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LAND USE COMMISSION

STATE OF HAWAI'I

ACTION)
DR08-36 KO OLINA DEVELOPMENT LLC)
_____)

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 9:10 a.m. on January 24, 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:

RONALD HELLER, VICE CHAIR
CHAD McDONALD, VICE CHAIR
SHELDON R. BIGA
THOMAS CONTRADES
LANCE M. INOUE
ERNEST MATSUMURA
NICHOLAS W. TEVES, JR.

EXECUTIVE OFFICER: DAN ORODENKER
CHIEF CLERK: RILEY HAKODA
STAFF PLANNER: BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. DR08-36 Ko Olina Development, LLC

For the Petitioner: WYETH MATSUBARA, ESQ.
BENJAMIN MATSUBARA, ESQ.
KEN WILLIAMS, Ko Olina

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

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1 VICE CHAIR HELLER: Let's call the meeting
2 to order. The first order of business is adoption of
3 minutes from the meeting of January 10, 2013. Does
4 anyone have a motion?

5 COMMISSIONER CONTRADES: So moved.

6 COMMISSIONER INOUE: Second.

7 VICE CHAIR HELLER: It's been moved and
8 seconded. Any comments? If not, call for a vote.
9 All in favor say aye.

10 COMMISSIONERS: "Aye".

11 VICE CHAIR HELLER: Any opposed? (no
12 response) Minutes are adopted, Mr. Orodenger, would
13 you please brief us on the meeting schedule.

14 MR. ORODENER: Thank you, Mr. Chair.
15 February 7th, Thursday we're scheduled to be on Maui
16 for the Ka'ono'ulu Ranch oral argument and
17 decision-making Order to Show Cause.

18 On February 8th we're scheduled to be on
19 Kaua'i for Important Agricultural Lands Petition and
20 site visit at 10:00 a.m. Hearing to follow. That
21 will be in Lihue at the state building.

22 On February 21st to the 22nd we'll be on
23 Maui again, Waiko Industrial Investment, LLC commence
24 the hearings on that; and West Maui Land Motion for
25 Reconsideration.

1 March 7th and 8th we will continue with the
2 Waiko Industrial Investment, LLC hearings on Maui and
3 Ka'ono'ulu Ranch Adoption of Order.

4 VICE CHAIR HELLER: Thank you. Next item
5 of business is an action meeting on Docket No. DR08-36
6 Ko Olina Development Company to receive a continued
7 status report from Petitioner and take appropriate
8 action, if any.

9 Will the parties please identify themselves
10 for the record.

11 MR. WYETH MATSUBARA: Good morning, Chair
12 Heller and Commissioners. Wyeth Matsubara along with
13 Ben Matsubara on behalf of Ko Olina Development.
14 Sitting to my right is Ken Williams of Ko Olina.

15 VICE CHAIR HELLER: Thank you.

16 (Mr. Yee approaching counsel table)

17 VICE CHAIR HELLER: We were just having the
18 parties identify themselves for the record.

19 (Laughter)

20 MR. YEE: Deputy Attorney General Bryan Yee
21 on behalf of the Office of Planning. And I'm alone
22 apparently. And Rodney Funakoshi is behind me.

23 VICE CHAIR HELLER: Let me update the
24 record. On August 28, 2009 the Commission met and
25 received Petitioner's written and oral status report.

1 From December 2009 'til December 14, 2012 the
2 Commission received 13 quarterly status reports from
3 Petitioner.

4 On January 18, 2013 the Commission received
5 Petitioner's Boat Launch Supplement to its Thirteen
6 Status Report filed on December 14, 2012.

7 Let me briefly describe our procedure for
8 today on this docket. First, I will call for those
9 individuals desiring to provide public testimony to
10 identify themselves. Also such individuals will be
11 called in turn to our witness box where they will
12 provide their testimony.

13 After completion of the public testimony
14 the Commission will ask the Petitioner to provide any
15 comments relevant to past quarterly reports and
16 supplemental status report filed on January 17, 2013.

17 After Petitioner's presentation we will
18 receive any comments from the State Office of
19 Planning. Is there anyone in the audience who desires
20 to provide public testimony at this time? Do we have
21 signups?

22 MR. ORODENKER: Yes, we do, Mr. Chair.
23 Warren Von Arnswaldt followed by Clayton Chang.

24 VICE CHAIR HELLER: Before we swear you in
25 I should probably put this on the record. I've noted

1 in previous meetings but not sure I've done it on the
2 record of this docket, that I'm representing the
3 Association of Apartment Owners of Beach Villas at Ko
4 Olina in an action against Ko Olina Community
5 Association. If anyone has any issues or problems
6 with me presiding over this meeting you should raise
7 those now.

8 MR. YEE: No concerns.

9 VICE CHAIR HELLER: In that case I'll ask
10 you to swear or affirm the testimony you're about to
11 give will be the truth.

12 WARREN VON ARNSWALDT
13 Being first duly sworn to tell the truth, was examined
14 and testified as follows:

15 THE WITNESS: I do.

16 VICE CHAIR HELLER: Please state your name
17 and address for the record.

18 THE WITNESS: Warren Von Arnswaldt. I live
19 at 92-755 Palailai Street in Makakilo.

20 VICE CHAIR HELLER: Thank you. Please
21 proceed.

22 THE WITNESS: I gave the Commissioners a
23 copy of what most of what I'm concerned about. To
24 start off: We come before you to better inform you as
25 to the so-called program, progress of the Ko Olina

1 boat ramp. The ramp was supposed to have been
2 completed by April of this year. That's according to
3 the schedule put out by Ko Olina. As for their
4 attachment A that they sent out, if you don't have
5 this statement you can't even read the dates they put
6 on.

7 It's also on the December quarterly report
8 with a revised schedule. The revised schedule is
9 dated. This one is not dated. So we're presuming
10 this thing was made out in July of 2009 and would be
11 following this -- this schedule would be following
12 from them. Apparently it's not starting until
13 September of '09 with their revised schedule.

14 Okay. Granted, they gave timelines for
15 permitting and everything. Now the DOAP with the
16 Corps of Engineers in permitting has gone far beyond
17 what was expected. It was expected to be one year.
18 Now it's 2 years plus already. There's no permitting
19 for the development of the boat ramps.

