr. Dega wrote, stated that they all needed changes.
13 But due to the woeful understaffed SHPD reports are
14 accepted with little comment or challenge even though
15 they all need additional work.

16 Cultural practitioner expert Kahu Michael
17 Lee engulfed us all in a 2-hour testimony by revealing
18 for the first time many Hawaiian secrets that were
19 kapu to non-family members and non-koko ears.

20 He explained how the Pele Clan lived on the
21 property and that there's a hei'au to memorialize my
22 18th great-grandfather Opeluha'alili. And how only
23 Pele Clan family members can own and take care of that
24 he'iau. Ergo, why it was given to Victoria Kamamalu,
25 the grand-daughter of Kamehameha I who had the

1 spiritual mana and protections to own such lands.

2 Though it may be thought that simply
3 putting a large libation pohaku or stone in a
4 different place and in a park may be the answer, it
5 doesn't take into account the energetics that
6 accompany this pohaku used in Hawaiian religious
7 practices protected under Article XII section 7. And
8 moving it would violate our protected rights.

9 He further explained how the
10 interconnectiveness between the property and the ocean
11 protected his practice as a kahuna of the sea using
12 both seaweed, corals and invertebrates as medicine and
13 how it affects the fish population, coral and reefs
14 which is also a concern of the State Coastal Zone
15 Management, CZM HRS 205-a4(b) and 5.

16 In a letter found between many Keith Ahue
17 who was the Chairman of SHPD in 1994 to an Army Corps
18 of Engineers, Mr. Jyo, who confirmed in fact that the
19 complex referred to as the Kahoma Stream Terrace
20 Complex was located in the constructed impact area of
21 the Kahoma flood control project located in
22 TMK (2)4-5-09, 10, 11 and 15 which is above the
23 Petition Area, within the Petition Area, below the
24 Petition Area and beside the Petition Area.

25 This is the chairman of the SHPD that's

1 confirming this. Where we may not have been so
2 successful in trying to explain to you how this, this
3 terrace structure is part of this, but in this letter
4 he confirms it.

5 Intervenor Michele Lincoln questioned Rory
6 Frampton's dispute of the terrace system complex
7 studied by Bishop Museums archaeologist Robert
8 Connolly being in the Petition Area who marks the site
9 with the No. 6 pole and near the railroad track
10 bridge, which are shown in an 1884 Lahaina map to be
11 where the railroad tracks are still located today
12 parallel to Cane Haul Road.

13 Furthermore, Intervenor Michele Lincoln
14 points out there are seven abandoned concrete
15 telephone or electric poles in her backyard from the
16 railroad track putting the No. 6 pole in the GPS area
17 where the heiau was pointed out to be by Kahu Michael
18 Lee and GPS'd by Rory Frampton on his dig this past
19 September 19, 2012.

20 One of my biggest surprises to learn was
21 that there doesn't seem to be any cultural
22 practitioners the state or the county Office of
23 Planning can consult with to fulfill their mandate to
24 protect cultural practices under Article XII Section 7
25 of the Hawai'i State Constitution. And the state

1 Office of Planning depends on SHPD, who again, is
2 woefully under staffed and accepts AI's an Assessment
3 with little comment or challenge even though they need
4 additional work, according to public testifier
5 Lucienne deNaie.

6 It was because of that state and county
7 Office of Planning personnel was not able -- it's
8 because of this, state and county office personnel was
9 not able to recognize that when the Petitioner's
10 floral and fauna experts stated that there was no
11 significant plants and fauna in the Petition Area he
12 was wrong.

13 What he identified in one month out of 12
14 months' survey as useless plants or weeds, I was able
15 to describe how I used these plants in my cultural
16 practice as la'au lapa'au and for my health.

17 Furthermore, because he did not understand
18 the cultural and religious practice of how the kanaka
19 imbibes the owl with the spirt of our ancestors, he
20 thought that only Hawaiian owls were the owls that our
21 `aumakua used rather than both the Hawaiian and the
22 endangered owl.

