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LAND USE COMMISSION
STATE OF HAWAI'I
HEARING AND ACTION
A12-795 WEST MAUI LAND COMPANY, INC.-)
KAHOMA RESIDENTIAL, LLC.)
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing
at Courtyard Maui Kahului Airport, Haleakala Room-532
Keolani Place, Kahului, Hawai'i, commencing at
8:00 a.m. on February 22, 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:

KYLE J.K. CHOCK, CHAIR

RONALD HELLER, VICE CHAIR

CHAD McDONALD, VICE CHAIR

SHELDON R. BIGA

LANCE M. INOUE

ERNEST MATSUMURA

EXECUTIVE OFFICER: DAN ORODENKER

STAFF PLANNER/CHIEF CLERK: RILEY HAKODA

STAFF PLANNER: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

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

RESIDENTIAL, LLC (Maui)

For the Petitioner: JAMES GEIGER, ESQ.

For the County: JAMES GIROUX, ESQ.
Deputy Corporation CounselFor the State: BRYAN YEE, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI
Office of Planning

Intervenor: MICHELE LINCOLN

Intervenor: ROUTH BOLOMET

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1 VICE CHAIR HELLER: We're going to take a
2 few items out of order this morning. Start with a
3 hearing and action. Let me do it the proper way here.
4 I'd like to suggest we move to amend the agenda and
5 delete the adoption of order or DR12-48 in the matter
6 of the Petition of Grove Farm Company for Declaratory
7 Order to designate Important Agricultural Lands for
8 approximately 11,000 acres at Haupu, Lihue, Kaua'i.
9 Is there a second?

10 (Chair Chock now present)

11 COMMISSIONER McDONALD: Second.

12 CHAIR CHOCK: Sorry. Is there a Motion to
13 Amend and then a second?

14 COMMISSIONER BIGA: So moved.

15 CHAIR CHOCK: Moved and seconded Biga and
16 McDonald. All in favor? "Aye". The next item on our
17 agenda -- and we're going to take our executive
18 session in a few minutes -- but we'd like to start
19 with A12-795 West Maui Land Company, Inc. Kahoma
20 Residential, LLC.

21 There's several motions on this docket for
22 this morning. The first being Petitioner's Motion for
23 Reconsideration. Prior to having the parties present,
24 because we have our Intervenor who has missed her
25 flight this morning but is on the next flight, we're

1 going to wait for her to arrive. What we're going to
2 instead do is take any public testimony if there's
3 any.

4 So are there any members of the public to
5 testify on the Petitioner's Motion for Reconsideration
6 at this time? Please come forward. Our executive
7 officer will call you up. When you hear your name
8 just take a seat in the chair.

9 MR. ORODENKER: Bill Greenleaf followed by
10 Vincent Mina.

11 CHAIR CHOCK: Good morning.

12 BILL GREENLEAF
13 being first duly sworn to tell the truth, was examined
14 and testified as follows:

15 THE WITNESS: I do.

16 CHAIR CHOCK: Thank you. Could you please
17 state your name and address. You can sit down and
18 speak into the mic, Sir.

19 THE WITNESS: Okay. Thank you. Good
20 morning. My name is William Greenleaf. I live in
21 Makawao Town, 310 Ho'opalu Drive.

22 CHAIR CHOCK: Proceed.

23 THE WITNESS: Okay. Well, as I understand
24 it this is about 17 acres that was, that is
25 agricultural land and there's been a decision made by

1 the Land Use Committee (sic) to remain -- (outside
2 interruption) I understand there's been a decision
3 made by the Land Use Committee (sic) for it to remain
4 agricultural land. There was a petition for it to
5 become -- was it urban? Am I correct about that? The
6 zoning be changed to urban.

7 I wrote in testimony previously. And one
8 of the points I would like to reiterate from my
9 earlier testimony is that jobs is often discussed as
10 one of the important reasons for land to be designated
11 as urban lands and turned into houses instead of
12 remaining in agriculture.

13 As I thought about that I realized that it
14 does, does create jobs but it's a short-term creation.
15 When the project's done then those workers are out of
16 work again unless there's another project created.

17 When we, especially when we consider
18 something that goes back this far in time as far as
19 heritage lands and that kind of land was agricultural
20 land to feed people. It gave jobs for a thousand
21 years.

22 And I think that's something I don't hear
23 in the papers and I don't hear often discussed. I
24 really want to keep point moving forward and keep in
25 mind. We talk about food security and the need to

1 feed people and of course that's absolutely paramount
2 as we build more and more homes in the Hawaiian
3 Islands and consider where food is going to get
4 shipped from.

5 At some point people near the food are
6 going to want the food. And there'll be that demand
7 will possibly make it difficult for food to come to
8 Hawai'i. If we plan now and save these lands and
9 encourage young people to farm, then we're making a
10 really positive statement. We're making a positive
11 impact. We're creating jobs for young people.

12 So often this makes my heart ache when I
13 see kids growing up here and I know they really don't
14 have a chance to have a future here. They have to
15 think about going somewhere else.

16 I first got to know Hawaiians when I was at
17 Arizona State in the '60s. That's why I'm here. I
18 could not believe my Hawaiian friends at Arizona State
19 the amount of nice things they could do for me before
20 I could think of one nice thing to do for them. It
21 really -- I got an early introduction to aloha.

22 For these kids to have a chance to farm and
23 grow food it's very exciting for young people to start
24 to reconnect with what it's like to feed the land, to
25 develop the food for the soil by taking the things

1 that we're growing and recycling them in a composting
2 manner.

3 My wife and I moved here in 2000. We
4 started farming in 2004. And it's been an amazing
5 experience for me. I'm learning all the time.
6 Nature's always teaching us. Nature is so generous in
7 Hawai'i. When I make a mistake on the farm and dig
8 something up, start again, I get rewarded pretty
9 quickly. My learning curve is fast.

10 And I'd like to just close with this last
11 thought. When people talk about agricultural lands
12 and we think about it's easy to get an impression of
13 the large tracts of lands where people grow in row
14 crops. So they see agricultural land as flat plains
15 that can be grown in that fashion.

16 That's not the agriculture that the people
17 that came before us saw. They were smaller plots of
18 land. They weren't row crops. Pests love row crops.
19 Once they find something they like like tomatoes or
20 eggplant they can just work their way down the row.

21 But the people that came before us they
22 were smarter than that. They also had to live on the
23 food. And they had to deal creatively with all kinds
24 of land. I would say that as you in this very
25 important job as Land Use Commissioners, I'd like you

1 to consider my words as you go forward and realize
2 that if you give Hawaiians, and all the people who
3 have come since then, land to grow food and water
4 they'll produce food. And they'll make this place
5 look like paradise.

6 It won't look like dust blowing out to the
7 reef and killing all the future fish. It'll look like
8 a place where you want to go sit down and talk story.

9 I thank you for your consideration. I
10 thank you for supporting the Petitioner's claim to
11 have her family lands remain in agriculture and not be
12 rezoned to urban use. I request that you do that
13 again today. Thank you.

14 CHAIR CHOCK: Thank you. Parties, any
15 questions for this witness?

16 MR. GEIGER: Sir, a couple questions. Have
17 you read the Petition that was filed in this case by
18 my client?

19 THE WITNESS: And your client's who?

20 MR. GEIGER: West Maui Land Company.

21 THE WITNESS: I have read the Petition of
22 the person that is asking for the land not to be
23 reclassified.

24 MR. GEIGER: You've read Ms. Bolomet's
25 pleadings. My question is: Did you read the Petition

1 that's before this Commission asking for the change?

2 THE WITNESS: It's possible that I did when
3 this whole thing began. I haven't in the last few
4 days.

5 MR. GEIGER: When was the first time you
6 heard about this?

7 THE WITNESS: It was in 2012. It was prior
8 to the past hearing.

9 MR. GEIGER: Did you review the written
10 testimony of the agronomist Paul Singleton?

11 THE WITNESS: Was that part of your
12 submission?

13 MR. GEIGER: No, sir. It's a written
14 direct testimony of Dr. Paul Singleton, an agronomist.
15 Did you review that testimony?

16 THE WITNESS: No.

17 MR. GEIGER: Did you review any of the
18 transcripts of the testimony of Dr. Singleton?

19 THE WITNESS: No.

20 MR. GEIGER: Nothing further.

21 CHAIR CHOCK: County?

22 MR. GIROUX: We have no questions.

23 CHAIR CHOCK: State?

24 MR. YEE: No questions.

25 CHAIR CHOCK: Ms. Lincoln?

1 MS. LINCOLN: No questions.

2 CHAIR CHOCK: Commissioners, any questions
3 for this testifier? Thank you for your testimony,
4 sir.

5 THE WITNESS: Okay. Thank you.

6 MR. ORODENKER: Vincent Mina followed by
7 Dick Mayer.

8 VINCENT MINA

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

11 THE WITNESS: I do.

12 CHAIR CHOCK: Could you state your name and
13 address, please.

14 THE WITNESS: Yes. Vincent Mina, 1768
15 Kalawi Place Wailuku, Maui.

16 CHAIR CHOCK: Great. You can have a
17 seat --

18 THE WITNESS: Can I approach the
19 Commissioners? I have a ho'okupu for everybody.
20 These are from our farm, for your lunch. That's what
21 we do. We feed people.

22 (Distributing sprouts in plastic bags)
23 Aloha, everybody.

24 CHAIR CHOCK: Aloha.

25 THE WITNESS: I'm a small farmer. I'm

1 taking my hat off as a member of Farmers Union United.
2 That's a 110 year-old farming organization. It's
3 actually eight years older than the Farm Bureau. I'm
4 the president of the state organization and also
5 president of the Maui Chapter.

6 But I'm here today as small farmer. If the
7 Farmers Union needs to weigh in on this we will bring
8 it to our board and we will do so in kind.

9 This is close to my heart, this issue. And
10 I appreciate the vote of confidence that you gave to
11 Ms. Bolomet regarding this issue. And I want you to
12 uphold that today.

13 As a small farmer I'm in relationship to
14 the realm we're all going back to one day. So I'm in
15 relationship with the soil. It's very important to
16 me. I don't know if you folks have ever farmed or
17 been from a farming background.

18 But as Bill mentioned, basically it's
19 primal. It's our existence. It what keeps us well.
20 I'm 60 years old. I'm in the best health I've ever
21 been. It's mainly due to the fact I see my food as my
22 medicine.

23 Now, it's very interesting to me that when
24 I'm reading this Petition I didn't get all through it
25 in detail because I started seeing some of the things

1 that were, how -- the tone of it. Basically the tone
2 spoke to the fact that we're supporting -- this is a
3 continuance of supporting our service-based economy
4 here in Hawai'i as opposed to a production based
5 economy or an economy that could be in balance as a
6 production-based economy with a service-based economy.

7 So when I see the Petitioner's name come
8 up, that developer who wants to develop these houses,
9 and this being the same person that's funding a
10 program to put homeless people back onto the farm to
11 be able to have them make money to step back into
12 society through working on a farm, it's ironic to me
13 that this person is in support of keeping this land in
14 agriculture.

15 But I understand. He wants to develop 68
16 homes from what I understand, because that will help
17 house people that will support the service-based
18 economy that we're in.

19 My wife, my son and I are making a living
20 on 2,000 square feet growing the greens that are in
21 front of you right now. Two thousand square feet
22 we're making a living on. This is food for the
23 community. This is real food.

24 And thankfully my son sees the value in
25 that. And my son will now take over that farm as I

1 get older. And that'll be value for his family and
2 for the community.

3 Sixteen acres is a lot of land to be able
4 to grow food on. It's not the size of the land that's
5 important here. It's the use of the land. And you
6 folks are the Land Use Commission. So I would think
7 and feel that how you value that use of the land is
8 predicated on what that land can provide.

9 Now, I understand, I heard questions being
10 brought up about did -- was there a reading of the
11 gentleman that testified from the University?
12 Singleton. And I read that. And I was appalled by
13 it, that this man's supposed to be a scientist, and
14 saying that these lands weren't agri-able.