20 There's other things that were not done
21 that coincide with the Corps of Engineers permitting.
22 There was a water quality certificate, your CZM, your
23 Coastal Zone Management. All those things have to be
24 taken care of before we even look at an Army Corps of
25 Engineers.

1 I didn't put it in your notice but they
2 also needed a 2-lane approval from the Coast Guard or
3 from the military. That was submitted in August of
4 2011. That's almost one year after the DOAP was
5 submitted. That wasn't approved until April of 2011.
6 That was all right. It only took a short while.
7 Approved on 8/22 submitted in four, that's only 4
8 months. We get to the additional Coastal Zone
9 Management, that was submitted and completed in March
10 of 2020 -- ah, 2012. That's way after the permit was
11 even applied for.

12 And water quality control took another 20
13 months for them to approve that from September of 2010
14 until May of 2012. All these things had something to
15 do with the Corps of Engineers. I blame the Corps of
16 Engineers on this, which you folks have no
17 jurisdiction over.

18 So it all has to do with their project
19 manager. I approached him on September 19 soon after
20 the lawyers had put out the last, September quarterly
21 report. They were concerned about the DOAP not being
22 approved yet. I contacted Corps of Engineers. I was
23 lied to by the project manager. All the things he
24 said was going on weren't going on at all. He was
25 making no consultations with NOAA or anything. And he

1 specifically said that NOAA was holding up the whole
2 process that had to do with endangered species and the
3 pile driving. That had nothing to even do with it.
4 But he never even talked to NOAA about it. I got in
5 contact -- I couldn't get ahold of him for two months.

6 Finally in November I talked to his
7 supervisor. I found out that they weren't aware of
8 all this. They had an emergency meeting. What I told
9 them and from what Mr. Morioka, another boating
10 friend, he contacted Representative Colleen Hanabusa's
11 office. She sent a legal representative over there to
12 find out what was going on with the permitting.

13 It didn't take one day when this review
14 from the Corps of Engineers came out in the December
15 quarterly report that Mr. Matsubara provided you.
16 That's all, all of those enclosures got to do with
17 permitting.

18 If you look into those permitting things
19 there's some section in there that I can't, I have no
20 explanation for. And the explanation given by DOD
21 doesn't agree with me. When they submit their
22 permitting to Corps of Engineers, all that's
23 represented in their enclosures I think is under
24 enclosure 3 if you got your December thing. There's
25 stipulations as far as what Ko Oline is supposed to

1 do, what the designs are for that area. The designs
2 were submitted. It was finished in August of 2010
3 just before their filing in September of 2010.

4 Now, in their scheduling enclosure 2 they
5 say that they have four piles to be driven. It asked
6 for a date when those piles were going to be driven.
7 The date given them was February of 2013.

8 Now, previously they said March or April, I
9 don't know which date, was supposed to be the opening
10 date of the marina.

11 Now, if you put down "pile driving February
12 of 2013" there's no way you're gonna have a boat ramp
13 the following month. That's the beginning of your
14 construction there. NOAA so far, I'm presuming, has
15 not gotten any consultation yet from the Department
16 of -- Corps of Engineers. I talked to Watanabe again.
17 He says the permitting will be done in 2 weeks at the
18 least. He doesn't know how much longer after that.

19 Someone else calls him he finds out they
20 said, "Oh, no he was misrepresented." He said the
21 consultations will not be out until two weeks. Now,
22 NOAA has been waiting for this consultation since
23 September when I contacted it. They tried to contact
24 him about it.

25 So there's another -- I don't know why all

1 this delays are in there, but I don't know if Ko Olina
2 has anything to do with this or not.

3 But if they put in a starting date of
4 February '13 it seemed like they not concerned about
5 the permitting until that time.

6 When we started this hearing, fact-finding
7 and everything, Conclusion of Law and everything was
8 completed in different November of '08. At that time
9 we stipulated that we wanted the old ramp open while
10 they were building the new one. They specifically
11 said, "No. That area is for future development."

12 The Board didn't go along with us at that
13 time. I think they should have closed down any other
14 permitting for that area until the ramp was put in.
15 They could have opened up that boat ramp and used it.

16 They just went in there and dug the asphalt
17 at the beginning of the ramp up and then turned
18 everybody else away. They opened up the ramp in 2000.
19 They closed it in 2005. That was one month after they
20 had the okay from Phoenician and Marisco for the use
21 of their dry dock facility for a replacement boat ramp
22 which they were found illegally not to do. It was
23 supposed -- the ramp was supposed to be, stayed in the
24 marine where it was previously expected.

25 Now, when you look back into your other

1 files you find that Ko Olina was already in
2 communications with Marisco for the use of their ramp
3 there in 2000, the same year that they opened up the
4 ramp at Ko Olina.

5 They would not even have opened the ramp in
6 Ko Olina in June of 2000 if it wasn't for the fact
7 that the Department of Planning required them to open
8 up the ramp before they would get any further
9 permitting to build their clubhouse.

10 But it shows, it shows a trend that Ko
11 Olina is not very keen about public access to their
12 property out there. They didn't want us in there in
13 the first place. They got us out of there as soon as
14 they could. They're saying this Project has been
15 going on longer than it should have. You have a big
16 conglomerate, big Aulani Resort out there, which
17 wasn't even started to be building when this thing was
18 decided upon in November of 2000.

19 Now you have a big resort over there that's
20 finished, operational, making plenty of money for them
21 over there, but the small little boat ramp is still on
22 the table. That's all I have to say.

23 VICE CHAIR HELLER: Thank you. Parties,
24 any questions for this witness?

25 MR. WYETH MATSUBARA: No questions.

1 MR. YEE: No questions.

2 VICE CHAIR HELLER: Commissioners, any
3 questions? Thank you. Who do we have next?

4 MR. ORODENKER: Creighton Chang.

5 CREIGHTON CHANG

6 Being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: Yes.

9 VICE CHAIR HELLER: Please state your name
10 and address for the record.

11 THE WITNESS: My name is Creighton Chang.
12 My address is 94-307 Loa'a Street in Waipahu.

13 VICE CHAIR HELLER: Go ahead, please.

14 THE WITNESS: Chairman Heller, Members of
15 the Commission, I'm here to brief the Commission on
16 the fishermen's perspective regarding the current
17 timeline that's occurring.