23 The LUC is required under the Hawai'i State
24 Constitution to preserve and protect customary and
25 traditional practices of native Hawaiians. The LUC is

1 required under the Hawai'i Constitution to preserve
2 and protect the practices of native Hawaiians -- I'm
3 sorry repeated that.

4 In Ka Pa'akai O Ka 'aina vs. Land Use
5 Commission 94 Hawai'i 31, 45 in the year 2000, "the
6 LUC is under an affirmative duty to protect these
7 rights and to prevent any interference with the
8 exercise of these rights in order to fulfill its duty
9 to preserve and protect customary and traditional
10 native rights to the extent feasible."

11 "The LUC at a minimum must make specific
12 findings and conclusions as to the following: 1.
13 Identify and scope of the valued cultural, historical
14 or natural resources in the area including the extent
15 to which traditional and customary native Hawaiian
16 rights are exercised in the Petition Area.

17 "2. To the extent which those resources,
18 including traditional and customary native Hawaiian
19 rights will be affected or impaired the proposed
20 action.

21 "And 3. the feasible action, if any, to be
22 taken to reasonably protect native Hawaiian rights if
23 they are found to exist. Ka Pa'akai at 47, (2000) in
24 addition to HRS 205A-4(a) and section 205A-5(b),
25 section 205A-2(b) (2).

1 Would it not then be a failure on the part
2 of the LUC to do the three mandated steps without a
3 full Archaeological Assessment because the information
4 that they're relying upon in the current
5 archaeological survey was deficient and only tested in
6 filled areas not determining the true extent and
7 nature of invaluable Hawaiian cultural resources
8 within the Project Area and the extent to which
9 traditional and customary native Hawaiian rights are
10 exercised in the Petition Area.

11 Burials are listed on the boundary notes of
12 Keone's LCA 11150 and was also reported by myself on
13 my great-great grandfather's property, Ka'aua LCA 9795
14 apana 1.

15 A walk through on the property to examine 8
16 to 12 feet of fill above the original grade does not
17 fulfill SHPD's obligation to investigate or protect
18 these burials.

19 In Paulette Kaleikini vs. Wayne Yoshioka,
20 et al, the Hawai'i Supreme Court recently found that.

21 1. A declaration that the city and DLNR
22 violates HRS 6E-42 and/or 6E-8 a declaration --

23 2. A declaration that an AIS must be
24 prepared for the rail project prior to decision-making
25 on Project or commencement.

1 3. A declaration that Final EIS was
2 unacceptable because it did not include a proper AIS.

3 4. A declaration voiding "any and all
4 state and county permits or approvals" for the rail as
5 a result of them not meeting the EIS with the proper
6 AIS.

7 On August 24th, 2012 the Supreme Court
8 ruled unanimously that the state and the city had
9 violated the law concerning the surveying of native
10 Hawaiian burial sites.

11 They said that, "SHPD failed to follow its
12 own rule when it concurred in the rail project prior
13 to the completion of an Archaeological Survey for the
14 entire Project. The rules established a sequential
15 process under which an Archaeological Inventory Survey
16 must precede SHPD's concurrence in a project.

17 "As noted in the rules the review process
18 is designed to identify significant historic
19 properties in project areas and then to develop and
20 execute plans to handle impacts to the significant
21 properties in the public interest." That's HRS
22 13-275-1(a) "

23 "SHPD failed to comply with HRS Chapter 6E
24 and its implementing rules when it concurred in the
25 rail project prior to the completion of the required

1 Archaeological Survey for the entire Project.

2 "The city failed to comply with HRS chapter
3 6E and its implementing rules by granting a Special
4 Management Area for the rail project and by commencing
5 construction prior to the completion of the historic
6 preservation review process.

7 Would the approval of this Petition to
8 reclassify these lands from ag to urban by the LUC not
9 be the same mistake made by the state and Honolulu
10 county in the rail project if you approve the boundary
11 amendments prior to meeting HAR 13-275?

12 Robin Knox, my water expert, on August 3,
13 2012 states, "The county of Maui is currently
14 operating under several consent decrees from the EPA
15 related to the Lahaina area sewage collection system
16 and wastewater reclamation facility.