15 As Bill pointed out Hawaiians made
16 agri-able land of all their lands. There was no A, B,
17 C,D. They knew how to be in relationship with the
18 land. So all I'm asking for at this point in time is
19 a level playing field for local people, for people who
20 are growing your food to be able to practice what we
21 love and what we're about.

22 I know for myself I'm not on a big parcel
23 of land growing food mainly because I know the
24 political system in place right now. Being a
25 service-based economy is not supportive of my doing

1 that. I'll drive myself into the ground. I'll kill
2 myself trying to make a living at doing it. And I
3 won't be able to be pono in working the land because
4 of the pressure that will be on me to produce, to
5 produce, to over produce the lands.

6 And that's what's basically happened here
7 in Hawai'i. The lands have been overproduced. So the
8 concept of aloha 'aina is about being in relationship
9 and knowing that you have to give back in order to get
10 from the land.

11 So I value and appreciate what Ms. Bolomet
12 is doing here in standing firm, standing true to her
13 family, to her ancestral ties to keep this land in a
14 place to grow food. We can do a lot of things with
15 our lands, with our agricultural lands.

16 It's sad to see that people who represent
17 farming organizations are representing, consulting for
18 developers that just took 1500 acres of prime
19 agricultural land out of Ho'opili on O'ahu. I mean
20 this is unconscionable. The rationale is: Well,
21 there's all kinds of land that's not being farmed.

22 Well, that doesn't fly with me because
23 those lands could be producing cover crops that could
24 be producing cover crop seeds that could be helping
25 to regenerate all of our agricultural lands.

1 So there's -- if the government was to
2 support things like this then we could see the 90
3 percent of the food that we're bringing in become the
4 reverse. That we would be growing it here.

5 So I don't understand why our political
6 system does not value our growing our own food. Based
7 on results it doesn't. Eight percent of what we grow
8 agriculturally on the islands, only 8 percent is
9 edible. That's a sad testament to paradise on Earth.
10 So thank you for your time.

11 CHAIR CHOCK: Thank you, sir. Before we
12 open you up for questions just a couple of comments.
13 I want to note for the record that Intervenor Bolomet
14 just arrived. It's 8:15. Welcome. We're glad you
15 could be here.

16 And thank you very much for your ho'okupu.
17 It's well appreciated, but inappropriate for us as
18 Commissioners to accept. But we will make sure they
19 get to the appropriate people or whoever we can give
20 it to.

21 THE WITNESS: Don't accept it. Just eat
22 it. (laughter).

23 CHAIR CHOCK: I think I should so I can
24 look as good as you when I turn 60. Okay. Questions?

25 MR. GEIGER: No questions.

1 MR. GIROUX: No questions.

2 MR. YEE: No questions.

3 MS. LINCOLN: No questions.

4 MS. BOLOMET: No questions.

5 CHAIR CHOCK: Commissioners, any questions?

6 Thank you for your testimony.

7 MR. ORODENKER: Dick Mayer followed by
8 Marvin Tenaga. Sherri Dodson is also on the list.
9 She's our final signup.

10 DICK MAYER
11 being first duly sworn to tell the truth, was examined
12 and testified as follows: name and address

13 THE WITNESS: My name is Dick Mayer. I
14 live at 1111 Lower Kimo Drive Kula, Hawai'i.

15 CHAIR CHOCK: Go ahead.

16 THE WITNESS: The reason I'm coming down
17 here is not to speak in favor or opposed to the
18 Project per se, but rather to speak to what I
19 understand will be a motion before you today to
20 reconsider.

21 I understand that one of the arguments
22 being put forth in the motion is that now that the
23 Maui Island Plan has been documented with Urban Growth
24 Boundaries, the Community plan of West Maui is trumped
25 by that. That is incorrect.

1 Over and over again as the Maui Island Plan
2 was going before the council -- in fact let me step
3 back and say, what I'm basing all this. I'm the
4 Vice-Chair of the Maui Island General Plan Advisory
5 Committee, the group that advise the county and still
6 in force, advising the county on the long-range plan
7 for Maui and worked previously as a planning
8 commissioner. I was also the vice chair of one of the
9 community plans here on Maui.

10 The county attorneys told the county
11 council over and over again when the councilmembers
12 asked: What will this plan do to the existing
13 community plans? And they said: It will do nothing.
14 It will have no force and effect on existing community
15 plans.

16 But as each of the six community plans on
17 the island, West Maui being one of them, come up for
18 revision, at that time the community will have a
19 chance to look at all of the land uses in the area,
20 make the recommendations to the Council, the Planning
21 Commission. And the Council will then eventually make
22 a decision as to where agricultural land, urban land,
23 things should go. But nothing has changed in the
24 community plan of West Maui at this stage.

25 In fact, when the community plans are taken

1 up according to the schedule approved by the Council,
2 West Maui will be the very first of the community
3 plans. So probably sometime later this year, early
4 next year the West Maui community plan will be taken
5 up.

6 It will give a chance for the whole
7 community to have their advisory committee
8 established, consider testimony from the community and
9 decide whether this was an appropriate place for
10 housing. And it may be or may not be.

11 When the urban growth boundary was
12 established, that does not mean that the land would be
13 all within that boundary, all be put into urban, what
14 we usually consider urban as housing, commercial,
15 roads, schools, post offices, et cetera.

16 But rather, the concept was this is an area
17 within which housing and those such of things could
18 take place. But it would also be an area where parks
19 would take place, where community gardens would take
20 place, agricultural activities would continue.

21 It was not meant the Urban Growth Boundary
22 to be urbanized in the sense of having construction
23 projects taking place. So I want to make sure that
24 the -- and I understand that there are representations
25 going to be made and motions that would say somehow

1 the Urban Growth Boundary now defines this area as
2 urban. Urban in this case means parks, could be
3 community gardens, could remain in agriculture, could
4 be green belts, greenways, recreation areas. All
5 those things would be within that Urban Growth
6 Boundary.

7 The Maui Island Plan is intended to be a
8 long-term plan. It goes out to the year 2030 in its
9 boundary. So up to the year 2030 those areas within
10 the Urban Growth Boundary could be urbanized or may
11 not urbanized. But this gives the county where
12 infrastructure in the county should be located.

13 It gives the planners and the developers
14 side areas that will potentially be urbanized but not
15 necessarily guaranteed to be urbanized. Therefore
16 areas outside the Urban Growth Boundaries would be
17 areas where they could not expect to see the county
18 providing or the state providing schools, hospitals,
19 other kinds of facilities outside the boundary. That
20 just gives a parameter to it all.

21 That's all I wanted to say today. I
22 understand that's going to be an item before you
23 today. And I wanted to make that clear.

24 CHAIR CHOCK: Thank you, Mr. Mayer.
25 Questions?

1 MR. GEIGER: Mr. Mayer, couple questions.
2 First of all, you understand that this Project was
3 approved by the county council under the Affordable
4 Housing Act?

5 THE WITNESS: Yes, I do.

6 MR. GEIGER: And you understand that the
7 county exempted this Project from the General Plan and
8 Community Plan, West Maui Community Plan?

9 THE WITNESS: That's correct.

10 MR. GEIGER: You indicated that one of the
11 benefits of the Maui Island Plan is to establish where
12 the County should have infrastructure, correct?

13 THE WITNESS: Correct.

14 MR. GEIGER: You understand that this
15 Project site has infrastructure surrounding it
16 already?

17 THE WITNESS: Yes.

18 MR. GEIGER: You understand that this
19 Project site is surrounded by urban.

20 THE WITNESS: Yes.

21 MR. GEIGER: Okay. Thank you.

22 THE WITNESS: But does not mean it should
23 not be urbanized with buildings? It was meant to be
24 an area where urban could take place but not
25 necessarily so.

1 MR. GEIGER: You understand that the Maui
2 Island Plan approved this Project in this location,
3 correct? It included it in the map as this Project in
4 this location, correct?

5 THE WITNESS: Correct.

6 MR. GEIGER: Thank you.

7 THE WITNESS: But that would be up to the
8 community plan to decide that. The Maui Island Plan
9 does not designate where projects would actually take
10 place, but this potentially could be in the area based
11 on the community plan. The Maui Island Plan does not
12 give, does not trump the existing community plans,
13 does not trump necessarily future community plans. It
14 only indicates where community plan areas could be
15 established for this purpose. It does not give
16 zoning. It does not give community plan designation.

17 MR. GEIGER: And it does not trump the
18 resolution of the County Council which exempted this
19 Project from General Plan and zoning, correct?

20 THE WITNESS: That's correct.

21 CHAIR CHOCK: County, any questions?

22 MR. GIROUX: No questions.

23 CHAIR CHOCK: State?

24 MR. YEE: Just so that I'm clear about
25 Maui's Urban Growth Boundary. Is it true that two of

1 the purposes which may be two of the major purposes of
2 the Urban Growth Boundary is to direct where urban
3 growth should occur as well as to indicate where urban
4 growth should not occur?

5 THE WITNESS: That's correct.

6 MR. YEE: Nothing further.

7 CHAIR CHOCK: Any other questions, parties?

8 MS. LINCOLN: No questions.

9 CHAIR CHOCK: Thank you, Mr. Mayer.

10 THE WITNESS: Thank you.

11 MR. ORODENKER: Marvin Tenaga followed by
12 Sherri Dodson.

13 MARVIN TENAGA
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: Yes.

17 CHAIR CHOCK: Could you state your name and
18 address, please.

19 THE WITNESS: My name is Marvin Tenaga, 166
20 Wahikuli Road, Lahaina.

21 CHAIR CHOCK: Go ahead.

22 THE WITNESS: Thank you for this
23 opportunity to be able to be here this morning. I was
24 asked to speak on, in favor, why I'm in favor of this
25 Project. You know, it is my hope that I don't offend

1 anybody. It's just this is my third time testifying
2 for the purpose of affordable housing and what it
3 means to me. Everybody has their agenda of why it's
4 important to them. So it's just why it's important to
5 me for affordable housing.

6 I was born, raised in Lahaina. I graduated
7 Lahainaluna High School. I work in Lahaina with the
8 Maui Police Department. I was afforded the
9 opportunity to go back and work in the town that I was
10 raised in. And I enjoy it. I love it. I have -- I'm
11 married have three children. Currently we are renting
12 our home.

13 We when the second time I testified I was
14 afforded the opportunity to look into a home to
15 purchase. One of the things that the testifiers asked
16 was: Can't you find another affordable house in
17 Lahaina? So we did. We looked at it. We had an
18 opportunity come up around us. And when the house was
19 offered to us on Pao'i Street my understanding it was
20 going to be 1800 a month. I could afford that.

21 As the paperwork went through the next
22 thing you know it was 2700 a month. And I was like
23 well, let's make it be happen.

24 So we had my mother-in-law move here from
25 O'ahu. She was going to help purchase the home.

1 Eleven days before closing the underwriting asked for
2 \$20,000 more. I already put down \$30,000. Where am I
3 going to find \$20,000 in 11 days?

4 So with that our dreams of purchasing a
5 home -- and mind you the house that we're looking is
6 probably they're looking at about \$12,000 worth of
7 fixing because of the damages of the previous owner.
8 So we were kind of going into a negative already. But
9 we wanted to purchase our own home. Was tired, still
10 tired of paying someone else's mortgage on their
11 second or third home. With that the Project with us,
12 our purchasing of a home extinguished last year.

13 I just learned recently within the last few
14 months that the project was shut down. You know, it
15 saddened me because there's opportunities for people
16 to have homes there.

17 As far as the ownership of the land I don't
18 want to get involved with that because, one, I'm
19 speaking on is affordable housing and how come it's
20 important to me. You know, people say that there's
21 other places in Maui to live in, to live at.

22 If you're from Lahaina you understand.
23 Lahaina is a special place. I raised my kids there.
24 However, my kids go to school in Wailuku -- my
25 daughter used to go to go to Wailuku to Kupunanaleo.

