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LAND USE COMMISSION
STATE OF HAWAI'I

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TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing at Honolulu Airport Conference Center, 400 Rodgers Blvd., Suite 700, Room #3, Honolulu, Hawai'i, commencing at 9:00 a.m. on January 10, 2013, pursuant to Notice.

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

A P P E A R A N C E S

COMMISSIONERS:

CHAD McDONALD, VICE CHAIR

SHELDON R. BIGA

THOMAS CONTRADES

LANCE M. INOUE

JAYE MAKUA

ERNEST MATSUMURA

NICHOLAS W. TEVES, JR.

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK: RILEY HAKODA

STAFF PLANNER: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A12-795 WEST MAUI LAND COMPANY, INC-KAHOMA

RESIDENTIAL, LLC (MAUI)

For the Petitioner:

JAMES GEIGER, ESQ

HEIDI BIGELOW, West Maui Land

For the County:

JAMES GIROUX, ESQ.

Deputy Corporation Counsel

Department of Planning

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

RODNEY FUNAKOSHI

Office of Planning

Intervenor:

ROUTH BOLOMET

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A P P E A R A N C E S (cont'd)

Docket No. A99-728 HOUSING AND COMMUNITY DEVELOPMENT
CORPORATION OF HAWAI'I (O'ahu)

For the DHHL:	CRAIG IHA, ESQ. [REDACTED] Deputy Attorney General
For the HHFDC:	COLETTE HONDA, ESQ. Deputy Attorney General
For the County DPP	DON KITAOKA, ESQ. [REDACTED] Deputy Corporation Counsel TIM HATA, DPP
For the State:	BRYAN YEE, ESQ. Deputy Attorney General Office of Planning RODNEY FUNAKOSHI, OP

I N D E X

PUBLIC WITNESSES

PAGE

Clare Apana

7

--00--

1 VICE CHAIR McDONALD: Good morning. I'd
2 like to call the state of Hawai'i Land Use Commission
3 January 10, 2013 meeting to order. First, I'd like to
4 welcome all you back, hope you folks all had a great
5 New Year's celebration. Good to see you folks again.

6 First order of business is the adoption of
7 the December 6th, 2012 meeting minutes.

8 Commissioners, do we have a motion to approve?

9 COMMISSIONER BIGA: So moved.

10 COMMISSIONER TEVES: Second.

11 VICE CHAIR McDONALD: The minutes have been
12 moved and seconded. Those all in favor?

13 COMMISSIONERS VOTING: "Aye".

14 VICE CHAIR McDONALD: Any opposed? The
15 minutes are adopted. Executive Officer Orodenger can
16 you please cover the tentative meeting schedule for
17 the Commissioners.

18 MR. ORODENER: Thank you, Mr. Chair.
19 January 24th is our next meeting. It will once again
20 be here at this location for the Ko Olina Development
21 status report. Thursday, February 7th, we'll be on
22 Maui for the Ka'ono'ulu Ranch oral argument and
23 decision-making.

24 February 8th we'll be on Kaua'i for
25 Important Agricultural Lands Petition, site visit and

1 then the hearing.

2 Then February 21st and 22nd we'll be on
3 Maui for the Waiko Industrial Investment, LLC
4 commencement of hearings. March 7th and 8th once
5 again Waiko Industrial Investment on Maui.

6 VICE CHAIR McDONALD: Thank you,
7 Mr. Orodener. At this time I'd like to entertain a
8 Motion to Amend the Agenda and go into executive
9 session to discuss some issues with our attorney.

10 COMMISSIONER MAKUA: Moved.

11 COMMISSIONER INOUE: Second.

12 VICE CHAIR McDONALD: Moved and seconded.
13 At this time the Commission will go into executive
14 session. I think if you folks could step outside,
15 give us a few minutes and Riley will come and gather
16 you folks after the executive session.

17 (Executive session was held. 9:08-9:26)

18 VICE CHAIR McDONALD: We're back on the
19 record. This is an action meeting on Docket No.
20 A12-795 West Maui Land, LLC to approve the form of the
21 order in this matter. Will the parties identify
22 themselves.

23 MR. GEIGER: Good morning, Chair
24 Commissioners. James Geiger on behalf of Petitioner.
25 With me is Heidi Bigelow, Petitioner's representative.

1 MR. GIROUX: Good morning. James Giroux on
2 behalf of the Department of Planning, County of Maui.

3 MR. YEE: Good morning. Deputy Attorney
4 General Bryan Yee on behalf of the Office of Planning.
5 With me is Rodney Funakoshi from the Office of
6 Planning.

7 MS. BOLOMET: Aloha. I'm Routh Bolomet
8 Intervenor and this is Clare Apana.

9 VICE CHAIR McDONALD: Thank you. Let me
10 update the record in this matter. On December 6, 2012
11 the Commission met in Kahului, Maui, Hawai'i and voted
12 to deny the petition for district boundary amendment
13 in Docket No. A12-795.