17 The primary cause of failure to comply with
18 the subject Clean Water Act provisions are lack of
19 infrastructure. According to the county of Maui
20 engineering reports by CH2 Mhill which can be found on
21 their website, the existing plant capacity is not
22 adequate to comply with the current clean water
23 treatment redundancy capacity requirements.

24 The Petitioner says the wastewater facility
25 has a permit from EPA and DOH, but does not clarify

1 that the permits are for underground injection
2 controls and that there is no NPDES permit.

3 Given that there is current EPA enforcement
4 actions and pending Clean Water Act litigation
5 regarding the NPDES permit, it is predictable that the
6 allowable effluent pollutant loading at Lahaina will
7 not be allowed to increase, requiring improvement
8 treatment capacity to add any additional discharge.

9 The subject Project does not propose to
10 build a sewage treatment plant and does propose to
11 send sewage to the already-inadequate Lahaina
12 Wastewater Reclamation Facility.

13 The proposed Project is affordable housing
14 and receives exemptions from fees that would otherwise
15 support infrastructure that would be burdened by the
16 Project.

17 Throughout those hearings the Petitioner
18 based their reasoning that commercial agriculture was
19 impossible on land because it had no irrigation water
20 or infrastructure available. Yet Maui Public Works
21 map show that, in fact, there are both abandoned and
22 new irrigation, potable and drainage pipes, below the
23 surface on the property as we speak.

24 And the Maui Public Works maps in the
25 Petitioner's Exhibit 41 shows us all that the

1 Petitioner was well aware of where to access the
2 Public Works maps to see what was under the current
3 soil grade in the Petition Area.

4 As a matter of fact, it's hard to believe
5 that they would be unaware of these pipes if, in fact,
6 they were responsible for finding out if there were
7 any pipes that the soil engineer had to be aware of
8 when he did his soil core samples according to the
9 soils engineer's testimony.

10 While the Petitioner claimed no water was
11 available for irrigation, they explained that they
12 will tap into the perimeter water and get water meters
13 from the county to irrigate their parks and their
14 public areas.

15 With further questioning of Rory Frampton
16 he admits that, in fact, a commercial farm can get an
17 ag meter from the county. And I, as a farmer who has
18 a meter and uses county potable water to irrigate my
19 crops, I can tell you firsthand that there are
20 discounted water rates if you didn't already know
21 that.

22 In addition, the Petitioner based all of
23 their agricultural studies on the out-of-date
24 sugarcane and pineapple production models that by
25 their own admission has been leaving the islands over

1 the last 30 years.

2 But in their Petition they admitted that if
3 they had to use this land for agriculture it would
4 provide local grown foods and require little
5 investment in infrastructure.

6 In my findings of fact, conclusions of law,
7 and decision and order I explained that farm
8 legislation not only provides the right to farm under
9 the Hawai'i Agriculture Protection Act, Hawai'i
10 Revised Statute's division 1 Government Title 11,
11 Agriculture and Animals chapter 165 called the Hawai'i
12 Right to Farm Act.

13 Under HRS 165-4 Right to Farm, it states
14 that quote, "No court official, public servant or
15 public employee shall declare any farm operation a
16 nuisance for any reason if the farming operation has
17 been conducted in a manner consistent with generally
18 accepted agricultural and management practices."

19 CHAIRMAN CHOCK: You have less than 5
20 minutes, Ms. Bolomet.

21 MS. BOLOMET: "There shall be rebuttal
22 presumptions that a farming operation does not
23 constitute nuisance.

24 The Important Agricultural Lands
25 objectives, Act 183 and 233, the Act fulfills the

1 Constitutional mandate found in Article XI Section 3
2 of the State Constitution to protect agricultural
3 lands; to identify plans for maintenance of strategic
4 agriculture and resource base that can support a
5 diversity of agricultural activities and
6 opportunities, to contribute to the viability of ag
7 through the expansion of agriculture income and job
8 opportunities which increase food security for current
9 and future generations.