1 Unfortunately she has Kaiopuni and Nahi'ena'ena. But
2 she will be going to Paia -- I mean Kalama and King
3 Kekaulike as the program progresses. Hopefully, our
4 hope is when she gets older it comes to Lahaina. But
5 I don't want to live in Kihei. Lope them though who
6 scrows get I said should?

7 I don't want to live in Wailuku. I don't
8 want to live in Kahului. Because my family is in
9 Lahaina. People who I love and care about is from
10 Lahaina. I'm not saying that the other parts of the
11 island is bad it's just where I, is home to me.

12 Now, some of the things I wanted to talk
13 about is that I'm in favor for the Project because of
14 those reasons. And, you know, if it's possible. You
15 know as a police officer people say, "Well, go live in
16 Honokowai, this area." Try live in an area like that
17 as a police officer. It's hard for us. We got to
18 find not perfect places but places that are safe for
19 my family, for my kids.

20 And some places I just cannot live. I wear
21 a hat when I'm in public so people don't see me.
22 Hopefully don't recognize me. That's just my mana'o.
23 That's my view of things. Again it's not to offend
24 anybody or to take away from anyone else's testimony.
25 Thank you for that.

1 CHAIR CHOCK: Thank you. Parties, any
2 questions?

3 MR. GEIGER: No questions.

4 MR. GIROUX: I have no questions.

5 MR. YEE: No questions.

6 MS. LINCOLN: I just have a couple
7 questions.

8 THE WITNESS: Yeah.

9 MS. LINCOLN: Could you define what you
10 have think of as affordable housing, what price range?

11 THE WITNESS: The house that we went to was
12 \$359,000. So we put down \$30,000 thinking that we
13 would be able to afford it. However, under the
14 underwriting requested that 20,000 before closing and
15 this was an affordable housing project. I know that
16 the houses can go up to 499,000. That's just the cap
17 on that. But it's just per the income that we have.

18 My wife stays home to take care of our
19 kids. Being a mom is a full-time job. When I come
20 home from work I can't complain because she has a hard
21 time. Three kids. For you moms, you guys know. I
22 can't take away from that. She stays home. And we
23 make less than six figurers a year.

24 MS. LINCOLN: Are you aware with this
25 Project that probably about 75 percent of the homes

1 are going to be in the 500 to the \$685,000 price
2 range?

3 THE WITNESS: I was made aware the cap was
4 490, around \$500,000.

5 MS. LINCOLN: There was going to be 8 homes
6 that would be in the 372 to \$425,000 price range. But
7 there was nothing under 372 unless it was Habitat for
8 Humanity. So would you still consider the 500 to
9 \$685,000 "affordable housing"?

10 THE WITNESS: I wouldn't fall into that
11 price range 'cause what I was informed it was due to
12 our income for those. And if it's ten homes, hey, I'm
13 better off trying for ten homes than no home. And if
14 this Project goes through and I don't get a home there
15 I mean life goes on. You know what I mean? But I'm
16 here to say that I support it for affordable housing.

17 MS. LINCOLN: Okay. Thank you.

18 CHAIR CHOCK: Commissioners, any other
19 questions for this testifier? Thank you for being
20 here.

21 THE WITNESS: Thank you for your time,
22 everyone.

23 MR. ORODENKER: Final signup testifier is
24 Sherri Dodson.

25 SHERRI DODSON

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

3 THE WITNESS: Yes.

4 CHAIR CHOCK: Your name and address please.

5 THE WITNESS: My name is Sherri Dodson.

6 I'm the executive director for Habitat for Humanity,
7 Maui. Our address is 970 Lower Main Street, Wailuku,
8 96793.

9 CHAIR CHOCK: Go ahead.

10 THE WITNESS: I'm back again. And I am
11 asking the Commissioners to reconsider their decision
12 to not let this Project go through. I understand
13 there's a real balancing act between what is good for
14 the people who want affordable housing and keeping
15 land open space.

16 I've lived in Maui most of my life. We
17 have actually moved from Honolulu because it got to
18 grown up. We went through extensive public hearings
19 before we went to the county to ask for the 201
20 exemption. As a co-developer we were part of all
21 that. So I heard all the testimony.

22 I heard a lot of people ask about the homes
23 when they were going -- that was the main question I
24 got: "When are these homes going to be available?"
25 There were people there that talked about open space,

1 and keeping it open space.

2 As soon as it came out in the news we
3 started getting phone calls about when the Project was
4 going to be ready, when could they apply. We started
5 taking names.

6 Throughout the entire 201-H process with
7 the county we got drilled quite a few days. They, the
8 county determined that this Project, the balance was
9 that we needed affordable housing, especially Lahaina.

10 I can't tell you how many times we get
11 phone calls from people who are desperate, who are
12 homeless. We'll get into anything. We currently have
13 nine units at Harbor Lights that we're renovating.
14 We're doing whatever we can to provide housing for
15 people but the need is never can going to end here.

16 We talked about what is affordable here. A
17 lot of times it's not the price of the house that
18 makes it unaffordable. This gentleman's house was
19 affordable but the mortgage laws, the new mortgage
20 laws made it unaffordable. It was the mortgage
21 underwriting law that said that he would have to come
22 up with another 20,000. It wasn't that the house
23 wasn't affordable. It wasn't because of income. It
24 was because of the price of the house.

25 All these things make it be really, really

1 difficult for people to get homes right now. And in
2 our economy when people aren't working or want to get
3 back to work even for a short period of time, and
4 there is such a huge need, I think the balance in this
5 particular case needs to be tipped towards affordable
6 housing.

7 There's lots of areas that I personally
8 don't think we should put housing. This is my home
9 too. And I'm a firm believer in infill projects where
10 there's already urban development. We're currently
11 building a 16-unit condominium right in the middle of
12 Happy Valley where there's other houses multi-family.

13 And this *is* an urban area. There's houses
14 next door. They will have neighbors. It's not out in
15 the country. It's not Haiku. It's not Upcountry
16 there where there's a lot of open fields. It is an
17 urban area and it's been so long since Lahaina had an
18 affordable project. The last affordable project was a
19 Hawaiian Home Lands project, so it was limited to just
20 native Hawaiians.

21 There's a lot of people in Lahaina who work
22 two or three jobs and can't even afford the rent. And
23 those are the people we get calls from. Those are the
24 people that become homeless because of one job loss
25 even though they have three. And they can't afford

1 their rent anymore. These the phonecalls we get.

2 This Project is a good Project. I think it
3 covers 25 to 120 percent medium income (sic) so that
4 the very low income, the homeless, up to the teachers
5 and police officers, and then up to a little bit more,
6 maybe the dual income people with a little bit more
7 income, 120 percent medium income (sic).

8 All those people have an opportunity. It
9 may be that somebody at 120 percent medium income
10 (sic) doesn't want to live in this Project. So there
11 will be more homes at the lower level. You know, the
12 market drives these prices, not the developer.

13 If I could sell a home -- I usually don't
14 have trouble selling a home at \$150,000 or 200,000
15 especially at a zero percent interest. But there are
16 people who won't buy a house right now in this market
17 at 4 or \$500,000.

18 So the developers are gonna have to come
19 down on their price. And that's a risk they're
20 willing to take. It's a risk that -- and that's why
21 Habitat decided to co-develop with them because this
22 is a developer this is willing, they are committed to
23 affordable housing. They're willing to take that risk
24 that if the house market, the market for the house is
25 300,000 that's what they'll sell it for.

1 The county set those guidelines of 500,000.
2 That's through the Residential Workforce Ordinance.
3 There's a very calculated chart. Up to 120,000 that's
4 what's up they could afford. That's not necessarily
5 what the developer will charge. It leaves it open for
6 them.

7 So I just really ask you to reconsider your
8 decision. Again, I know it's a hard balancing act,
9 this falls on your shoulders and it's a heavy burden.
10 I can tell you that the county, we went through the
11 same thing when we went to the County Council. And
12 they realized that affordable housing in this
13 particular case needed to outweigh the need for open
14 space in this area.

15 So, please, for the families that are
16 waiting for affordable housing, affordable homes,
17 please change your minds.

18 CHAIR CHOCK: Thank you for your testimony.
19 Parties, any questions?

20 MR. GEIGER: No questions.

21 MR. YEE: No questions.

22 MS. LINCOLN: No questions.

23 MS. BOLOMET: I have a question.

24 CHAIR CHOCK: Go ahead, Ms. Bolomet.

25 MS. BOLOMET: Thank you for testifying.

1 We're all learning more and more about the needs for
2 affordable housing. Would you say that people are
3 calling you for affordable housing because of the cost
4 of housing or because their salaries are so low?

5 THE WITNESS: We get so many individual
6 stories. We get stories of families who've had a
7 major illness in their family and the medical bills
8 put them out on the street. They're both hard
9 working, both have good jobs, one with the state, one
10 with a construction company.

11 They were both working. But they were put
12 out on the street because they had to pay their
13 medical bills.

14 We have stories of kupuna who, you know,
15 couldn't maintain their homes, lost 'em through the
16 mortgage crisis. I mean the stories are so varied
17 it's different for everybody. Some people lost their
18 jobs. Some people got -- the prices got way too high
19 at some point and they lost their homes or they were
20 never able to.

21 I get a lot of young kids now calling us
22 wanting ownership. Lot of people who want to return
23 here. I know my nephews are going to school. I hope
24 they're able to come back here. It will depend on
25 whether we have affordable homes for them.

1 MS. BOLOMET: But it really comes down to
2 jobs. If you can't produce an income to qualify for
3 homes, there's only ten homes that this Project is
4 proposing. So for all the rest how do you -- how do
5 you justify asking the Commissioners to build
6 something that most people can't afford even though
7 they're calling it affordable homes?

8 THE WITNESS: The entire Project is a
9 hundred percent affordable.

10 MS. BOLOMET: I can't afford 400,000 and --
11 and--

12 THE WITNESS: Let me finish.

13 MS. BOLOMET: Okay.

14 THE WITNESS: The county has deemed
15 "affordability" up to 120 percent. And there are
16 families who make 120 percent of medium income (sic).
17 And the medium income for a family of four right now
18 is \$76,000. So they make \$80--\$90,000 a year. And
19 those people can't go out into the open market yet and
20 buy a home.

21 This Project will allow even those people
22 who are making \$80--\$90,000 a year to afford a home.
23 And my understanding on this, you know, if they want
24 to build their own home they might be able to do that.
25 We have a lot of local guys that are contractors. We

1 get phonecalls all the time from guys, "Well, let me
2 build my own house. Help me build my own house."
3 That's what we do. But if they're given a plot of
4 land then they can build their own home a lot cheaper
5 sometimes than a contractor can.

6 MS. BOLOMET: So you actually have to go to
7 the owner of the land to do this. Do you agree?

8 THE WITNESS: I don't understand. The
9 owner is proposing this Project.

10 MS. BOLOMET: Well, that's on the table.

11 THE WITNESS: Oh, I'm sorry. I didn't
12 mean to make...

13 MS. BOLOMET: When I was reading the
14 definitions of what affordable homes are, I didn't
15 realize that affordable homes also mean rental houses.
16 It didn't necessarily mean ownership. So as long as
17 there's places for ownership, rental, people can still
18 get into these affordable homes whether it's in this
19 Project or another, is that correct?

20 THE WITNESS: Absolutely. Especially in a
21 town like Lahaina there's a lot of transient people,
22 people who come in to work for Marriott, Hyatt, some
23 other Marriott or Hyatt who are only going to rent.
24 But the rental market is very expensive as well.

25 The units at Harbor Lights, what they are

1 currently renovating, when we sell them to our
2 families they're gonna be paying less for their
3 mortgage than they will for rental.

4 Rental right now in Harbor Lights which
5 most of us, it's a nice project. A lot of people
6 don't think it is, but it's a nice project. They're
7 going for \$1200 a month for a 1-bedroom. That's on
8 top of the \$668 maintenance fee. That's really
9 expensive.