18 The boat ramp issue started in February of
19 2005. At that time Ko Olina Resort closed the
20 existing boat ramp and advised the permittees to use
21 the replacement ramp at Phoenicians. After looking at
22 the ramp at Phoenicians it was obvious this ramp did
23 not meet the requirements of the Findings of Fact in
24 addition to other construction and safety issues.

25 From that time we've met on various

1 occasions at these hearings to give the Commission
2 the fishermen's perspective regarding what the problem
3 was with all its supporting documents. In the
4 October 2008 meeting the Commission ruled in the
5 fishermen's favor and ordered Ko Olina to build a new
6 boat ramp open to the public inside the marina.

7 This ruling was accomplished in 3 years and
8 8 months which was a victory for the fishermen. A
9 timeframe was given 6 months to come up with designs
10 and schedule for the completion of the ramp. Ko Olina
11 requested and was granted timeframe of 43 months to
12 complete the boat ramp.

13 Like Warren said April is the day that this
14 ramp supposed to be open. This was allowed as a very
15 conservative timeframe understanding the difficulty
16 getting the permits and that the ramp would be
17 constructed by the end of the 43rd month.

18 As I currently understand the situation the
19 permit is still with the Department of Army. It has
20 been there for the last 2 years. Who is following
21 through with this? It is clear that no one is because
22 Ko Olina wants this Project delayed. As I said before
23 in these hearings, I hope this Project gets on track
24 and built before I'm dead and buried.

25 To put this in perspective, Aulani, which

1 is over a hundred million dollars, has been designed,
2 bid, built and occupied faster than this boat ramp.
3 This is a situation where we the fishermen have won a
4 major battle and end up losing the war.

5 We fishermen do not see any progress to the
6 order to build a new boat ramp inside the marina. I
7 implore, you Commissioners to enforce a reasonable
8 timeframe to get this ramp completed. As I stated
9 before, the old ramp is there. Fixing it and
10 reopening should be done immediately.

11 Opening the old ramp is the simplest, less
12 costly, safest solution and should be done in the
13 interim until a new facility is constructed. This
14 would give Ko Olina incentive to complete the new ramp
15 in an expeditious manner rather than take 4 years to
16 complete a new one.

17 Please keep in mind that the public has
18 been denied their access rights to use the facility.
19 This has been brought up time and time before and yet
20 the fishermen are still being denied. What gives Ko
21 Olina the right to deny the public access to a
22 facility when they're in clear violation of the
23 finding of fact?

24 How long more will it take? It's coming up
25 on 8 years since the public has been denied these

1 access rights. Continued procrastination by Ko Olin
2 will continue since there are no consequences for
3 their non-compliance. Commissioners, please help the
4 fishermen gain back what has been clearly taken away
5 from them, their public access rights. Thank you.

6 VICE CHAIR HELLER: Parties, any questions?
7 Commissioners, any questions? Thank you. Is there
8 anyone else present who wants to provide public
9 testimony? Please come forward.

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

13 THE WITNESS: I do.

14 VICE CHAIR HELLER: Please state your name
15 and address for the record.

16 THE WITNESS: My name is Ed Watamura.
17 Address 2015 Leiloki Drive, Honolulu, Hawai'i.

18 VICE CHAIR HELLER: Go ahead.

19 THE WITNESS: I'm representing the Waialua
20 Boat Club, president. We've been involved in this, I
21 guess, I want to call it a fiasco at this point
22 because we've been denied public access, as Craig
23 explained. I'm not going to through the timelines and
24 that's all. That's just going to be repeating.

25 But, however, I want to talk about a

1 statement that was made to us in 2009 by this
2 Commission that they would "hold Ko Olina's feet to
3 the fire" on this. And we entrusted this Commission
4 to do such, "hold their feet to the fire" to get this
5 Project done. And it is apparent that this is not
6 happening. So I just urge you to do what we entrusted
7 you to do. That is to "hold their feet to the fire".
8 Thank you.

9 VICE CHAIR HELLER: Okay. Parties, any
10 questions?

11 MR. WYETH MATSUBARA: No questions.

12 VICE CHAIR HELLER: Commissioners, any
13 questions? Is there anyone else present who wants to
14 provide public testimony. Please step forward.

15 ROY MORIOKA
16 being first duly sworn to tell the truth, was examined
17 and testified as follows:

18 THE WITNESS: I do.

19 VICE CHAIR HELLER: Please state your name,
20 and address for the record.

21 THE WITNESS: My name is Roy Morioka.
22 Residence is 1190-A Iki Place, I-k-i Place, Honolulu,
23 Hawai'i.

24 VICE CHAIR HELLER: Go ahead.

25 THE WITNESS: Gentlemen and lady, I'm for

1 the concerns and testimony provided by the previous
2 testifiers. I respectfully seek your support to
3 better oversee this DR08-36 Ko Olina Development, LLC
4 and its progress. The U.S. Army Corps of Engineers
5 has commented that they're busy. A recent
6 communication from them indicates that the State
7 Office of Historic Preservation has still not been
8 contacted with regard to the parking associated with
9 this launching ramp.

10 We've had 2 years to have all of these
11 things progress. And yet it hasn't. It's a domino
12 kind of thing. Step by step rather than in parallel.
13 It befuddles me as to how our Administration can
14 function in this fashion. This concern rises to my
15 personal opinion that Ko Olina is simply going through
16 a minimalist approach in this whole matter.

17 If it were the Aulani Project I'd guarantee
18 they'd be on the doorstep of the U.S. Army Corps of
19 Engineers. They would be on the doorstep of SHPD to
20 ensure that all of the i's were dotted and the t's
21 were crossed to ensure that the deadlines assured us
22 would have been met.

23 As the president had indicated, the
24 Commission, perhaps not this body, but the Commission
25 offered the community, the public boaters, their

1 support. And I seek your, this new Commission, your
2 support in holding Ko Olina accountable and following
3 through. If you look at the chronology of events that
4 have occurred, every quarter you get a report from Ko
5 Olina, 13 of 'em, on track, on track, on track, but no
6 inquiries. No one on the Land Use Commission queries
7 as to what "on track" means.