14 Is there anyone in the audience who wishes
15 to provide public testimony at this time? Please come
16 forward.

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

20 VICE CHAIR McDONALD: Please state your
21 name, your address and proceed for the record.

22 THE WITNESS: Clare Apana. Wailuku, Maui.

23 VICE CHAIR McDONALD: Please proceed.

24 THE WITNESS: Thank you. I'm sorry. I was
25 told that there would not be any public testimony.

1 Thank you for the opportunity. An article came out
2 recently in the Maui News which spoke about this
3 Kahoma Project. The people who are doing the bringing
4 it forth said they were perplexed about why it hasn't
5 got through.

6 I find that very interesting because as we
7 went through all of these proceedings with the
8 neighborhood and with Ms. Bolomet as Intervenors,
9 there were so many things that were shown where this
10 Project was done in the way that is not up to the
11 standards of the laws of Hawai'i.

12 Even as it was pointed out so many times
13 that the parts of this land are in land court -- I
14 know this is not your jurisdiction, but it just shows
15 how many things are not yet done, how many things were
16 done poorly to have an Archaeological Assessment with
17 properties listed from a whole 'nother area, I mean
18 all the way across Lahaina Town to the other side of
19 it, like, at least seven miles away.

20 It just shows the work that was not done to
21 prepare this application. And I was very surprised
22 and happy to see that you Commissioners thought
23 perhaps the same thing, that it was not adequately
24 done, and it was not adequate to pass the standards of
25 the state and of your body. And I hope that you will

1 uphold that.

2 And speaking personally I have seen the
3 hard work that Ms. Bolomet and Michele Lincoln have
4 done on their own without anything but their own
5 passion for seeing that the right thing happens and
6 protecting their land holdings.

7 And I hope that you will not prolong this.
8 They do these things on their own with their own time
9 without legal -- without being able to afford legal
10 counsel.

11 And I think your first decision, the
12 decision you made, showed that this application was
13 not adequate. And thank you for doing that.

14 I hope that you will allow Ms. Lincoln and
15 Ms. Bolomet to go home and rest knowing that they have
16 done their job. And I think they did a super job even
17 though there were many times where they were
18 definitely not knowing exactly what they were supposed
19 to, what the laws are of this quasi-body.

20 So I thank you. I hope that you will
21 uphold your decision. Thank you very much.

22 VICE CHAIR McDONALD: Thank you,
23 Ms. Apana. Any questions from the parties?

24 MR. GEIGER: No questions.

25 MR. GIROUX: No questions.

1 MR. YEE: No questions.

2 MS. BOLOMET: No questions.

3 VICE CHAIR McDONALD: Commissioners?

4 Anyone else in the audience wishing to provide public
5 testimony? Seeing none, Commissioners before you is
6 the Form of the Order denying the Petition of this
7 Docket No. A12-795. Let me remind you, Commissioners,
8 that what we are voting on today is the actual Form of
9 the Order. So the Chair at this time will entertain a
10 motion to approve the form.

11 MR. GEIGER: Excuse me, Chair, if I could.
12 I do need to place on the record an objection. On
13 behalf of the Petitioner we would object to the
14 Commission taking action because this would be in
15 violation of HAR 15-15-82(b) and (c) in that we were
16 just served with the Proposed Findings of Fact,
17 Conclusions of Law, Decision and Order prepared by the
18 Commission today. And that doesn't comply with your
19 rules.

20 MR. GIROUX: County joins the objections.

21 MR. YEE: Just to explain. I believe the
22 objection is based upon the rule which says that if a
23 Commissioner proposes a Decision and Order the
24 parties' given three days to review the document. So
25 I think the idea is that since this Order was prepared

1 by the LUC, not sure exactly who, obviously, but it's
2 presumably staff, that would effectively come within
3 the ambit of the rule requiring or allowing the
4 parties three days to review it.

5 This is normally -- normally this doesn't
6 occur because the parties are drafting the orders, and
7 then you're just adopting some form of the order
8 adopted by the parties. But apparently this case
9 you're not adopting the order submitted by one of the
10 parties but have drafted an entirely new document. I
11 think that's the argument being presented to you.

12 MR. GEIGER: Chair, if I could, there's
13 actually two arguments. 1. Any proposed findings,
14 conclusions, decision and order prepared by a
15 Commission member -- in this case this is proffered by
16 the Commission -- has to be submitted at least seven
17 days before the hearing or the meeting at which action
18 will be taken on the proposed findings and
19 conclusions.

20 The second part is that all the parties,
21 each party can provide its position on the proposed
22 findings, conclusions, at least three days before or
23 within three days from the date of service of the
24 proposed findings and conclusions.