10 HRS 205-B3b. Also under this incentive,
11 incentive 1. It allows for farm dwellings and
12 employee housing to landowners and for the employees
13 working on the lands. So this land not only can
14 provide agriculture but it can provide housing.
15 According to the ag expert of the Petitioner, he
16 himself doesn't even use soil. He farms on benches.
17 So soil doesn't even need to be an issue here and the
18 rocks.

19 However, I can farm on this type of soil.
20 And these soils -- and in his practice and his
21 business he has 14 people per one and three quarter
22 acres. If we were to figure out how much we could put
23 as far as creating jobs on 16 acres, we figured it
24 would be around 72 jobs agricultural related. And we
25 could put in that many homes.

1 So not only are you having sustainable
2 agricultural jobs, you're also providing the
3 construction jobs for the infrastructure and the
4 housing. So nothing is lost in keeping this ag.

5 CHAIRMAN CHOCK: One minute.

6 MS. BOLOMET: The bottom line is this:
7 These lands are called kuleana lands. Kuleana lands
8 are protected by the county under the kuleana
9 exemption. In this exemption it basically says that
10 the state and the county cannot tax these lands
11 because they don't have any control over these lands.
12 They don't have any authority or jurisdiction over
13 these lands.

14 If, in fact, they don't have any
15 jurisdiction over these lands and the US Constitution
16 also says under Foster vs. Neilson, that the state
17 does not have any authority to assert its jurisdiction
18 on foreign allodial titled lands, which are what
19 kuleana lands are, how is it, then, may I ask, that
20 the Land Use Commission finds that they have the
21 authority to make a decision on lands that not even
22 the county of Maui recognizes that they do not have
23 the ability to tax because it is out of their realm of
24 jurisdiction? Thank you very much.

25 CHAIRMAN CHOCK: Thank you, Ms. Bolomet.

1 Any rebuttal?

2 MR. GEIGER: Yes, Chair. My client has me
3 to keep it short so I'll try to follow my client's
4 wishes on this. I'm sure the Commission would
5 appreciate it.

6 Again, this is my last opportunity to
7 address you. I want to thank you for your attention.
8 I want to thank you for your patience.

9 I'm going to go in rebuttal in reverse
10 order here. Let me first address Intervenor Bolomet's
11 argument to you. And that's what it was. It was
12 argument. Intervenor Bolomet never testified in this
13 case. She was never sworn under oath. She never
14 provided any testimony. Everything that she's done
15 has been asking a question, argumentative fashion or
16 here now argument.

17 For example, she recently said, "Oh, well
18 we could have 80 some jobs on this property." There's
19 no evidence in the record on this because there's been
20 no testimony before you to establish that. You have
21 to act on facts. You don't act on argument. You act
22 on facts.

23 Another example. She indicated that
24 Lucienne deNaie gave testimony to you folks. Luciene
25 DeNaie did not testify. She was not sworn under oath.

1 She provided a written correspondence, but we didn't
2 have the opportunity to ask her questions about that
3 written correspondence to point out the errors and
4 inaccuracies in that correspondence.

5 That's why you folks act based upon facts.
6 You don't act based upon my argument. You don't act
7 based upon the County's argument. You act based upon
8 the facts, the testimony from the witnesses, or the
9 documents that are received into evidence.

10 Let me address real briefly Ms. Lincoln.
11 Again, she gave a very passionate argument, but it was
12 argument. Let my point out two basic facts that were
13 misrepresented. She tells you to worry that this
14 property is flood zone X and there's going to be
15 problems because it's flood zone X.

16 Flood zone X is the default designation of
17 property. Makawao is flood zone X. Flood zone X by
18 its classification means nothing.

19 The other thing she mentioned was a lot of
20 talk about open space in the community plan. Open
21 space and community plan is uniquely something that's
22 handled by the county not by the Land Use Commission,
23 and continued representations that the resolution was
24 contingent on your approval are wholly inaccurate.

25 The resolution is before you as

1 Petitioner's Exhibit 11. There is no contingency on
2 the exemption that's granted to this property.

3 The county council -- the community plan is
4 law. The county council has the right to change that
5 law. They changed the law when they adopted the
6 resolution which is Exhibit 11. There is no -- "wait
7 a minute, if the Land Use Commission says something
8 else we take it back." That's... just... not...
9 the... fact.