8 We've taken extraordinary efforts to find
9 out what's happening. We've been lied to. And most
10 recently just a couple of days ago we were lied to by
11 Mr. Watanabe at the U.S. Army Corps of Engineers,
12 which prompted me to send an e-mail to NOAA which
13 quickly respond -- or was responded to by the U.S.
14 Army Corps saying, "Oh, we haven't sent you any
15 materials yet," which was promised us to be sent
16 December 7, 2012. Today is January 2013.

17 And we still have not had that paperwork
18 promised to be delivered on December 7th to be in the
19 hands of NOAA Fisheries.

20 And yet the SHPD issue has not even been
21 addressed. We are very concerned. And we look to you
22 Commissioners to truly hold Ko Olina Development
23 Corporation, LLC accountable and perform the due
24 diligence that we the public seek from you. Thank you
25 very much.

1 VICE CHAIR HELLER: Parties, any questions?
2 Commissioners, any questions? Thank you.

3 THE WITNESS: Thank you.

4 VICE CHAIR HELLER: Is there anyone else
5 present wishing to provide public testimony? Come
6 forward.

7 RICHARD YAMASAKI
8 being first duly sworn to tell the truth, was examined
9 and testified as follows:

10 THE WITNESS: Yes.

11 VICE CHAIR HELLER: Please state your name
12 and address for the record.

13 THE WITNESS: My name is Richard Yamasaki.
14 I live at 98-738 Na Ali'i Street in Aiea. I represent
15 the Reel Fishing Club who although we -- I cannot
16 bring that many members because most of the members
17 are working this morning. I'm now retired so I can
18 participate.

19 Last time I testified in regards to this Ko
20 Olina problem was approximately 2 years ago. And at
21 that hearing I testified that I was somewhat involved
22 with Mr. Horita when Ko Olina was still bushes out
23 there, and Herbert Horita was trying to get the
24 permits for Ko Olina to be constructed.

25 And there were numerous hearings out in the

1 Wai'anāe area. And I remember one hearing in
2 particular was at the old Nanaikapono School where
3 there were many Hawaiian activists from the Waianāe
4 area stating that they would like to see various
5 things being constructed.

6 And one of them was access to the Ko Olina
7 Harbor which the Ko Olina Development at that time was
8 proposing that they would extend the deep draft harbor
9 to include a marina.

10 Some of the folks out there asked for
11 public access so they could fish outside of the Ko
12 Olina area. Now, I cannot remember all the details,
13 but I do remember that several things were granted.
14 One of them was the public harbor, not public harbor
15 but public access to the Ko Olina Marina.

16 Then there was a walkway that I remember
17 they had to construct. And also to allow the people
18 to have access to the beach area in one of the coves.

19 Now, it's been about, what, 7 years ago now
20 that the public was denied access to the boat ramp
21 which I used to partake of. I had a boat. And I used
22 to be able to launch there. I remember filling out
23 all the necessary forms, insurance papers and
24 everything.

25 Then one day it was closed to us. And we

1 were told that this was temporary and that it was --
2 another boat ramp would be constructed or have, allow
3 the boaters access to the Ko Olina Marina. I don't
4 have all my dates, but I believe it was at least 7
5 years ago. The last time I testified I asked the Ko
6 Olina people, "Well, why don't you allow the fishermen
7 to use the boat ramp?"

8 Now, they broke up the boat ramp so there's
9 no access. We were told, "Wait. Another ramp is
10 going to be forthcoming."

11 Well, we waited and waited and waited, but
12 nothing. Okay. Now, this was -- this public boat
13 ramp was put in. It was a mandate that that was part
14 of the process that Horita had to comply with. Now
15 Horita is out of the picture. But I believe that the
16 new owner that Ko Olina Development at present are
17 still supposed to comply with giving access to the
18 fishermen for the boat ramp, but that's been denied to
19 us for over seven years now.

20 Now, I don't know all the reasons why,
21 delay on this, delay on that, but I stated that if
22 it's gonna to take seven years, if we had known that,
23 at least make that ramp accessible.

24 Now, I don't know how come Ko Olina had the
25 permission to just stop the public from using it, to

1 demolish the existing boat ramp. And nothing was
2 given to the public. I don't know of any other
3 situation that that's possible to, especially to
4 comply with the original, the original permits.

5 'Cause Ko Olina, the permits that were
6 granted for the regional Ko Olina was predicated on
7 all these various factors: The walkway, the access to
8 the beach, and the public access to boaters.

9 I don't know if the access to the people
10 and the cove for swimming is still active or not. I
11 don't know that. But I do know that the public boat
12 ramp was demolished approximately seven years ago.

13 And although they say that you can use the
14 Phoenician area, the Phoenician area had nothing to do
15 with the original Ko Olina permit. If that was the
16 case then Horita probably didn't have to put in the
17 boat ramp. They could say, "Well you can use the
18 Phoenician area."

19 But being as it is I would like to have the
20 Commission press to have Ko Olina comply with the
21 original permit or what you call -- the permit
22 requirements that a public boat ramp be accessible to
23 the fishermen.

24 And that's what we want to see. But like I
25 said we've been patiently waiting but I think seven

1 years is more than enough time. And I think the
2 public has been denied access to the boat ramp which
3 we should not have been denied all this time. Thank
4 you.

5 VICE CHAIR HELLER: Parties, any questions?
6 Commissioners, any questions?

7 COMMISSIONER McDONALD: I have a quick
8 question. Mr. Yamasaki, what's the reason -- I got to
9 apologize. I'm not real familiar with this
10 Phoenician's boat ramp. What's the reason why the
11 local boaters, the local fishermen can't utilize the
12 Phoenician's boat ramp?

13 THE WITNESS: What? I'm sorry. I don't
14 understand that.

15 COMMISSIONER McDONALD: You as well as the
16 previous testifiers identified this Phoenician's boat
17 ramp.

18 THE WITNESS: Yes.

19 COMMISSIONER McDONALD: And you folks are
20 saying it's inadequate or insufficient.

21 THE WITNESS: In my opinion, yes. I have
22 personally gone down to the Phoenician boat ramp. In
23 fact it was on the news many years ago. The
24 Phoenician boat ramp is very, very difficult to launch
25 a trailered boat off. The Phoenician boat ramp is

1 really a -- it's what's called a pullout for big
2 vessels. You bring a crane in, they drive in, they
3 hoist the boat out and take it to a dry dock. But
4 there's no safe way that boaters can get in and out.