25 MR. YEE: I stand corrected.

1 MR. GEIGER: There are actually two
2 timeframes both of which have not been met.

3 VICE CHAIR McDONALD: The Chair's going to
4 move for executive session at this time.

5 COMMISSIONER TEVES: Second.

6 (Recess was held. (9:34-10:50))

7 VICE CHAIR McDONALD: We're back on the
8 record. Mr. Geiger, your objections have been noted
9 for the record. Please understand that we, the
10 Commission, has voted on the substantive matter in
11 this Petition. Right now we're going to move forward
12 with the approval with a vote of the form of the
13 order.

14 MR. GEIGER: Just so the record is clear,
15 then, I understand that the Chair is denying or
16 overruling my objections, is that correct?

17 VICE CHAIR McDONALD: That's correct.

18 MR. GEIGER: Thank you.

19 VICE CHAIR McDONALD: Again, Commissioners,
20 before you is the form of the order denying the
21 Petition in this Docket No. A12-795. As I stated
22 before the vote today is on the form of the order. So
23 at this time the Chair will entertain a motion to
24 approve the form. Commissioners, what's your
25 pleasure?

1 COMMISSIONER BIGA: So moved.

2 COMMISSIONER TEVES: Second.

3 COMMISSIONER McDONALD: The motion has been
4 moved and seconded. Executive Officer Orodenger,
5 please poll the Commission.

6 MR. ORODENKER: Thank you, Mr. Chair. The
7 motion is to adopt the order.

8 COMMISSIONER INOUE: Before we get to that
9 can I make a comment or should I do that as it comes
10 to me?

11 VICE CHAIR McDONALD: When you're called
12 upon, Commissioner.

13 MR. ORODENKER: Commissioner Biga?

14 COMMISSIONER BIGA: Yes.

15 MR. ORODENKER: Commissioner Teves?

16 COMMISSIONER TEVES: Yes.

17 MR. ORODENKER: Commissioner Matsumura?

18 COMMISSIONER MATSUMURA: Yes.

19 MR. ORODENKER: Commission Inouye?

20 COMMISSIONER INOUE: Yes, but I would like
21 to explain. I just wanted to state on the record that
22 I do not fully agree with the proposed findings of
23 fact, all of the proposed findings of fact,
24 conclusions of law. But having said that, the law
25 clearly requires that 6 affirmative votes which were

1 not obtained and for that reason I think the final
2 decision and the order is correct. I concur with
3 that.

4 MR. ORODENKER: Commissioner Contrades?

5 COMMISSIONER CONTRADES: Yes as to the form
6 only.

7 MR. ORODENKER: Commissioner Makua?

8 COMMISSIONER MAKUA: Yes.

9 MR. ORODENKER: Chair McDonald?

10 VICE CHAIR McDONALD: Yes as to form only.

11 MR. ORODENKER: Mr. Chair, the motion
12 passes unanimously.

13 VICE CHAIR McDONALD: Thank you, Parties.
14 We will adjourn this portion of the meeting. We'll go
15 into a 5-minute recess so we can move on to the next
16 item on the agenda which is the HCDCH/DHHL action
17 meeting.

18 (Recess was held. 10:10).

19 VICE CHAIR McDONALD: We're back on the
20 record. This is an action meeting to approve the form
21 of the order in the matter of Docket No. A99-729(c)
22 Petitioner, the state of Hawai'i Department of
23 Hawaiian Home Lands, ("DHHL"), Motion for Order
24 amending the Findings of Fact, Conclusions of Law and
25 Decision and Order dated September 8th, 1999.

1 Will the parties please identify
2 themselves.

3 MR. IHA: Good morning, Mr. Chair and
4 Members of the Commission. Craig Iha on behalf of the
5 Department of Hawaiian Home Lands, state of Hawai'i.

6 MS. HONDA: Good morning. Deputy Attorney
7 General Colette Honda on behalf of Hawaii Housing
8 Finance and Development Corporation.

9 MR. KITAOKA: Good morning. Don Kitaoka,
10 deputy corporation counsel on behalf of the Department
11 of Planning and Permitting, city and county of
12 Honolulu. And with me is Tim Hata from that
13 department.

14 MR. YEE: Good morning. Deputy Attorney
15 General Bryan Yee on behalf of the Office of Planning.
16 With me is Rodney Funakoshi from the Office of
17 Planning.

18 VICE CHAIR McDONALD: Good morning. Thank
19 you. Let met update the record in this matter. On
20 September 14th, 2012 the Commission met in Ko Olina,
21 O'ahu, Hawai'i and voted to grant the Petition to:

22 (1) Recognize DHHL's standing to seek and
23 obtain the relief requested by the Petition.