10 With regard to State Office of Planning,
11 they told you that they have, I think, five, four
12 named findings of fact that they would like minor
13 revisions to. They'd like an addition of one finding
14 of fact concerning warning sirens.

15 We don't agree that these revisions are
16 necessary. But we would be willing to accept those
17 revisions because we don't think it adds, we don't
18 think it detracts, but if it's something that would
19 assist the State Office of Planning we're happy to go
20 ahead and assist the state Office of Planning in that
21 manner.

22 Finally, with regard to the County, they
23 told you they had two concerns. Both of those
24 concerns have been addressed in Conditions 10 and 11
25 of the proposed findings of fact, conclusions of law

1 and decision and order.

2 So we believe that everything that's been
3 brought up here except for the fundamental differences
4 that we've talked about, everything that's been
5 brought up here has been addressed in the proposed
6 findings and conclusions and decision and order that
7 was submitted in reply to the State Office of
8 Planning.

9 Again, I thank you so very much for all of
10 your attention in this. I know that it's been a long,
11 hard process. And we look forward to hearing from
12 your deliberations approval of our Petition. Thank
13 you.

14 CHAIRMAN CHOCK: Thank you, Mr. Geiger.
15 Commissioners, any questions for any of the parties?
16 (pause) Commission will now conduct formal
17 deliberations concerning whether to grant the Petition
18 whether in whole or in part or to deny the Petition.

19 If the Commission decides to grant the
20 Petition in whole or in part, it needs to determine
21 what conditions of approval to impose. I would like
22 to note for the parties and the public that during the
23 Commission's deliberations I will not entertain
24 additional input from the parties or the public unless
25 those individuals or entities are specifically

1 requested to do so by the Chair.

2 If called upon I'd like to ask that any
3 comments be limited to the question at hand.

4 The Commission held hearings on the merits
5 of this Petition on July 19th and 20th, September 6th
6 and 7th, October 4th and 5th, 2012 and oral argument
7 was concluded today.

8 Commissioners, let me confirm that each of
9 you have reviewed the record, read the transcripts for
10 any meeting that you may have missed and are prepared
11 to deliberate on the subject docket.

12 After I call your name will you please
13 signify with either an aye or nay that you're prepared
14 to deliberate on this matter. Commissioner Biga.

15 COMMISSIONER BIGA: Aye.

16 CHAIRMAN CHOCK: Commissioner Contrades?

17 COMMISSIONER CONTRADES: Aye.

18 CHAIRMAN CHOCK: Commissioner Makua is
19 absent. Commissioner Matsumura?

20 COMMISSIONER MATSUMURA: Aye.

21 CHAIRMAN CHOCK: Commissioner McDonald?

22 COMMISSIONER McDONALD: Aye.

23 CHAIRMAN CHOCK: Commissioner Teves?

24 COMMISSIONER TEVES: Aye.

25 CHAIRMAN CHOCK: Commissioner Inouye?

1 COMMISSIONER INOUYE: Aye.

2 CHAIRMAN CHOCK: And I too as Chair is
3 prepared to deliberate on this matter. The goal today
4 is to determine by way of motion the Commission's
5 decision on whether to grant in whole or in part,
6 Petitioner's request to reclassify the subject
7 property or to deny the Petition.

8 If a decision is reached today, and based
9 upon the Commission's guidance, staff will be directed
10 to draft appropriate findings of fact, conclusions of
11 law and decision and order reflecting the Commission's
12 decision. Commissioners, what is your pleasure on
13 this matter?

14 COMMISSIONER BIGA: Chair, can we have a
15 5-minute recess? Is that in order?

16 CHAIRMAN CHOCK: Sure. Is there a motion?
17 Why don't we do that. 5 minute recess. (gavel)

18 (Recess was held. 11:50 to 12:00)

19 CHAIRMAN CHOCK: We are back on the record.
20 Commissioners, what is your pleasure on this matter?

21 COMMISSIONER McDONALD: Actually, Chair --

22 CHAIRMAN CHOCK: Commissioner McDonald.

23 COMMISSIONER McDONALD: I have a question,
24 actually, for the parties. We're going through a
25 hearing for Ka'ono'ulu. I know the county and the

1 state are aware of the issues at hand. And as far as
2 the representations made in this hearing and the
3 potential for the changes in the future with regards
4 to this property, does the State Office of Planning as
5 well as the county feel that if this Petition moves
6 forward that there are appropriate conditions noted in
7 your filings to address any potential future changes
8 to the land use?