5 Now, a public boat ramp should have safety
6 features. You should have a way to tie your boat up
7 to and get out of the boat. Phoenician boat ramp
8 doesn't have any of that. You're going to have to
9 have someone drive your boat in and drive your boat
10 out.

11 No one can get in, even someone has no
12 handicaps, you cannot climb up the ramps, the steep
13 walls. There's no, whachu call walkway areas where
14 you can bring your boat up and tie down and exit, get
15 up. There's no way you can do that.

16 So certain types of vessels may be able to
17 exit that area and launch, but it's not safe at all.
18 There's also a big surge there. The surge will pitch
19 all the way up so it's very, very difficult.

20 So that's why the Phoenician boat ramp is
21 not sufficient. It was on the news. There were a lot
22 of fishermen that tried to bring their boats in to
23 televise it to see how difficult it is to get a vessel
24 in and out of there.

25 COMMISSIONER McDONALD: Thank you.

1 VICE CHAIR HELLER: Any other questions,
2 Commissioners?

3 AUDIENCE MEMBER: Chair, can I say
4 something?

5 VICE CHAIR HELLER: Public testimony is one
6 time. Is there anyone else who has not testified
7 previously and wants to provide public testimony?
8 Okay. Thank you. Will Ko Olina Development please go
9 ahead and make whatever presentation you wish.

10 MR. WYETH MATSUBARA: Chair, Commissioners,
11 appreciate the time. I'll be brief. The main
12 objective of this report today is to make it
13 absolutely clear that KOD, Ko Olina Development, is
14 firmly committed to constructing and completing the
15 boat launch ramp in the marina as soon as possible.

16 Recently we filed some status reports with
17 the Commission. We filed on October 19, 2012. The
18 LUC sent us a letter regarding concerns, public
19 concerns regarding the status and progress of the boat
20 ramp. We replied with a letter. We also attached a
21 letter in response to those public concerns and
22 addressing those public concerns as to the diligent
23 efforts and the amount of effort that went into
24 addressing and continuing our work towards completing
25 the boat ramp.

1 December 14 we filed our 13th status report
2 which provided a further status update of our
3 progress. Recently on January 17th we provided a
4 supplement to our 13th status report regarding the
5 status of the boat ramp and Ko Olina Development's
6 efforts in that regard.

7 One of the main things we want to assure
8 you is that any assumption that Ko Olina has not
9 worked diligently or has not kept in contact with the
10 permitting authorities is absolutely incorrect. We
11 attached in our supplemental to our 13th as Exhibit 4,
12 39 e-mails that we have done from our consultant with
13 the Army Corps of Engineers and other permitting
14 authorities.

15 Over 39 e-mails and following up: What's
16 the status? What can we do? What needs to be done?
17 Any time anything was asked of us, for instance,
18 through NOAA, through the Army Corps of Engineers
19 asked for an acoustic test. Our engineer provided
20 that, a response to that within five working days.
21 Our response time is absolutely quick.

22 Our consultant is top of the line. He's
23 had 43 years of engineering experience in marine work.
24 And in the last seven years alone he's completed 15
25 Department of Army permits including two currently

1 that's going on this.

2 I mean this is the guy. Ko Olina did not
3 hold back in hiring consultants to ensure as best as
4 possible, as best as reasonably possible that we get
5 this boat ramp in that marina as quickly as possible.

6 We filed all the permits that were able to
7 file on time. It has to be understood that while we
8 can have control of when we file and what we file, we
9 have no control over how long it takes the permitting
10 authorities to review and process our permits.

11 You heard testimony today that it seems
12 like after we provide information that some of the
13 frustrations are more towards the permitting
14 authority. I can assure you all of this that the
15 frustrations of the boaters have towards permitting
16 authorities is the same on our side.

17 I cannot begin to express the amount of
18 frustration that I've felt for my clients and
19 consultants during this process. But it is a process.
20 It is what is required. It is what we're obligated to
21 do and what we continue to do. We will continue to
22 work with them.

23 Obviously the current timeframes that we
24 propose based on our best estimates have not been met.
25 We never once promised that we'd be able to complete

1 the boat ramp at this specific time. And I know the
2 Commission in their wisdom never requires any due
3 date, specific due date especially when there's
4 permitting involved that is beyond the control of the
5 Applicant.

6 Currently the status is as some of the
7 public boaters have mentioned, that on November 30th
8 Department of Army submitted a Coordination Notice and
9 Review. This review was sent to 14 federal, state and
10 county agencies requesting that any comments be
11 returned by December 7th.

12 On December 7th last month, we received two
13 comments according to the Department of Army Corps.
14 So as we know now there are two further followups that
15 need to be done. One was from NOAA, the National
16 Oceanic and Atmospheric Administration. The other one
17 was from the State Historic Preservation Division,
18 SHPD.

19 The Department of Army then issued to us
20 these comment -- the full comment letters from these
21 two entities to us on December 12. But before even
22 waiting to receive the full comments on December 12,
23 Ko Olina went ahead and retained two well-qualified
24 consultants to address any and all concerns from NOAA
25 and from SHPD.

1 In terms of SHPD we hired Cultural Surveys
2 analyst Hal Hammatt who's done countless cultural
3 surveys in front of this Land Use Commission.

4 And to address any of the NOAA issues,
5 we've hired AECOS who's done countless numbers of
6 representations and permitting with NOAA as well as
7 with the Department of Army Corps.

8 So Ko Olina without even waiting to get the
9 final Notices of Conditions and Requirements already
10 retained two consultants who have been working already
11 to address these concerns in an effort to help push
12 this, push this forward.

13 So based on some comments we received
14 yesterday as well from the Army Corps they're looking
15 to issue the Department of Army permit within the next
16 two to four weeks. There will be at least two special
17 conditions of which we know one. NOAA would like us
18 to do an essential fish habitat review.

19 And SHPD wants us to do a cultural survey
20 review for our land side parking lot assessment. As
21 I've said already, both consultants are working on
22 already providing what documentation we need, what
23 answers NOAA and SHPD need and present it to them.