10 Used to be in the old days you could rent a
11 3-bedroom, 2-bath house on an 8,000 square foot lot
12 for 1500. \$1,200 for a 2-bedroom condominium at Harbor
13 Lights is expensive. And there are people who do want
14 to rent, but there's a lot of people who do want to
15 own. It's the reason why I got into doing what I'm
16 doing because it is the dream. It's the dream of
17 homeownership.

18 When I was raised my father instilled it in
19 me when I bought my first house I got a starter home,
20 an affordable home. I was thrilled. It was my dream
21 come true.

22 MS. BOLOMET: Okay. Thank you.

23 CHAIR CHOCK: Thank you. Commissioners,
24 any questions? Thank you for your testimony. Anybody
25 else in the audience wishing to provide public

1 testimony who hasn't signed up, please come forward.

2 Good morning, Ma'am.

3 LUCIENNE DeNAIE

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

6 THE WITNESS: Yes.

7 CHAIR CHOCK: Please state your name and
8 address.

9 THE WITNESS: My name is Lucienne DeNaie. I
10 live at 320 Door of Faith Road in Haiku, Maui. I'm
11 here today to offer some historical perspective 'cause
12 many decisions were made before any of you were on the
13 Land Use Commission that kind of affected this
14 Project.

15 I too served on the General Plan Advisory
16 Committee. One of the historical perspectives I'd
17 like to provide is how this Project was presented to
18 the commissioners -- to those commissioners. We were
19 told by the planning staff that this was a logical
20 infill project, small project, mostly affordable. But
21 we were also told, "Look, when you're setting the
22 Urban Growth Boundary you can have places in the Urban
23 Growth Boundary that are open space like this was in
24 the Community Plan. You can have places that were
25 given Park designation. It doesn't mean that

1 everybody single place within that boundary is
2 necessarily gonna be built."

3 But what we were told about this Project is
4 that, you know, it was just some abandoned Ag lands
5 and so forth. I had sat through some of the Lahaina
6 West Maui Community Plan meetings. My friend Dave
7 Chenowith served on this -- the late Dave Chenowith
8 served on this C.A.C. Citizens Advisory Committee for
9 the West Maui Plan.

10 And I remember that people really spoke out
11 for this particular place because they felt that, you
12 know, it was a dense neighborhood, good planning,
13 would say there would be some little breather space.

14 This was a place that some families
15 remember when it had a river through it, you know.
16 It's unfortunate that our only solution for flooding
17 is to make these big concrete channels that we think
18 are wonderful, but this place had a history. It had a
19 use. And there were people who remember that.

20 And that's why it wasn't some accident or
21 oversight or bad decision that it was designated as
22 open space in the community plan. It was a conscious
23 community decision. And it is sort of sad that, you
24 know, what you hear often is: Well, it was park or
25 open space but we need housing more so we can

1 sacrifice that.

2 It never goes the other way. It's never
3 like: Well, you know, it was for urban but we really
4 need open space more so let's sacrifice that housing
5 designation because it hasn't been used in 20 years
6 and let's make it open space. It never happens that
7 way.

8 So on one hand we say we want good planning
9 and balanced planning, we want liveable communities.
10 But what I found serving on the General Plan Advisory
11 Committee was that we were told not to look at
12 specific projects, just to look at general areas where
13 urban growth would be permitted.

14 And we were told to look at nine criteria
15 about whether something made sense or not. Well, we
16 didn't look at the general idea. Everything was like
17 a kind of a popularity vote on project by project. So
18 it really was, you know -- not how it was meant to be.
19 And we didn't look at those nine criteria.

20 There are plenty of areas in the Maui
21 Island Plan that don't meet any of those nine
22 criteria, or meet very few of them. But they were
23 approved because many sincere people came out and
24 said, "We need housing. We need affordable housing.
25 My family is suffering."

1 Well, I just wanna point out to this
2 Commission Dr. Mayer -- Mr. Mayer made the point that
3 we were told again and again what's in the Maui Island
4 Plan is only a beginning. And in the Maui Island Plan
5 as just an example, several thousand acres of land
6 were changed from Ag to Rural. Many times the
7 landowners, individual properties owners, were not
8 even notified.

9 This was passed by the Council. But the
10 county council made it clear this doesn't change
11 anything. The fact that this land in the Maui Island
12 Plan is now in the Rural Growth Boundary doesn't
13 change anything about your Ag land. Nothing will
14 change until the community plan is amended.

15 My understanding is what the Council did by
16 okaying the 201-H is they bypassed the community plan.
17 They did not amend if the community plan. The
18 community plan is just bypassed. They just said,
19 "Well, you don't have to amend the community plan."
20 They didn't say they were amending it. They said,
21 "We're exempting you from amending it and saying this
22 can proceed on this land."

23 So the buck stops here. Your Commission
24 has given permission on a number of affordable housing
25 projects in Lahaina that all had the same people

1 coming and say, "We need affordable homes. Please
2 take this Ag land and turn it into something that now
3 can be used." One of these is Pulelehua. I don't
4 think any of you were serving on the Commission at
5 that time. I think it was 2008, 2009. Some of your
6 staff would probably remember.

7 This proj -- maybe it was 2007 -- this
8 project had to happen. It was designated 50 acres of
9 park in the community plan. But it *had* to happen.
10 You folks gave Urban because it was going to provide,
11 I think it was, like 500, 400 something units of
12 affordable housing.

13 Urbanizing the land doesn't necessarily
14 mean everyone can move into a house. I think that you
15 just need to realize that. Pulelehua has not been
16 built in spite of -- they signed an agreement with you
17 guys. They had the financing to go on, that they
18 could do it; that's why you should give them
19 urbanization. Pu'u Koli'i got approval from this
20 Board back in the '80s and then reconfigured back on
21 201-H process probably in 2009. It's affordable
22 housing. It's recreating an old village.

23 I can't tell you how many people and said,
24 "My mo'opuna need a place to live." Teachers came.
25 Firemen, policemen said, "Please, we want to live in

1 Lahaina. It's the heart of Lahaina. It's where our
2 families grew up."

3 It's been approved. It's never been built.
4 so It's not a matter of whether you just give approval
5 or not whether these folks get the housing they
6 deserve. It's a matter of whether the approvals that
7 are given are held accountable.

8 These folks if they promise to do something
9 for a certain reason, should have started doing it.
10 And they haven't. And I think this should be a part
11 of your consideration: Did this will Project follow
12 the law? Not whether we need more affordable housing.
13 We do. We've approved a lot of affordable housing in
14 Lahaina. And it's near where people already live in
15 Lahaina or they already work in Lahaina.

16 But we haven't gotten anybody to build any
17 of it. Maybe these folks will jump to the head of the
18 line and build their 60-some units. And maybe 20 of
19 them will be affordable. Maybe that will be a huge
20 step forward. But wouldn't it be a bigger step
21 forward to get 400 units in Pu'ukoli'i and 400 units
22 in Pu'ulehua going?

23 I know you guys don't have the authority.
24 But you *do* have the authority to do what's pono and
25 stick with what the community plan actually was the

1 will of the people when they worked on the community
2 plan. A whole organization was found called Lahaina
3 Open Space just to sort of promoted the fact we were
4 desperate for open space in Lahaina. It has the least
5 amount of open space in any urbanized area in Maui.

6 So there's that other side of the coin. I
7 just wanted to provide this perspective because I've
8 gone to these meetings for the last 20 years and seen
9 a lot of things come and go. Thank you.

10 CHAIR CHOCK: Thank you. Parties,
11 questions?

12 MR. GEIGER: Just a couple. Ma'am, you're
13 familiar with the resolution that the county council
14 adopted concerning this Project on the 201H?

15 THE WITNESS: Yes, I am. I think they were
16 misled for the same reasons the GPAC was misled.

17 MR. GEIGER: Regardless of what you think
18 about that let me ask you a question about the
19 resolution. You understand that there are time limits
20 within the resolution as to when construction has to
21 be completed.

22 THE WITNESS: Well, there's a time limit
23 for Pu'ukoli'i. I don't see it being built. It was a
24 201-H too.

25 MR. GEIGER: Well, back to my question.

1 You understand that there's a time limit for this
2 Project.

3 THE WITNESS: I understand. But what
4 happens to those time limits, sir?

5 MR. GEIGER: That's an enforcement action.
6 You would agree?

7 THE WITNESS: I agree. And that seems to
8 be a empty desk.

9 MR. GEIGER: Okay. But you don't know that
10 this client or this Petitioner, rather, would be the
11 one that wouldn't build. In fact you don't have any
12 knowledge of that.

13 THE WITNESS: I do not. I'm just setting
14 an historical perspective of each person said the same
15 thing this person is saying.

16 MR. GEIGER: Indeed. And we know that the
17 proposed findings would include a condition that they
18 comply with the resolution the county council. You I
19 understand that?

20 THE WITNESS: I understand. And I'm sure
21 you know that the Commission always has strong
22 conditions. And we find out that unless citizens
23 sometimes come and ask that they be enforced, we have
24 the Pi'ilani mega-mall thing. Those conditions
25 somehow can get ignored. So good luck.

1 MR. GEIGER: Let me focus on just one other
2 area. You understand that in the resolution this
3 Project was exempted from the West Maui Community Plan
4 and from the General Plan.

5 THE WITNESS: Yes.

6 MR. GEIGER: Excuse me. And from zoning?

7 THE WITNESS: And from zoning, yes.

8 MR. GEIGER: And then you also understand,
9 do you not, that the county was given the opportunity
10 to purchase this land for park use or open space use?

11 THE WITNESS: I understand. And this is
12 the county at the time, you know just... the county
13 rarely purchases land for open space. I helped found
14 the Maui Coastal Land Trust because the county rarely
15 purchases lands for open space. You needed someone to
16 jump in and actually get something done.

17 MR. GEIGER: And in this case there was
18 nobody to jump in and say, "We want it."

19 THE WITNESS: There wasn't. But I think
20 the ownership issue really should be considered.

21 MR. GEIGER: Thank you, Ma'am.

22 CHAIR CHOCK: Parties, any other questions?
23 Commissioners. Ms. Bolomet, go ahead.

24 MS. BOLOMET: (off mic) You provided
25 written testimony during the hearings, the evidentiary

1 hearings, is that correct?

2 THE WITNESS: I did on one occasion about
3 some of the archaeological aspects. I am an
4 historical researcher. That's kind of one of my hats
5 that I wear.

6 (Chair Chock called away from meeting)

7 MS. BOLOMET: Can you please tell us a
8 little bit -- Mr. Geiger at one point said that he
9 didn't have a chance to ask you questions. Would you
10 please tell us what your experience is with the
11 Mr. Degas' archaeological reports?

12 MR. GEIGER: Mr. Chair.

13 THE WITNESS: If Mr. Geiger wants to know
14 the --

15 MR. GEIGER: Ma'am, just a second. Chair,
16 a couple of things. Number one, there was
17 misrepresentation and Ms. DeNaie's testimony was
18 actually never offered. There was some -- it was
19 mentioned but it was actually never offered. And as
20 you will recall you had indicated earlier that when
21 Ms. Bolomet's evidence came up we would handle it on a
22 case-by-case basis as it was offered. This was, in
23 fact, was never offered because I was objecting about
24 the fact it was being handed out without being
25 offered.

1 So I would object, number one, that there's
2 a misrepresentation made whether there was testimony
3 was offered. Number two, I believe, this is somewhat
4 beyond the scope of whatever the public testimony was
5 so I'm not sure what we're getting into. But it
6 seems like we're opening up the record for additional
7 information that wasn't in the scope of the public
8 testimony.

9 VICE CHAIR HELLER: As far as what has
10 previously been put into the record the record will
11 stand for itself. I don't think it's productive to
12 debate what is or is not in the record. The record is
13 the record.

14 Ms. Bolomet, if you could stick to
15 questions for the witness based on the testimony
16 that's offered today that would be appreciated. Based
17 on her public testimony today, do you have any follow
18 up questions?