24 (2) Re-designate a new docket A99-728(c)
25 covering that portion of the Petition Area identified

1 as Tax Map Key No. (1)9-1-016; parcel 142 comprising
2 of approximately 67.184 acres of land in the Petition
3 Area "C" or the subject property separate and apart
4 from the remaining 715 acres reclassified under Docket
5 No. A99-728.

6 (3). Release of the Petition Area "C" from
7 the conditions of the 1999 Decision and Order.

8 (4). Issue a new Findings of Fact,
9 Conclusions of Law and Decision and Order for the
10 subject property in Docket No. A99-728(c).

11 Is there anyone in the audience who wishes
12 to provide public testimony in this matter? Seeing
13 none, Commissioners before you is the form of the
14 order granting the Petition in this
15 Docket No. A99-728(c).

16 The Chair will entertain a motion to
17 approve this matter -- approve the form of the Order,
18 excuse me, in this matter. Commissioners, what's your
19 pleasure?

20 COMMISSIONER INOUE: Mr. Chair, I would
21 move to approve the form of the order and with the
22 offer of one amendment. A couple things first of all.
23 This is a preprinted form from my computer so it may
24 be wrong. But on page 58 there are a couple typo
25 errors in my version.

1 Item paragraph 4: The waste e water. Is
2 that adequate waste e water? Item No. 5 I believe
3 it's aviation and noise easement, not avigation. It
4 may be -- it may be my printing. So I just wanted to
5 point that out.

6 Actually the friendly amendment that I
7 would propose, and this is because of some problems
8 with the other dockets, on Conclusion of Law No. 22,
9 for Decision and Order B-22.

10 VICE CHAIR McDONALD: Commissioner Inouye,
11 what page?

12 COMMISSIONER INOUE: I'm sorry. It's page
13 61 is a condition. Yeah. Condition. B-22 I would
14 like to add at the end of the first sentence "comma,
15 as reflected in those findings" -- "in these findings
16 of fact, conclusions of law and decision and order."
17 So that would be my motion.

18 COMMISSIONER MATSUMURA: Second the motion.

19 COMMISSIONER McDONALD: The motion has been
20 moved my Commission Inouye and seconded by
21 Commissioner Matsumura.

22 MR. YEE: Chair, could I make a brief
23 comment?

24 VICE CHAIR McDONALD: Sure.

25 MR. YEE: I believe the term "avigation" is

1 a term of art. So I think avigation is a correct
2 term.

3 VICE CHAIR McDONALD: Thank you, Mr. Yee.

4 COMMISSIONER INOUE: Thank you, Mr. Yee.

5 I stand corrected so I'll withdraw that part of the
6 motion.

7 VICE CHAIR McDONALD: Executive Officer
8 Orodenger, please poll the Commission.

9 MR. ORODENER: Thank you, Mr. Chair. The
10 motion is to adopt the order with amendments,
11 typographical errors and additional language in
12 Condition No. 22. Commissioner Inoue?

13 COMMISSIONER INOUE: Yes.

14 MR. ORODENER: Commissioner Matsumura?

15 COMMISSIONER MATSUMURA: Yes.

16 MR. ORODENER: Commissioner Teves?

17 COMMISSIONER TEVES: Yes.

18 MR. ORODENER: Commissioner Contrades?

19 COMMISSIONER CONTRADES: Yes.

20 MR. ORODENER: Commissioner Makua?

21 COMMISSIONER MAKUA: Aye.

22 MR. ORODENER: Commissioner Biga?

23 COMMISSIONER BIGA: Yes.

24 MR. ORODENER: Chair McDonald?

25 VICE CHAIR McDONALD: Yes.

1 MR. ORODENKER: Mr. Chair, the motion
2 passes unanimously.

3 VICE CHAIR McDONALD: Thanks,
4 Mr. Orodenker. Thank you, Parties, for your time in
5 joining us in this brief session. I guess the next
6 item on the agenda which we had planned to discuss,
7 the LUC administrative rules revision, my
8 understanding is there have been some delays with some
9 of the responses from the agencies that Mr. Orodenker
10 can get into.

11 MR. ORODENKER: Yes, Mr. Chair. Thank you.
12 We had originally proposed further discussion on the
13 LUC administrative rules for this meeting. However,
14 some of the agencies who we are discussing the rule
15 amendments with have not responded to us as yet. No
16 names mentioned. (Laughter). We would request that
17 this be deferred until the next meeting.

18 VICE CHAIR McDONALD: Thank you,
19 Mr. Orodenker. Any other comments, questions from
20 Office of Planning or Commissioners? (no response)
21 Great. We stand adjourned. Thank you.

22
23 (The proceedings were adjourned at 10:06 a.m.)

24 --oo00oo--
25

C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State
of Hawai'i, do hereby certify;

That I was acting as court reporter in the
foregoing LUC matter on the 10th day of January
2013;

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_____2013

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