24 So at this time that's all the information
25 I have on the current status of this permit. But this

1 DOA permit obviously went beyond what we expected.
2 Just to look at the e-mails you see our consultant
3 following up with these guys. I think it's impossible
4 for them to put it under the table. I mean there's no
5 way they could have.

6 Our guys, they documented written e-mails
7 that we've printed out and provided to show a pretty
8 diligent effort on our side to follow up. Constantly
9 seeking updates, constantly seeking requests if
10 there's anything we need to do, let's do it. And if
11 there were requests for us to follow up, I mean he
12 responded in a quick, quick manner.

13 I think that our consultant has gone above
14 and beyond what's expected in this process. It's just
15 unfortunate and frustrating on both sides as to what's
16 going on. We're open to questions if there's any from
17 the Commission.

18 VICE CHAIR HELLER: Commissioners, any
19 questions? Commissioner McDonald.

20 COMMISSIONER McDONALD: Thank you,
21 Mr. Matsubara. You mentioned anticipating pulling the
22 Corp. permit in two to four weeks. That directly came
23 from FARLEY?

24 MR. WYETH MATSUBARA: This came from my
25 consultant. My consultant contacted FARLEY, that's

1 correct.

2 COMMISSIONER McDONALD: I can sympathize
3 with these processes and understand the frustration
4 that your client as well as these boaters have with
5 regards to the Corps permit process. I've been
6 personally involved with the permit process. And I do
7 understand it can get frustrating.

8 I also understand there's a bunch of
9 federal agencies that are involved with the review of
10 the permit. So your statement of a 2 to 4-week
11 approval date, I'm wondering if you have any idea as
12 far as what remaining federal agencies you folks are
13 awaiting comments from.

14 MR. WYETH MATSUBARA: Anticipating,
15 correct. I appreciate that. Thank you for
16 understanding. Every time I try to be open and
17 explain things to whoever it may be, we always get it
18 as a commitment or statement. And it's unfortunate
19 because I just don't have that ability to do that.
20 I'm trying to provide information.

21 From what I understand that November 30th
22 expedited review letter that was sent out, that made a
23 requirement to those other 14 agencies to say
24 something now or forget it.

25 My understanding is that that process has

1 been vetted. I can't guarantee this but we only
2 expect that the current NOAA comments and SHPD
3 comments are the two agencies, remaining agencies that
4 will need follow up.

5 So when I represented that FARLEY expects
6 or the Department of Army expects to issue us a permit
7 in two to four weeks, the permit will be issued with
8 special conditions. So the permit will say: This
9 permit's in favor of Ko Olina with these two special
10 conditions.

11 And the special conditions I'm assuming are
12 going to require follow up before you can actually
13 start construction. But like I said we're starting to
14 address those issues now so that we can probably
15 shorten the wait time.

16 I did mention our 13th and 12th annual
17 reports. We've already filed our building permits
18 with the county. Okay. So that's ahead of schedule.
19 Normally you'd wait to find out what, if any,
20 requirements that the Department of Army has in case
21 it needs to adjust or change your application with
22 DPP. But we consulted DPP, told them our situation.
23 Said, "We're just going to file this already. If we
24 need to make changes can we amend it." They agreed to
25 allows us to expedite amendments if necessary.

1 We filed our building permit application
2 already.

3 COMMISSIONER McDONALD: Any comments
4 received from U.S. Fish and Wildlife?

5 MR. WYETH MATSUBARA: Well, the process
6 would go from them to the Department of Army and then
7 to us. And at this time we have not received any
8 notice from the Department of Fish and Wildlife
9 Services. There were some issues through NOAA
10 regarding some kind of acoustic concerns regarding
11 pile driving.

12 Again, this is just my understanding. My
13 understanding is that based upon our consultant's
14 workup about what he was going to do in mitigation,
15 and in consultation with the Department of Army,
16 they've told NOAA there's no need to address any
17 acoustical Endangered Species Act issues. My
18 understanding is that NOAA is agreeing to that as
19 well.

20 So that's my understanding. I can't commit
21 to that but that is my hope and that is what we
22 expect.

23 COMMISSIONER McDONALD: No, I understand
24 the process as far as your consultant going through
25 the Army Corps for the necessary purview from the

1 various agencies. I do have a concern with U.S. Fish
2 and Wildlife in particular based, again, upon my past
3 experience. Has there been any type of outreach to
4 that agency beyond the Corps permit process?

5 MR. WYETH MATSUBARA: No. Our consultant
6 is pretty keen on keeping it, his direct line of
7 communication through FARLEY. I think, yeah as far as
8 him specifically outreaching other agencies he does
9 not normally do that.

10 COMMISSIONER McDONALD: So as far as
11 construction, okay, the permit -- or we're hoping
12 that -- you folks are hoping that the permit gets
13 issued within the next two to four weeks.

14 MR. WYETH MATSUBARA: Correct.

15 COMMISSIONER McDONALD: Are there any
16 mitigation measures that would need to be implemented
17 prior to the actual start of construction?

18 MR. WYETH MATSUBARA: Yes. SHPD is going
19 to require us to do a cultural survey analysis first.

20 COMMISSIONER McDONALD: Has that been
21 initiated?

22 MR. WYETH MATSUBARA: Well, we've retained
23 Hal Hammatt, Cultural Surveys. And they have --
24 they've already been given him -- we retained him,
25 given the notice to proceed. My understanding is that

1 we've already given him our prior EIS's. There's
2 multiple EIS's for this entire Project when it was
3 first approved. So that's a good place to start.

4 So he's reviewing that now. He's going
5 through that process now. Our hope is that there's
6 been enough disturbance in that area already that
7 there will not be an issue but I cannot guarantee
8 that. So they're starting that process.

9 We're hoping that there will be nothing to
10 document and there will be a quick survey. But that's
11 something we can't guarantee until he actually gets on
12 the ground. But, yes, he has started that process.
13 We're not waiting for the permit to tell us we gotta
14 do these conditions. We're going ahead doing it.

15 COMMISSIONER McDONALD: Any issue with
16 coral mitigation?

17 MR. WYETH MATSUBARA: That's a great point.
18 Because I've been in discussions with people at DOBAR
19 and whatnot. Thank goodness that there are no coral
20 issues in the marina. That's another thing that could
21 hold up a project.