19 MR. BOLOMET: Well, when you sat on the
20 committees did you guys discuss anything about the
21 history of these lands?

22 THE WITNESS: No. We were led to believe
23 this was remnant, abandoned farmland. Our maps are
24 very poor. It's kind of, you know, they're sort of
25 big scale like Land Sat Photo, NOAA photo. It's kind

1 of hard to tell where "where" was.

2 If you didn't live in that neighborhood you
3 wouldn't have known it was once a stream area. You
4 wouldn't have known it once had nine people claiming
5 Land Commission Awards to grow things. You wouldn't
6 know any of that. None of that was presented to us.
7 And in general decision-making is based on either
8 abundance or lack of information.

9 MS. BOLOMET: And what do you know about
10 these lands now?

11 THE WITNESS: Well, they have a rich
12 history. There's plenty of documentation people were
13 buried there. People had homesteads there. It's all
14 in the public records and the testimony of the native
15 tenants which is, you know, I spend my spare time
16 looking at books about dead people. So I read a lot
17 of that stuff. Thank you.

18 MS. BOLOMET: Thank you.

19 VICE CHAIR HELLER: Any questions,
20 Commissioners. Is there anyone else presents who
21 wishes to come forward give public testimony? Step
22 forward.

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

1 THE WITNESS: I so swear.

2 VICE CHAIR HELLER: Please state your name
3 and address for the record.

4 THE WITNESS: My name is Simon Russell.
5 I'm a small farmer in Haiku, East Kulia'a Road, 910.
6 I farm ducks, taro, bananas and papayas. I just
7 wanted to ask the Commission not to change its ruling
8 on Agricultural to Urban because I think it's a bad
9 precedent for our state. I was reviewing the decision
10 last year on O'ahu by the Ho'opili and was horrified
11 to see 1500 acres of prime Ag lands changed from Urban
12 to -- from Agricultural to Urban.

13 And I'm very acutely aware, as many of us
14 are, that we imported 92 percent of our food to the
15 state. We also are a net exporter of our food crops
16 meaning that we grow -- only about 8 percent of what
17 we grow is edible. So seed corn and coffee and other
18 crops are exported from our state to the tune of about
19 90 percent exports. We also have 90 percent imports.
20 So there's a massive imbalance in our food production
21 in Hawai'i. Thus my testimony today to ask you not to
22 rezone Ag land to Urban.

23 I'd like to bring to your attention, I'm
24 sure many of you have read it, the Hawaiian
25 Constitution Article XI section 3 states: "The State

1 shall conserve and protect agricultural lands, promote
2 diversified agriculture, increase agricultural
3 self-sufficiency, and assure the availability of
4 agricultural lands."

5 That being said I do believe affordable
6 housing is urgently necessary. Me personally I make
7 about \$30,000 a year. There's no way that I would be
8 able to afford 500 to \$600,000. So I'm not sure what
9 "affordable" means to everybody, but that's not
10 affordable to me. So I don't think that this
11 sacrifice of Ag land is warranted and would ask that
12 your decision to deny the permission to rezone remain
13 as it is. Thank you.

14 VICE CHAIR HELLER: Stay there for a
15 minute. Parties, any questions?

16 MR. GEIGER: No questions.

17 MR. YEE: No questions.

18 MR. GIROUX: No questions.

19 MS. BOLOMET: I have questions.

20 VICE CHAIR HELLER: Go ahead.

21 MS. BOLOMET: Do you know a lot of farmers
22 that are looking for farmland?

23 THE WITNESS: Quite a new, yeah.

24 MS. BOLOMET: And what size acreage do they
25 look for?

1 THE WITNESS: Well, all the farmers I know
2 couldn't afford any farmland here. That's the whole
3 problem. I mean if there was a decent 5-acre lot, you
4 know, for \$50,000 I'd, you know, borrow some money and
5 buy it, but that will never happen so I rent and I'm a
6 tenant.

7 MS. BOLOMET: So 5-acre lots are what
8 farmers are looking for, in that range?

9 THE WITNESS: It's very difficult to make a
10 living farming on 2 acres like we have here on Maui
11 especially if it's uneven terrain. I'm talking about
12 crop production like corn or other things where you
13 can drive a tractor. If you're doing small,
14 small-scale production of value added products,
15 smaller lot's usable.

16 MS. BOLOMET: Are you aware that on farms
17 you can build housing, you can take 5 percent of the
18 land and use it for housing for farmers?

19 THE WITNESS: Yeah, I'm aware of that.

20 MS. BOLOMET: So farmland can provide
21 affordable housing --

22 THE WITNESS: Hmm-hmm.

23 MS. BOLOMET: -- to people and a job.
24 Wouldn't you consider that more of a win/win situation
25 than producing -- than just putting up houses people

1 really can't afford?

2 THE WITNESS: Absolutely, yeah.

3 MS. BOLOMET: That's it. Thank you.

4 THE WITNESS: Thank you.

5 VICE CHAIR HELLER: Commissioners, any
6 questions? Is there anyone else present today who
7 wishes to step forward and provide public testimony?

8

9 JOHANNA KAMAUNU

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

12 THE WITNESS: I do.

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

15 THE WITNESS: My name is Johanna Kamaunu.
16 And I live in Waihe'e, 222 Waihe'e Valley Road,
17 Wailuku.

18 VICE CHAIR HELLER: Go ahead.

19 THE WITNESS: One of the comments I wanted
20 to make something that -- I appreciate this whole
21 process, appreciate that our Intervenors here brought
22 the case forward because it's given me an opportunity
23 to learn and understand how this all works.

24 And one of the things I've been researching
25 is what my rights would be as it pertains to the

1 things that are happening here and as a Native
2 Hawaiian.

3 Something interesting I found out came
4 about in the couple cases. Howard Hughes has this
5 corporation called Sumu Corp. And they're a real
6 estate company now. Sometime ago they filed a case
7 against the State of California. And part of the
8 reason dealt with submerged lands. And the State of
9 California saying that they had the rights to
10 submerged lands. Sumu Corp. said they had acquired
11 their rights through some other means.

12 Thus the battle ensued. In the final
13 analysis the courts found that the State of California
14 didn't have authority or didn't have the right to
15 assert what they call an easement, agreement for an
16 easement right there. It was based on the fact that
17 there had been rights previously recognized in an
18 original patent. Sumu Corporation got their patent
19 through, I believe it was Mexico. Sorry.

20 I really need to read this: "The rights of
21 the Mission Indians were recognized in this case."
22 And the thing that I found really interesting was that
23 the Indians didn't have any paperwork. And they
24 didn't claim to own. They merely stated that they had
25 used the land. And the court had decided that that

1 decision, that that action had merit to it.

2 And it had merit because it was known at
3 the time the patent was created that they had this
4 right. So I thought, well, that's pretty cool. A
5 third-party has interest in land and they have no
6 documents. But because it was known at the time the
7 patent was created that they had use of the land, that
8 right still prevailed for them 'til today in this
9 particular case.

10 So -- and I thought maybe that's just an
11 unusual case. But I found that there was several
12 others: *Barker v. Harvey* did the same thing. I found
13 out that the Mission Indians had rights. And there
14 was no claim for ownership, only that they felt they
15 still needed to have availability of that land to
16 them.

17 Now, when I looked at it in our situation
18 here today the court said that because their rights
19 were known at the time, usage was known at the time,
20 that their rights still prevailed.

21 With Land Commission Awards even though in
22 some cases they're not recognized today, Hawaiians
23 have more than a third-party interest that the Mission
24 Indians had. They have a document. The document is
25 the Land Commission Award. And they have it sealed

1 with the Royal Patent.

2 Since it was known at the time that the
3 Land Commission Awards were given, that access rights
4 were available to all Hawaiians for gathering
5 purposes, I'd like to assert that right as equal to
6 those of the Mission Indians.

7 It was something that was well-known. And
8 I just -- the fact that in most of the deeds that you
9 find today -- and I can attest to the one in our
10 particular valley, that the large landowner there has
11 a condition in his deed.

12 And it says that he has to allow and
13 recognize customary and traditional practices and
14 rights. Now, that tells me he recognized the right --
15 that right was recognized at the time the patent was
16 created. It's still recognized today.

17 If that's the case then we're missing
18 something here. And I think the biggest part is that
19 we have claim. Irregardless of what's going on today
20 the Land Commission Awards and the Royal Patents,
21 still provides more than a third-party interest than
22 the Mission Indians had in these previous cases.

23 I could share with you several other cases
24 but I'm sure your attorneys can look that up and find
25 it on their own. The bottom line is the rights

1 created by the Land Commission Award is far superior
2 to third-party interests. The patent that
3 substantiated that claim by National Constitution,
4 our claim today, and a monarch who had no compelling
5 self-interest to do so other than to assure that the
6 people of Hawai'i in 1838, when they created the
7 Constitution under the Declaration of Rights, would
8 not be left destitute to the influx of foreign
9 interest and greed.

10 The remnants of these Land Commission
11 Awards in the hands of the rightful heirs today has
12 held for over 200 years witnessing the integrity of
13 that law. But there are wolfs at the door of these
14 islands. And they have been here since 1838 since
15 that law was created. And they continue to assault
16 upon the fabric of this truth.

17 There's several other things that eat away
18 at what our right is. It may have nothing to do with
19 you here, but it shows the precedence the state is
20 making with this Kanaiolowalu Royal Commission which
21 purports to protect our rights, give us more rights as
22 a Native Hawaiian community.

23 But in essence they're trying to capture
24 our rights because they aren't able to capture it.
25 They aren't able to capture the Land Commission and

1 Royal Patents legally.

2 Kuleana tax exemption is another example.
3 Kuleana land did not need to be taxed. They were tax
4 exempt. The laws are there for -- the kuleana tax
5 exemption says that if you indicate you are a kuleana
6 landowner and you sign the tax permits, then you will
7 be granted a tax exemption.

8 In Maui that amounts to zero tax.
9 Unfortunately you have to sign a permit. The permit
10 is subject to the real property rules and it's also
11 subject to state law. So they've captured our rights
12 again.

13 Water use development permit. That's so
14 criminal. The water use development permit was --
15 well, when they send it to kuleanas it's criminal.
16 Kuleanas have a right. And it states in their own
17 documents that we don't need to apply for our water
18 permit. We have our rights. We won't lose our
19 rights.

20 However, if I remember that law correctly
21 it says: The rights will not be diminished nor
22 extinguished for failing to apply for water use
23 development permit. However, the state has hounded us
24 to apply.

25 VICE CHAIR HELLER: Ma'am, if you could

1 bring your comments to a conclusion. We're not here
2 to address water rights today.

3 THE WITNESS: Sorry. Okay. So the bottom
4 line is there's a lot of rights here that may not be
5 adequately addressed. We're looking at different ways
6 to save this land in Kahoma so that it will be
7 available to the rightful people and the rightful
8 heirs. I think that's just one of the things that has
9 to be looked at.

10 The other thing is I was a mortgage loan
11 processor for several years. This was some time ago
12 when building was booming on Maui and the
13 qualifications for a family looking for a home
14 required that they have, they meet a 4-to-1 ratio.

15 In other words, the loan that you could
16 apply for shouldn't be more than four times what you
17 make. And part of that processing required that they
18 be able -- well, bottom line, they be able to handle
19 the payments. In other words, you're not living from
20 one paycheck to the next paycheck and trying to make
21 the payments.

22 And all it would take, at least in our
23 financial company, is for one major financial
24 catastrophe to happen to them, just one: Your car
25 breaks down or someone gets sick or someone dies. It

1 just takes one of those things to happen and then
2 they're in this process of foreclosure eventually.

3 That's what the situation looks like today.
4 When I was working in the mortgage processing they had
5 to have some backup for themselves in order to stay
6 in, be a successful land -- homeowner. I'm sorry.
7 That's all I have to say.