9 MR. YEE: One, the Office of Planning is
10 comfortable with the conditions otherwise we wouldn't
11 have said we were fine with the conditions. I would
12 say there are a couple of things I would say. One is
13 there is in this case a requirement to complete the
14 infrastructure within 10 years.

15 What you will sometimes see is older cases
16 where these kinds of conditions are not included and
17 15 years goes by and then someone decides to develop.

18 That's where you, just as a practical
19 matter, tend to these problems occur more often.

20 Second, there is specifically in this case
21 a Condition 10 which requires compliance with the
22 resolution, the affordable housing resolution, which
23 obviously requires construction of affordable housing
24 within a certain time frame as well.

25 And then, of course, the Office of Planning

1 and the county may not completely agree but the Office
2 of Planning has come forward with a condition
3 requiring compliance with, substantial compliance with
4 representations. But I guess I would just offer that
5 as some level of comfort.

6 CHAIRMAN CHOCK: County?

7 MR. GIROUX: We did look at that. I think
8 one of the major differences in the two cases is that
9 you're looking at an issue of use in zoning as apart
10 from when this property is going into urban you have
11 several layers of county oversight and input already.
12 Basically under the 201-H process the use is already
13 determined. They can't use this for anything else.

14 The issue, if anything, would be the
15 representation that there are going to be so many
16 units. That's already addressed during the 201-H
17 process. So as far as the County's concerned we don't
18 have the same issue as far as the vagueness or an
19 issue of use because even though you're going to urban
20 and there's no underlying quote, unquote "zoning", the
21 201-H is going to determine the use. The use is going
22 to be affordable housing. Any other use would then
23 cause a violation of the Land Use Commission's Order.

24 There's conditions of timing. There's
25 conditions of price. There's conditions of when

1 these -- when these properties are going to then shift
2 over from being affordable to market. There's going
3 to be further agreements between the county and the
4 developer which will, under the conditions that we've
5 proposed, would be enforceable once integrated into
6 the Land Use Commission's Order.

7 That's the whole purpose of Conditions 10
8 and 11 that we've agreed to in order to get that by
9 the county. Because it is crucial that this land,
10 once urbanized, does go into affordable housing and
11 meets that need that we're looking at.

12 MR. GEIGER: If I may. In addition,
13 there's one further item. This particular Project has
14 been included as a part of the Maui Island Plan not as
15 an urban but as a project. So that there's an
16 additional mechanism, if you will, for enforcement for
17 this Project.

18 COMMISSIONER McDONALD: Thank you.
19 Mr. Chair, if I may I'd like to move for the approval
20 for the reclassification of approximately 16.7 acres
21 of land from the Agricultural District to the urban
22 District at Lahaina for a residential subdivision to
23 provide 68 single-family affordable housing units to
24 families earning less than 160 percent of the median
25 family income for TMK No. 4-5-10 parcel 5.

1 CHAIRMAN CHOCK: There's been a motion to
2 approve. Is there a second?

3 COMMISSIONER CONTRADES: I'll second.

4 CHAIRMAN CHOCK: It's been moved, and
5 seconded by Commission Contrades. Any discussion?

6 COMMISSIONER INOUYE: Chair, if I may.

7 CHAIRMAN CHOCK: Commissioner Inouye.

8 COMMISSIONER INOUYE: Let's see. In light
9 of what Commissioner McDonald talked about and what
10 we're going through in another matter here, I would
11 like to suggest that in Condition 13, which is kind of
12 a standard condition we have in most of our D&Os, I'd
13 like to add a comma at the end of the first sentence
14 and add the words, "as reflected in these findings of
15 fact, conclusions of law and D&O, decision and order."
16 I'd like to propose adding that in. Let me leave it
17 at that for now.