22 COMMISSIONER McDONALD: Thank you,
23 Mr. Matsubara.

24 MR. WYETH MATSUBARA: Thank you very much.

25 VICE CHAIR HELLER: Other questions?

1 Commissioner Biga.

2 COMMISSIONER BIGA : Good morning. Thank
3 you for coming and testifying. Listening to
4 everything, listening to the testifiers, I'm new to
5 this board. But it concerns me when we stop the
6 public from using access that they have a right to.

7 What would be Ko Olina's best guess,
8 because it's obviously not going to meet the deadline,
9 that this ramp would be actually done? It's a guess.
10 I'm not holding you to it. What do you think?

11 MR. WYETH MATSUBARA: It's very difficult.
12 I mean honestly, if you look for the e-mails, and I
13 pointed out in my last supplemental, that there was
14 indication from the Department of Army Corps that our
15 permit would be issued September 1st, 2011.

16 We have written representations from the
17 Department of Army that we'd get our permit by that
18 date because our consultant was saying, "Hey, look.
19 We've gotta file, we've gotta schedule, we gotta file
20 our DPP permits by September 1st, 2011. What's the
21 status?"

22 This was in early 2011. The Department of
23 Army said, "Oh, it should be done by September 2011."
24 That obviously did not occur.

25 So I mean it seems that we have some

1 indication that in four weeks we'll get it. But I
2 don't know the extent of what the cultural survey is
3 going to be. I don't know the extent of the essential
4 fish habitat. I'm hopeful that the essential fish
5 habitat will be minimal and that our consultants will
6 draft a response that's good enough that it will
7 expedite the matters.

8 But the whole start is going to be this,
9 for the Department of Army, will be based on what the
10 result is, further assessments by these other
11 consultants are gonna do. Honestly I knew the
12 question was gonna come up. I honestly tried to get
13 some best estimate. But at this date in January it's
14 too difficult for me to tell right now since things
15 are just in flux and in motion.

16 The other matters: We've already filed our
17 building permit, which I said. And it seems to be
18 processing fine. And right now it's within the NPDES
19 permit stage. So how long the NPDES permit stage goes
20 I don't know. But those are going to be the two
21 permitting processes that will determine when we can
22 start construction.

23 I can definitely put our best guess
24 estimates in our future status reports to give
25 everyone a better idea once I can kind of get my

1 handle on something.

2 COMMISSIONER BIGA : And you can understand
3 the frustration of the fishermen waiting over seven
4 years.

5 MR. WYETH MATSUBARA: Absolutely.

6 COMMISSIONER BIGA : I think my next
7 question would be: What would it take to open up the
8 old existing boat ramp?

9 MR. WYATT MATSUBARA: That's unacceptable
10 to us. This issue was raised in our Declaratory Order
11 hearing. We provided evidence and documents. We had
12 expert testimony provided, the reasons why we could
13 not open that up anymore: For liability reasons, for
14 permitting reasons and issues.

15 Any type of interim or other type of
16 provision was vetted and discussed in that hearing.
17 And the Declaratory Order and the Decision and Order
18 and the conditions that followed were the result of
19 those discussions and whatnot.

20 I understand it was the request for interim
21 solution to open up the original boat ramp was always
22 there, was always out there. We stated our reasons
23 during that hearing as to why we could not.

24 COMMISSIONER BIGA : You knew I had to ask
25 that question.

1 MR. WYETH MATSUBARA: I completely
2 understand, Commissioner.

3 COMMISSIONER BIGA : Thank you.

4 VICE CHAIR HELLER: Commissioners, anything
5 further?

6 COMMISSIONER McDONALD: One last follow up.

7 VICE CHAIR HELLER: Sure.

8 COMMISSIONER McDONALD: Knowing that you
9 folks have to do these additional studies, is it the
10 Corps' intent to issue a conditional permit pending
11 the outcome of these additional studies?

12 MR. WYETH MATSUBARA: Let me just say in
13 the moment and I can get corrected by my consultant,
14 my understanding is that the permit will be issued
15 with special conditions. My assumptions these special
16 conditions will require these things be followed up
17 with these other, with SHPD and NOAA prior to actual
18 construction can begin.

19 So that there will be a permit issued to us
20 with special conditions. And the special conditions
21 will have certain pre-requirements I guess, conditions
22 prior to us before we can proceed.

23 COMMISSIONER McDONALD: Proceed with
24 construction?

25 MR. WYETH MATSUBARA: Correct.

1 VICE CHAIR HELLER: OP?

2 MR. YEE: I'm not sure to what extent the
3 Commission has been oriented on the prior proceedings
4 in this case. So feel free to stop me if I -- I think
5 it's helpful, especially for those who have not been
6 involved in this case to understand.

7 Historically or what happened previously in
8 this case there was a district boundary amendment.
9 There was a condition to put in a boat ramp in the
10 marina. There was a dispute -- they did originally
11 put in a boat ramp -- there was a dispute apparently
12 between some of the nearby residents who complained
13 about the noise when the fishermen were coming back I
14 guess fairly late.

15 And there was a discussion between the
16 City, Ko Olina, and I think some of the boaters about
17 that when Ko Olina restricted the hours I think to
18 sunrise to sunset. And the boaters weren't happy
19 about that restriction.

20 So eventually the City facilitated an
21 agreement whereby Ko Olina moved the boat ramp to this
22 basically industrial area, the Phoenician boat ramp
23 that's been referred to. Phoenician boat ramp is a
24 pull in/pull out boat ramp. It's really not intended
25 for recreational boaters.

1 And the reason that's important is because
2 the wave action is significantly higher there. So
3 it's much more difficult to get in and out. The angle
4 or the slope that goes into the water I think is
5 different than you would normally find for other
6 recreational boat ramps.

7 So the boaters listed actual dangers from
8 the Phoenician boat ramp that -- and frankly it was
9 nowhere near as nice as you might imagine as Ko Olina
10 Harbor marina. Eventually -- and the LUC and the
11 Office of Planning was never involved in those
12 discussions.

13 So eventually it came to the attention of
14 the Land Use Commission which then held a hearing and
15 we basically agreed to resolve this through a
16 declaratory action. As you might imagine an Order to
17 Show Cause for reversion of an already developed area
18 was problematic. So we did a declaratory action in
19 that case. The LUC made a finding that yes the Order
20 required a boat ramp in the marina, in their actual
21 marina.