8 VICE CHAIR HELLER: Stay there for a
9 moment. Parties have any questions?

10 MR. GEIGER: No questions.

11 MR. GIROUX: No questions.

12 MR. YEE: No questions.

13 MS. LINCOLN: No questions.

14 MS. BOLOMET: Just one question. Do you
15 have any interest in these lands?

16 THE WITNESS: Thank you. It just came to
17 our attention as we've been working on our genealogy
18 that, yes, we now have interest and we'd like to lay
19 claim to this land.

20 MS. BOLOMET: Thank you.

21 VICE CHAIR HELLER: Commissioners, any
22 questions? Thank you. Is there anyone else present
23 who wishes to give public testimony? Come forward,
24 please.

25 xxx

1 KANELOA KAMAUNU

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

4 THE WITNESS: Yes.

5 VICE CHAIR HELLER: Please state your name
6 and address for the record.

7 THE WITNESS: My name is Kaneloa Kamaunu.
8 I'm from Waihe'e Valley. I'm here, of course, we came
9 here opposed this the last time. I guess everything I
10 come for is to oppose. Basically going through a lot
11 of the hearings.

12 Some of the things for me is especially
13 dealing with the water. Where is the water going to
14 come from? How they going to substantiate? We heard
15 one young man, in fact my nephew from Lahaina, Officer
16 Tenaga, talking about being asked for \$20,000 more
17 before he closed the deal.

18 Right now we're looking a little over
19 30,000 for a meter, for a water meter. That's not
20 including the loan that you're gonna take out which
21 would probably be, as he says, \$400,000. Just to get
22 a water meter you gotta take a loan out.

23 I talked to a person, several in fact, that
24 were actually looking to put water meters into their
25 homes. But then when they changed the price from

1 10,000 to 30,000 there was no way he could do it. So
2 we're looking at the -- and also where *is* the water
3 coming from? That's the big question here too. Where
4 is the water gonna come from? Have they solidify
5 where the water going to come from?

6 And I travel to Lahaina three or four times
7 a week. The traffic there, once you get to Olowalu
8 Store it's backed up every single day. And it's
9 because they put in traffic lights. They're putting
10 in more traffic lights on that one road. And the more
11 traffic lights you get, I mean there is from
12 Launiupoko to Puamana to Lahaina Town. I mean they
13 keep going through the whole thing.

14 Instead of taking one normal ride for where
15 we get to 45 minutes, it's almost an hour, sometimes
16 an hour and-a-half because of the infrastructure and
17 the buildings that are coming up.

18 So the other question to ask is: What is
19 the impact? The impact in Lahaina is bad. It's a bad
20 area. The roadways are packed every single day. When
21 you have tourist season, as far as right now we have
22 all the -- we have all the winter people coming down.

23 And, of course, the biggest thing's the
24 whales. Accidents happen. The occurrence of
25 accidents rise because people all of a sudden they see

1 the whales and they've never seen such a big animal in
2 water, all of a sudden just lose their minds and stop
3 on the road not thinking there's traffic coming from
4 both ways.

5 And I'm not kidding because I drive that
6 four times a week. I mean just to see a tale they'll
7 stop. All of a sudden they forget, and there's about
8 a hundred of cars behind them. And they forgot
9 everything else, and they just stop. So thing is then
10 with the lights, it's terrible to say.

11 I don't knock what's being said about
12 affordable housing. It's understandable young people
13 want to live here and they want to own a home. But
14 things aren't being, aren't being looked at. I mean
15 the infrastructure, how to get things there, how to
16 make sure that the sewage, the runoffs. We only know
17 this because we're active in a lot of these meetings.
18 A lot of people don't realize the impact one
19 subdivision can give to an area is critical.

20 Nobody thinks about what happens to the
21 ocean. Where's the runoff from the asphalt, all the
22 fertilizer from people's yards? And even if they were
23 doing farming, where's all that fertilizer going to?
24 It's going into the ocean. It's going into -- so the
25 impact, I mean you can -- it's maybe ten homes or

1 maybe a hundred homes, but that impacts that area.

2 If you haven't traveled to Lahaina, you
3 know -- I mean I remember Lahaina when only had Front
4 Street. You know what I mean? Could stop by, pick up
5 mangoes every day. No more those things. In fact
6 people cut the mango trees down 'cause they don't like
7 people stopping at their house. It's totally a
8 different area.

9 You go to Front Street, you stuck in
10 traffic too. So many things impact what's happening
11 here. Not only that I'm Native Hawaiian and that I
12 have native tenant rights that are being imposed upon
13 me that are being taken away because of structures
14 that are coming up, access to beaches where I would
15 normally go without having even to ask, running into
16 the -- being called up by people in the Police
17 Department because we're trespassing when in actuality
18 we're supposed to have the right to traverse. All of
19 a sudden there's a gate.

20 A lot of things gotta be taken care of.
21 Where is -- what's the impact? Lahaina is the
22 impacted area. If you haven't visited there you gotta
23 go. Because I mean everywhere you look there's
24 houses. I'm telling you, houses. But you gotta be a
25 millionaire or billionaire to own something out there.

1 So who are we actually afforded for? Yeah,
2 I want my nephew to have a home and his family. I
3 think they deserve one. But what is ten homes gonna
4 do? This young man probably makes about 70,000 a year
5 with overtime. How is he gonna afford that? How is
6 he gonna be able to take care of his family and to be
7 able to take care of his mortgage besides his car
8 payment?

9 Plus he's going to have to pick up a meter
10 which is \$30,000 which come to -- if you don't know
11 you don't own it. If you don't pay the county their
12 money for that meter, that they'll yank it out of
13 your -- they'll yank it from you, take it even if you
14 pay the \$30,000. I had this argument with them
15 already because that happened to us.

16 So go figure. You pay 30,000 you don't own
17 it. But what I'm saying is, you know, yeah, for
18 developer. They take care their part. What about the
19 rest of us, the rest of us have to deal with the
20 traffic? Nobody's looking for answers about traffic.
21 Nobody's looking for answers about runoffs.

22 Nobody's looking to answer to make sure
23 places on the ocean front -- that's major ocean front
24 you're talking about that don't get decimated.

25 Nobody's talking about, in these proposals,

1 how they going secure native tenant, which is a legal
2 term with legal standing, how they going deal with the
3 native tenant rights which is vested since 1838,
4 legislated 1840, which has not been diminished or
5 taken away. So there's a lot of things you have to
6 think about, physical rights, all these things.

7 To me what you did was correct the first
8 way. You guys going to have to go back to the drawing
9 board, figure out a way to conform. To me it's up to
10 them. They should conform because their impact is
11 going to be great. If you don't know Lahaina, go
12 visit Lahaina and you'll see. Thank you.

13 VICE CHAIR HELLER: Stay there for a
14 moment. Parties, any questions?

15 MR. GEIGER: No questions.

16 MR. GIROUX: No questions.

17 MS. LINCOLN: No questions.

18 MS. BOLOMET: One question. Do you have
19 interest in these lands?

20 THE WITNESS: Yes, I do.

21 MS. BOLOMET: How?

22 THE WITNESS: Well, right now we're in a
23 contested case with Mr. Geiger them in Moku.

24 MS. BOLOMET: Thank you.

25 VICE CHAIR HELLER: Commissioners, any

1 questions? Last call. If there's anyone present who
2 wants to give public come forward, please.

3 BRUCE U'UTU

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

6 THE WITNESS: Yes, I do.

7 VICE CHAIR HELLER: Please state your name
8 and address for the record.

9 THE WITNESS: Bruce U'utu, 249 Kupapa
10 Street Paia, Maui.

11 VICE CHAIR HELLER: Have a seat. Go ahead,
12 please.

13 THE WITNESS: First of all, good morning
14 everyone. Thank you for taking the time to having me
15 testify. Some incredible testimony I heard earlier.
16 I'm for this Project. And I thought we heard a lot of
17 the negative impacts potentially facing any project
18 whether it be affordable or non-affordable. This one
19 happens to be affordable.

20 "Affordable" in the criteria on to how much
21 money you make or not, it's tough for anyone. I own a
22 home and I rented a home. Even when I was renting I
23 was living paycheck-to-paycheck.

24 Even that I own a house I still struggling
25 to own a house. What makes it work is a ownership

1 pride, pride in the homeownership. That's what makes
2 it work for me. I went to the mayor's meeting State
3 of the County address. In his speech he stated we
4 need to do things that's good for our kids' kids. And
5 I started thinking about I get grandkids. And I have
6 kids right now. Started young. And I want something
7 for them. And I'm looking at them succeeding in
8 owning a home on Maui.

9 As I gained more thought into it it
10 happened to me. My mom was a beneficiary of low
11 income housing who bequettted (sic) that house to me.
12 That's the positive impact. I wish that upon
13 everyone. But they need the opportunity. I have that
14 house. My mom made \$200 a week. She's a janitor,
15 single mom, four kids. Tough, yeah?

16 We can talk about all the negative impacts.
17 She made it happen. Seventy-two houses in Paia at the
18 time it was low income. Tough life, yeah, tough, you
19 know. Everybody was struggling in that area.
20 Everybody made it work. But they followed the county
21 guidelines. And the impacts were more beneficial, the
22 positive impacts than these negatives.

23 I'm blown away by people just saying the
24 negative impacts 'cause there's a lot of positive. I'm
25 one. Without that where would I be? Without that

1 opportunity that it got bequetted to me, I'd still be
2 renting and struggling...daily.

3 The traffic impact -- and on top of it it
4 was Ag land but what was in Ag? Everything was Ag or
5 Conservation. That was Ag land that we built off. I
6 think the last affordable housing Project in Lahaina
7 was Leiali'i. And it was controversial 'cause the
8 State was gonna go ahead. The neighbors didn't like
9 it. Nobody wanted it.

10 I dare anyone to go up there tell 'em, "We
11 was against your project." They won't. Help our kids
12 sustain our life here. What the mayor said, "our
13 kids' kids." Give 'em one shot. Regardless how
14 expensive, they made 'em work, my mom did, \$200 a week
15 I'm blown away. That's why we hardly had food. Made
16 it work, \$200 for two weeks. I take that back.
17 That's crazy. She made it. My kids and my grand kids
18 live in my house.

19 Traffic would not increase in Lahaina if
20 you give in to the Lahaina residents because they all
21 in Lahaina in the same house for three generations in
22 one house. The traffic is there already. If you go
23 to my neighborhood right now at 5:30 you goin' see how
24 much cars is parked along the side of our neighborhood
25 because you get grandparents, parents and their kids

1 in one house. That's factual. That's reality. It's
2 happening right now.

3 So what I'd like to tell you guys is tell
4 my mom is, "Thank you, Mom for give me the house."
5 But as I thought about it it's not my mom. It's the
6 people who approved the process, who gave my mom a
7 fighting opportunity. That's who I gotta thank, who
8 gave my mom a shot, single parent. Gave 'em a shot.

9 So hopefully you guys going make a decision
10 that one day the next guy comes up here testifies and
11 says, "Thank you guys for generations back for making
12 it happen." Thank you, guys, for giving my parents a
13 shot, my mom a shot because I'm the beneficiary
14 testifying in front of you guys.

15 And I don't plan on leaving the island.
16 The guys who had it hard, they left. I feel so bad
17 for them. I got family in Vegas. They willing for
18 fight, but need one shot. They left. Can you blame
19 'em? There's no opportunities. We need
20 opportunities. All we ask for. Not handouts. Give
21 us shots. Thank you.

22 VICE CHAIR HELLER: Stay there a moment.
23 Parties, any questions?

24 MR. GEIGER: No questions.

25 MR. GIROUX: No questions.

1 MR. YEE: No questions.

2 MS. LINCOLN: Just one question. Can you
3 tell the Commission what you would define as
4 "affordable housing" as far as price range? From
5 where would it start, where would it go?

6 THE WITNESS: You know -- where would it
7 start? \$300-400? I know the cost of -- back then in
8 Lahaina 5 years ago it was 1.2 million. That was the
9 average cost of the move. I mean that's ridiculous.
10 So if you can keep anything half under that I'd be
11 stoked.