18 CHAIRMAN CHOCK: Thank you, Commissioner
19 Inouye.

20 COMMISSIONER INOUYE: Would that be okay as
21 a friendly amendment?

22 COMMISSIONER McDONALD: For the record I do
23 accept Commissioner Inouye's amendment.

24 COMMISSIONER CONTRADES: Yes. No problem.

25 COMMISSIONER INOUYE: If I may, Chair

1 Chock.

2 CHAIRMAN CHOCK: Commissioner Inouye.

3 COMMISSIONER INOUE: I really appreciate
4 all the parties' testimony and arguments in this case.
5 Everyone has their particular interests in mind. And
6 makes me at least, and I'm sure the rest of the
7 Commissioners here, makes a tough decision as in all
8 boundary amendment proceedings.

9 I am personally sensitive to the piecemeal
10 approach. However, we need to make decisions.
11 Petitions come in. In the long run there are many
12 stakeholders that are involved. And in order to do
13 what I think everybody wants to do it's not going to
14 happen in these particular proceedings. It's a bigger
15 process. It's something that I know we grapple with
16 and we're looking at but not in particular
17 proceedings.

18 We have to weigh all the facts that have
19 been presented and hope, especially the Intervenors,
20 understand this process. In particular we all want
21 open space but we also have competing interests.
22 Everybody has their particular areas of
23 responsibilities.

24 And we know ours is a kind of big
25 responsibility. And it's always tough to make these

1 types of decisions. For the Hawaiian culturally
2 sensitive things, you know, we all are sensitive to
3 that. We hear the sincerity of the testimony and the
4 arguments that you have made.

5 We hope that maybe some of it could be
6 voluntarily mitigated, specifically libation stones,
7 being able to take it to wherever you may need.
8 Although there's a question whether there's a libation
9 stone. I understand that. And I'm not suggesting
10 that be part of the D&O. I'm just hoping that some of
11 that could be mitigated by those voluntary means.

12 Anyway I just wanted to express my reasons
13 for also voting for it.

14 CHAIRMAN CHOCK: Thank you, Commissioner
15 Inouye. Commissioners, any other comments? (no
16 response) Executive Director, please poll the
17 Commission.

18 MR. ORODENKER: Mr. Chair, the motion is to
19 approve the reclassification of approximately
20 16.7 acres of land from the Agricultural District to
21 the urban District at Lahaina, Maui, Hawai'i for a
22 residential subdivision to provide 68 single-family
23 affordable housing units to families earning less than
24 160 percent of the median family income of families in
25 Maui County Maui, Hawai'i with amendment as proposed

1 by Commission Inouye.

2 Commissioner McDonald?

3 COMMISSIONER McDONALD: Yes.

4 MR. ORODENKER: Commissioner Contrades?

5 COMMISSIONER CONTRADES: Yes.

6 MR. ORODENKER: Commissioner Inouye?

7 COMMISSIONER INOUYE: Yes.

8 MR. ORODENKER: Commissioner Matsumura?

9 COMMISSIONER MATSUMURA: No.

10 MR. ORODENKER: Commissioner Biga?

11 COMMISSIONER BIGA: No.

12 MR. ORODENKER: Commissioner Teves?

13 COMMISSIONER TEVES: No.

14 MR. ORODENKER: Commissioner Napua and
15 Commissioner Heller are absent.

16 Chair Chock?

17 CHAIRMAN CHOCK: Yes.

18 MR. ORODENKER: Mr. Chair, there are 4
19 votes in support of the motion and 3 votes in
20 opposition. The motion does not pass.

21 CHAIRMAN CHOCK: Okay. Parties, just one
22 housekeeping matter. Initially we had talked about
23 coming back for the Adoption of the Order on
24 January 10th. But we are not scheduled to be here on
25 the island of Maui that day, so we will be coming back

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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 matters on the 6th day of December 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 matters.

DATED: This _____ day of _____ 2012

HOLLY M. HACKETT, HI CSR #130, RPR
Certified Shorthand Reporter