22 It was made clear at the time it was going
23 to take a long time to get that boat ramp built. I
24 mean the Petitioners were very clear about that. They
25 put out a projected schedule of 43 months for

1 construction.

2 And the Office of Planning at the time did
3 say: We understand it's going to take some time.

4 So the fact that it's taking a long time
5 was partially known at the time this was done. That
6 it would be this long we didn't fully appreciate
7 perhaps, but we've heard the reasons why.

8 To answer a couple of the questions about
9 the future, as you look at the 2009 schedule they
10 allow 18 months from the time the -- well, let's
11 backtrack.

12 There are five permitting requirements that
13 are listed in their schedule, their 2009 schedule. Of
14 those five the Department of the Army's permit and the
15 building permit are the two outstanding permits
16 required. And the building permit doesn't, according
17 to this schedule, doesn't begin until after the
18 Department of Army permit.

19 So starting from the building permit to the
20 completion of the construction is 18 months, so if you
21 wanted to have some general idea how long it's going
22 to take.

23 After the Department of Army issues their
24 building permit, the schedule provides for 18 months
25 of which six months is taken up by the building

1 permit. And the remaining year is taken up in actual
2 construction. There may be more things that are
3 complicating this but that's just what's in the
4 schedule.

5 As we move forward from today what will be
6 helpful to make clear, if not today then at least n
7 their annual -- not annual, the quarterly reports
8 would be, perhaps, a clear understanding what they
9 mean by "follow up".

10 So, for example, they said, "We need to
11 follow up with SHPD. We need to follow up with NOAA."
12 And it would be helpful to know does this followup
13 mean we're discussing with SHPD whether they are
14 correct in requiring an inventory survey? Or are we
15 following up with SHPD by doing an inventory survey
16 and submitting it to them?

17 And the same with NOAA. NOAA's talking
18 about essential fish habitat. They noted in their
19 latest quarterly report they were surprised by this
20 because the Department of Army had said, "This is not
21 an essential fish habitat."

22 So as you move forward with this in the
23 follow up you do perhaps with NOAA is the followup
24 going to be: "We're doing essential fish habitat
25 survey?" Or is the followup, "We're in discussions

1 with NOAA trying to convince them you do not need an
2 essential fish habitat survey"?

3 So we're just asking for further
4 clarification. It does appear, however, that if the
5 Department of Army is able to issue its permit then
6 presumably they can at least proceed with the building
7 permit stage. So at least there might be some time
8 gained in their 18-month schedule for that.

9 With that the Office of Planning does
10 understand the frustration. I think the frustration
11 is legitimate and sincere. We also understand the
12 problems that occur with permitting.

13 Apparently the biggest problem had been the
14 Department of Army not issuing the Notice. That was
15 at a very, frankly, a very long period sort of out of
16 the ordinary. But that's not something that can be
17 fixed at this point because the Army has issued its
18 Notice. So they did proceed from simply holding onto
19 the review of the permit application.

20 So at this point it doesn't appear to be
21 anything that can be done. Well, there's nothing I
22 can point to to specifically speed up the process
23 other than obviously continue with the quarterly
24 reports. That's all. Thank you.

25 VICE CHAIR HELLER: Commissioners, any

1 questions? Commissioners, what is your pleasure in
2 this matter?

3 COMMISSIONER TEVES: Mr. Chairman, I would
4 like to see another status report. We have open dates
5 in April and May. If it can happen in April I'd like
6 to have another status report to see where we are in
7 the permits.

8 VICE CHAIR HELLER: What's the date of our
9 April meeting?

10 MR. ORODENKER: We have April 4th and 5th
11 and April 18th-19th. The April 18th-19th meeting is
12 currently open.

13 VICE CHAIR HELLER: Would it be feasible to
14 file a supplemental status report for the April 18th-
15 19th meeting?

16 MR. WYETH MATSUBARA: Oh, yes, of course.
17 So this would just be a follow up status report
18 explaining where we are in progress.

19 VICE CHAIR HELLER: Right. Not replacing
20 the regular quarterly reports but just a supplement
21 for that meeting.

22 COMMISSIONER TEVES: I want them physically
23 here, not just filing the report so he can answer
24 questions from us.

25 VICE CHAIR HELLER: Is that making that in

1 the form of a motion?

2 COMMISSIONER TEVES: Yes.

3 VICE CHAIR HELLER: Is there a second?

4 COMMISSIONER BIGA : Second.

5 VICE CHAIR HELLER: Any discussion? Let's
6 call for the vote. The motion is to schedule a
7 follow-up session for the April 18th or 19th meeting
8 with a supplemental report to be provided and the
9 Petitioner to appear at that meeting to answer
10 questions.

11 MR. ORODENKER: Thank you, Mr. Chair. For
12 clarification the Movant was Commissioner Teves and
13 the second was Commissioner Biga. Thank you.
14 Commissioner Teves?

15 COMMISSIONER TEVES: Yes.

16 MR. ORODENKER: Commissioner Biga?

17 COMMISSIONER BIGA : Yes.

18 MR. ORODENKER: Commissioner Matsumura?

19 COMMISSIONER MATSUMURA: Yes.

20 MR. ORODENKER: Commissioner Inouye?

21 COMMISSIONER INOUE: Aye.

22 MR. ORODENKER: Commissioner McDonald?

23 COMMISSIONER McDONALD: Yes.

24 MR. ORODENKER: Commissioner Contrades?

25 COMMISSIONER CONTRADES: Yes.

1 MR. ORODENKER: Chair Heller?

2 VICE CHAIR HELLER: Yes.

3 MR. ORODENKER: Mr. Chair, the motion
4 passes unanimously.

5 VICE CHAIR HELLER: Thank you.
6 Commissioners, anything further? I believe we are
7 ready to adjourn. Okay. Meeting is adjourned.

8 MR. WYETH MATSUBARA: Thank you very much.

9
10 (The proceedings were adjourned at 10:15 a.m.)

11 --oo00oo--

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C E R T I F I C A T E

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

That I was acting as court reporter in the
foregoing LUC matter on the 24th 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 matter.

DATED: This _____ day of _____ 2013

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