12 MS. LINCOLN: Are you aware that this
13 Project there's only eight homes that are going to be
14 in the \$372- to \$425,000? And everything else is --
15 44 percent of it is in the 596 to 685,000. Would you
16 define that as affordable housing?

17 THE WITNESS: I would define that as
18 double. That's what --

19 MS. LINCOLN: \$685,000?

20 THE WITNESS: I have friends bought homes
21 at 800- and \$700,000 and they working two jobs. They
22 taking cracks right now. It's reality but they bought
23 it. Somebody give 'em a shot, this would even be
24 better for them.

25 MS. LINCOLN: But your initial reaction to

1 affordable housing was something between \$300-- and
2 400,000.

3 THE WITNESS: That's the bottom tier, yes.

4 MS. LINCOLN: Thank you.

5 THE WITNESS: You're welcome.

6 VICE CHAIR HELLER: Ms. Bolomet.

7 MS. BOLOMET: (off mic) Do you realize that
8 this Commission can't provide opportunities with jobs?
9 You said you had family in Vegas and they just wanted
10 opportunities. They need to have jobs and income
11 before you can afford, qualify for housing. Do you
12 agree?

13 THE WITNESS: Yes, I agree.

14 MS. BOLOMET: Okay. My father was in the
15 Ironworkers Union. Wouldn't you think that it would
16 be more beneficial to get the Pumehana Project that
17 has 4-- or 500 houses, affordable houses going over
18 something that only has ten real affordable houses
19 that's already been approved?

20 THE WITNESS: Are they building it or are
21 we talking about it? That's the question.

22 MS. BOLOMET: It's already been approved.

23 THE WITNESS: Well, a lot have. You know,
24 I understand what you're saying. A lot of projects
25 have been approved, but I want to see it done.

1 MS. BOLOMET: Yeah. There's no guarantee
2 that this is going to get done if it gets approved,
3 right?

4 THE WITNESS: You're right. There is no
5 guarantee.

6 (Chair Chock now present)

7 I heard on the news Governor Abercrombie
8 (inaudible)says there's going to be several thousand
9 homes and those are supposed to be affordable. Isn't
10 that an opportunity? You know a lot of opportunities
11 unfortunately are missed opportunities. That's real
12 sick. You know I take something that can be done
13 rather than talking about something and not being
14 done.

15 So my question if was ten to 20 I would
16 like to see the 20 people in that homes. And you go
17 there and you tell 'em, "I was against your project."
18 I'll never do that.

19 We have a small 50, I think was 50 homes in
20 my subdivision. Small, relatively small but
21 incredible. I'd love it. I would not go against
22 affordable homes.

23 MS. BOLOMET: Yeah. I'm all for affordable
24 homes. Don't get me wrong. I'm against this Project
25 because it's on my grandfather's land. And nobody's

1 even asking us if they could do it or even paying us a
2 dollar. Are you for that? Are you supportive of
3 that?

4 VICE CHAIR HELLER: Ms. Bolomet, I think we
5 are getting into arguing with the witness.

6 THE WITNESS: You know what? I don't have
7 factual evidence to say anything what you said. I
8 have no idea. But I'll take your word for it. I
9 probably got claims here too. I'm Hawaiian.

10 MS. BOLOMET: Good.

11 THE WITNESS: But I still feel for a lot of
12 people too who trying to make a living. That makes me
13 not go against anybody else. I'm supportive of you
14 like I would be supportive of have somebody owning a
15 home there.

16 MS. BOLOMET: Good. We're on the same
17 page. Thank you.

18 VICE CHAIR HELLER: Commissioners, any
19 questions? Then that completes the public testimony
20 portion of the meeting.

21 (speaker from audience off mic.)

22 VICE CHAIR HELLER: Let me remind you that
23 previous testimony is already in the record and does
24 not need to be repeated.

25 xx

1 CLARE APANA

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

4 THE WITNESS: Yes, I do.

5 VICE CHAIR HELLER: Please state your name,
6 your address for the record.

7 THE WITNESS: Clare Apana. Wailuku, Maui.

8 VICE CHAIR HELLER: Thank you. Go ahead.

9 THE WITNESS: Mr. U'utu, Bruce and I often
10 testify at the same places. And there's one thing
11 that we usually do agree on. And that is the
12 importance of our Hawaiian heritage and our kupuna. I
13 don't know that Mr. U'utu knows the depth of what has
14 been revealed upon this land. But it is not
15 protected. It was very well covered. I know that you
16 know.

17 I wear this (shawl) today because this is
18 made from the Lahaina west side red dirt, the dirt of
19 Tutu Pele. And what was shown to me -- and I only
20 speak for myself -- was that, yes, this is an
21 important place that is not being protected. This is
22 the place of her son's birth and his resting place
23 which I am not going to speak about.

24 These are things that are important to me.
25 It matters not much to me whether you believe them.

1 It doesn't matter to me much whether you believe them.
2 My rights and the cultural practitioner's rights is
3 protected by the State Constitution. I believe the
4 State attorneys swear an oath to that. But over and
5 over again I must fight for this. This is part of my
6 culture.

7 I'm sorry but the trail of burn marks and
8 the tree burn from the inside out and still standing
9 tells me that someone wanted us to see this place.
10 And we did find the importance of this place. And
11 nothing was done about it.

12 You know, I spoke to Mr. Dega. I've also
13 had much contact with him too. And before all of
14 this, the testimony or anything started, I said, "Oh,
15 what happens if there are errors in a archaeological
16 report?" And he said, "Well, we correct them, you
17 know." He said, "Well, You know I'm doing one with
18 Lucienne, where Lucienne pointed out some historical
19 inaccuracies that we made. So I'm going -- we have to
20 correct them." And I said, "Oh, okay. Well, that's
21 good."

22 I think we have kind of beat this dead but
23 they do not stand corrected. This report does not
24 stand corrected. I believe the time is over now.
25 What would you have me do? I am for every person

1 being able to have a home to live in. But what are
2 the costs of a person having ten families who may have
3 an affordable 370,000 -- \$350,000 home in this?
4 Place? What are the costs? I mean I think everybody
5 would love to build a house on somebody else's lot.
6 This is in question. This is in court still.

7 The benefits of ten homes that are
8 affordable cannot outweigh the procedure, the rules,
9 the laws that have been established to govern these
10 things. It's not a time when you can say "Oh, 10
11 people we can give them an affordable house. Let's
12 look the other way on the state laws."

13 What a precedent. So please come in and
14 keep making people like me have to come in, testify
15 and beg, beg you to do what they should just do when
16 it is pointed out. I rest on Article XII section 7
17 the cultural practice and the cultural practitioner
18 that showed you the connectivity of the water that
19 flows down to Mala Bay, of the karst system that runs
20 underneath this property, of the many burials that
21 have been already desecrated here, of the incredible
22 night that came to show us where the important place
23 was here on this land.

24 And I ask you -- I know it's not your
25 purview, but this is not clear issue of whose

1 ownership this is. And it's not time. This is not
2 the project.

3 I would say, Mr. U'u, I've heard
4 Ms. Bolomet's ideas of what she is going to do with
5 the land. And you'll get more jobs. Our people will
6 get jobs that will last into the future growing food
7 for our people. It's not just going to be building
8 the homes because that will come too.

9 It is the Project that should be here:
10 Sustainable homes, sustainable lands, sustainable
11 farming, jobs for local people. And I thank you so
12 much, Commissioners, you have a very hard job.

13 Going through this again has really made me
14 see how tough your job is.

15 Mr. Geiger, I thank you for your courtesy.
16 And I know how hard it is for you to represent what
17 you must represent. And I know that it's not always
18 maybe your decision. But I thank you for allowing
19 this to go.

20 And, County of Maui and the State Office of
21 Planning, I thank you too. I would wish that you
22 would take more heed in some of the cultural
23 importance that we bring. And because, gosh, you were
24 the guys who are supposed to be protecting us.

25 And I thank you, Ms. Lincoln, for your

1 brave and thoughtful research. I'm so in awe of that.
2 I thank you, Routhy, Ms. Bolomet. I've seen how much
3 you've given to do this. And it hasn't been anything
4 but knowing that this is something you must do. And I
5 saw how much you gave up of your health and your non-
6 money to do this. So I'm finished. Thank you.

7 VICE CHAIR HELLER: Parties, any questions?

8 MR. GEIGER: No questions.

9 MR. GIROUX: No questions.

10 MR. YEE: No questions.

11 MS. LINCOLN: No questions.

12 MS. BOLOMET: No questions.

13 VICE CHAIR HELLER: Commissioners, any
14 questions? Thank you. Then that closes the public
15 testimony part of this hearing. Mr. Chair, if I may,
16 this is a disclosure that I've put on the record, but
17 I want to make sure that before we move on it's on the
18 record in this docket in particular.

19 In my law practice I represent certain
20 taxpayers who are appealing real property tax
21 assessments including a couple of cases on Maui which
22 means that my client is adverse to the County of Maui
23 in those property tax cases.

24 They have no connection to the present
25 matter. And I don't think they would affect me in any

1 way in this case. But I just want to make sure the
2 disclosure is on the record. And if any party has any
3 objection to my participation, this would be the
4 opportunity to raise that objection.

5 CHAIR CHOCK: Parties, any objections?

6 MR. GEIGER: No objection.

7 CHAIR CHOCK: County?

8 MR. GIROUX: No objections.

9 MR. YEE: No objections.

10 MS. LINCOLN: No objection.

11 MS. BOLOMET: No objection.

12 CHAIR CHOCK: Thank you, Vice Chair for
13 your disclosure and also for pinch hitting while I
14 needed to leave the room for a few minutes. I believe
15 now we're into the presentations by the parties.
16 Petitioner? I'm sorry, Holly. Let's take a 10
17 minutes recess.

18 (Recess was held.)

19 CHAIR CHOCK: We'll proceed to closing
20 opportunities, give each 5 minutes. Are you ready to
21 proceed?

22 MR. GEIGER: I have just a quick question.
23 Did you say part of my 5 minutes include rebuttal?

24 CHAIR CHOCK: No. Five minutes is for
25 rebuttal.

1 MR. YEE: There are importantly three
2 matters pending. Is five minutes for all three
3 matters?

4 CHAIR CHOCK: No. We're just on the Motion
5 for Reconsideration. (9:45).

6 MS. LINCOLN: I have a question. Where did
7 it say in the procedural rules we only got 5 minutes?

8 CHAIR CHOCK: The Chair's discretion.

9 MS. LINCOLN: Okay. So they get to provide
10 unlawful evidence and I don't get to respond to that
11 more than 5 minutes?

12 CHAIR CHOCK: 5 minutes, Ms. Lincoln.
13 Proceed.

14 MR. GEIGER: Chair, Commissioners, I wanted
15 to thank you. We're back here on our motion to ask
16 you to reconsider the Decision and Order that you
17 adopted on January 10th or voted on January 10th,
18 actually adopted a few days later. What we're not
19 here to do is we're not here to go through and reargue
20 if the Project meets its criteria.

21 That's not the purpose of this proceeding.
22 What we're here to do is to point out the fatal flaws
23 in the Decision and Order and the Findings and
24 Conclusions that were entered by this board because we
25 don't want to have these type of flaws which will

1 create a situation where we'll go to a court. The
2 court will say there's flaws. It comes back. We want
3 to avoid that. We'd like to do this in one step.

4 This is really a very important decision
5 for you folks to make. I think you can tell from the
6 public testimony today. There's a lot of people who
7 want this Project. There are people who don't want
8 this Project. But the most important thing I think we
9 heard was that there are people who say you should
10 give the opportunity for the Project.

11 Well, in order to do that you guys gotta
12 take a look at your Decision and Order and you gotta
13 say: Do we have it right? Did we get it right?

14 I think when you take a look at it, look at
15 the Findings, look at the Conclusions you're going to
16 agree: No, I don't think this time we got it right.
17 We need to go back and redo it.

18 Now, I want to first address the
19 completeness of the record. In our motion we attached
20 two documents that were referenced to -- at least the
21 actions were being referenced in the hearing but the
22 actions hadn't been completed while we were in the
23 hearing.

24 The first thing I want to talk about is the
25 action where the county of Maui had adopted water

1 quality rules for stormwater runoff. One of the
2 findings that you folks had, one of the things that
3 you had is: We can't tell if there's an impact of
4 this Project to the natural resources. That's what
5 you said. That was Finding No. 171. You didn't say
6 there was an impact. You said, "Well, there may be an
7 impact."

8 Well, the county of Maui specifically
9 addressed this. They came out and they adopted rules
10 on water quality for runoff, for stormwater. And so
11 those rules, which were adopted after the evidentiary
12 portion was closed, have been attached.

13 You did hear testimony that if the proposed
14 rules, which were actually the rules that were
15 adopted, were adopted, that the Project would meet
16 that criteria and there wouldn't be water quality
17 issues with regard to stormwater runoff.

18 This is something that is new information
19 that's critical to your decision. It's critical to a
20 finding you made, one of the very few findings you
21 said that there was an impact. And as a result it's
22 information that you need to consider and you need to
23 say: Wait a minute. Can we really make that finding?
24 Can we really say there may be impact when we now have
25 rules adopted to address the specific thing that in

1 fact the Project complies with?

2 Now, I'm being reminded I've got a short
3 period of time. I'm going to have to hurry through
4 this. The other piece of new information that came
5 out was the Maui Island Plan. That was adopted as
6 part of the law. The mayor signed an ordinance that
7 adopted the Maui Island Plan. And you were told that
8 this Project was included in the Maui Island Plan.
9 You heard some public testimony today that said:
10 Well, maybe it really wasn't that great.

11 Well, you folks need to take a look, and we
12 attached it to the Motion to Reconsider, the ordinance
13 that was actually adopted and the portion of the Maui
14 Island Plan that specifically addresses this Project.
15 And it's found on page 8-61. And it talks about the
16 Kahoma Infill Project. That is this Project.

17 It doesn't say, "Hey, this is an urban area
18 where maybe we should have urban." It says, "We want
19 this Project in the Maui Island Plan." It's a planned
20 growth area. It goes through and states the name of
21 the Project, that it's urban infill. It tells the
22 number of units that will be built. It tells the
23 density.

24 Now, this is all information that was
25 adopted in December of last year after you folks had

1 made your vote in December. But it's information that
2 *directly* impacts on whether or not this should be
3 urbanized. So you folks should consider that also.

4 So these are two new items that you really
5 need to consider if you're going to address this
6 Project and you haven't considered it.

7 Now, I want to focus on why we filed the
8 motion. We didn't file this motion 'cause we were
9 sore losers. We didn't file this motion because we
10 thought it would be nice to come back to you guys and
11 say, "Hey, take another look at this."

12 We filed this motion and we thought about
13 it long and hard before we did it. And the reason we
14 filed this motion is there's just too many mistakes in
15 the Decision and Order. And it just will cause us to
16 all have to come back and spend more time with this.
17 We don't want that. You don't want that. I don't
18 think anybody sitting at this table wants that.

19 We wanted to get it right the first time.
20 So that means that you have to go through and you have
21 to say: Does the information in the Findings of
22 Fact -- does the information in this volume of
23 testimony, is it there that supports the findings?
24 And it isn't. Your findings rely upon some testimony
25 that was never admitted. Your findings rely upon

1 information that was never received into the record.

2 You can't rely upon information that's not
3 part of the record in order to support a finding. So
4 that's a fatal flaw that needs to be addressed.

5 CHAIR CHOCK: One minute.

6 MR. GEIGER: Thank you. There's other
7 information. We put it in our moving papers. We've
8 shown you how there's substantial credible evidence
9 that doesn't support your findings. And so we feel
10 that when you look at this whole thing what are you
11 going to see.

12 Well, first of all, you see that there's no
13 unmitigated impact. The traffic was mitigated. The
14 wastewater was mitigated by the condition that was put
15 in to say that if there's a problem the developer has
16 to pay for it.

17 The Project, as you've heard, is the right
18 project for this location. Now, it's designed for
19 local working families. It's designed for people who
20 live in Lahaina to have an opportunity to buy a house
21 in Lahaina. That's what we're asking. Take a look at
22 this.

23 The findings that we've pointed out cannot
24 be supported.

25 The Conclusions of Law cannot be supported.

1 There is no existing recreational facility on this
2 property. It's vacant land. It's not being used.
3 And there's no recreational facility. You know --

4 CHAIR CHOCK: Please summarize.

5 MR. GEIGER: Sure. -- we appreciate that
6 you folks do this. And you hear a lot of people talk
7 about projects. And you hear a lot of people get here
8 and say, "This is a great project. This should
9 happen." And that's fine. And we know that you have
10 a tough time, a tough decision-making process because
11 you hear all sorts of sides. You hear all sorts of
12 people argue. You hear passionate arguments as to why
13 it should or shouldn't go. And that's fine.

14 But ultimately what you folks have to do is
15 divorce yourself from the passion. Divorce yourself
16 from the arguments and say, "In this record does it
17 meet the design criteria?" And if it meets the
18 design criteria the Project should be approved. We
19 believe that the record shows that. Thank you.

20 CHAIR CHOCK: Thank you, Petitioner.
21 County, five minutes.

22 MR. GIROUX: Thank you, the County's
23 position is we do support the Motion to Reconsider
24 based on the additional information that we feel that
25 needs to be added into the record. Again, because of

1 that new information there's inaccuracies as far as
2 the actual drafting of the document.

3 But there's also procedural issues that we
4 want to put on the table as far as, you know, what
5 we're looking at is a process that's fair, that allows
6 the community to come in and give their position. But
7 also fairness has to go all across the board. The
8 playing field has to be level.

9 In an issue that's so controversial for
10 something that's 16 acres, we've taken literally more
11 testimony and more cross-examination, and more
12 documentation than if this were 300 acres or
13 600 acres. Yet, when we're looking at the Decision
14 and Order we have serious concerns as far as
15 administrative law, due process.

16 In researching the Hawaii Revised Statutes
17 and researching your own rules, I just need to bring
18 out some of these things because part of my job with
19 the county is to advise quasi-judicatory boards.
20 Yours is so unique in the way the Legislature has
21 carved out your duties and your procedures. One of
22 the things, and it might seem arcane or it might seem
23 nitpicky, but it is important.

24 Because under 205-4 the Legislature has
25 picked a methodology of making what is going to be a

1 decision. What it said is that they want to make sure
2 that this Board or Commission has six affirmative
3 votes when doing a district boundary amendment. Now,
4 that's what we call in the legal field your super
5 majority. Sometimes there's actions and counsel that
6 require super majority, lot of them are because of
7 their land use issues. If we want to have -- if
8 there's going to be changes in the land we want them
9 to be under the super majority.

10 And that's, although not unusual, it's
11 characteristic is because only certain boards need
12 that. Your Rules 15-15-13, under your rules of quorum
13 address that issue. However, what it again reiterates
14 the 205-4 requirement. But then it goes on in the new
15 paragraph, Paragraph B to state that, "The failure to
16 get six votes you have to file your Findings of Fact,
17 Conclusions of Law."

18 Now, as a practitioner we realize that this
19 puts this board in the most awkward of situations
20 because a failure to act now creates the requirement
21 under your judiciary, quasi-judiciary requirements to
22 come up with an affirmative Finding of Fact,
23 Conclusion of Law.

24 Without deliberation, without discussion,
25 that puts you as a board *and* your staff at a

1 disadvantage because how are you, under a motion that
2 fails, basically no action, then to deliberate to get
3 affirmative Findings of Facts and Conclusions of Law?

4 We were present when the decision was made.
5 We understand the decision. The decision was a Motion
6 to Approve with the amount of members --

7 CHAIR CHOCK: One minute.

8 MR. GIROUX: -- members who were present
9 and it didn't pass. So with the inability for us to
10 review the Findings of Fact and to file, pursuant to
11 Chapter 91, objections to those facts, puts us in this
12 situation where we're asking for reconsideration.

13 We have concerns of the Findings of Fact
14 did not have a discussion on the record. When you
15 guys -- when this board adopted your Findings of Facts
16 the members who were not present needed to have
17 reviewed the record. The problem is that there is no
18 record of your deliberation.

19 How can they adopt a Findings of Facts with
20 no review of Findings of Facts on the record? That's
21 a clear violation of Chapter 91. You cannot file
22 separate Findings of Fact that have not been adopted
23 by the members who were present or the members who
24 were able to review those Findings of Fact. There are
25 no Findings of Facts on the record. The record is as

1 it stands, not on the day that the decision was made,
2 but on all of the evidence that was presented during
3 the hearing under oath. That was not clear in these
4 Findings of Facts. We did not have the opportunity to
5 address those.

6 CHAIR CHOCK: Please summarize.

7 MR. GIROUX: What we are asking for is an
8 opportunity to clear up these procedural errors so
9 that there is no, no confusion as to what are the
10 facts. These are issues of credibility, thoroughness.

11 There's a lot of talk in this room that
12 we've heard and we've listened to about our
13 constitution requires us to act in aloha. The
14 statutes require us to act in aloha. We are required
15 to be pono, to do things with procedure and openness.
16 What the County is asking for is for that opportunity.

17 CHAIR CHOCK: Thank you, County. State,
18 are you prepared? Five minutes.

19 MR. YEE: The Office of Planning supports
20 the Motion for Reclassification. The Petition Area is
21 a small 16.7-acre parcel surrounded by Urban uses. It
22 is proposed for a housing project that will be
23 100 percent affordable housing.

24 For us the division of this parcel into 16,
25 1-acre gentleman farms is not the preferred

1 alternative. We'd certainly be suspicious if that
2 occurred.

3 We submitted our position on this. We will
4 refer you to that. I just want to emphasize three
5 particular points. One is with respect to your
6 Findings regarding the financial statements.

7 In your Findings of Fact you indicate that
8 the lack of an audited financial statement was a
9 factor in your decision. But there's nothing in your
10 Decision and Order indicating a particular problem
11 with the financial statement itself. There's no
12 particular circumstance, no particular fact, nothing
13 unusual about this case that suggests an audited
14 financial statement was necessary.

15 Our concern is 3-fold. 1. Is you haven't
16 done this in the past. 2. This appears to create a
17 rule. And you can't create a rule except through a
18 particular process. And 3. We have future cases
19 coming up that do not use audited financial
20 statements. We don't want this ruling to get in the
21 way of those cases.

22 The second issue is with respect to your
23 findings regarding open space, recreational area. I
24 want to be clear there are two different open space
25 issues. One involves the conformity with the

1 community plan and the designation of open space.

2 The second argument, which is what we're
3 talking about, is how open space recreational area is
4 a permissible use for agricultural property or
5 agricultural districts. And our position on this is
6 there is no facility here. It may be open, but it's
7 not a recreational facility.

8 And second, that even if it was that's not
9 a basis for keeping something in Agriculture because
10 open space recreational facilities doesn't service a
11 true agricultural use.

12 It would be, for example, like saying
13 because there is a wind turbine, which is a
14 permissible use on agricultural land, we will not
15 urbanize it because agriculture -- it's an
16 agricultural use, permissible use in an agricultural
17 district.

18 So there's certain types of uses we think
19 that are permissible, certainly on agricultural
20 districts. But the fact of that existing use is not a
21 basis for refusing to urbanize an area.

22 The third is really the lack of
23 specificity in some of your findings. You make
24 certain findings that say there's an open question, or
25 there's an unresolved issue. And for the Office of

1 Planning in some sense this is a procedural question.
2 I certainly understand that you could perhaps fix
3 this. And, you know, why are we raising this now
4 instead of waiting for appeal?

5 And the reason is sort of what the
6 Petitioner said, which is we really prefer to have
7 these issues decided here. We don't want to go all
8 the way up to the circuit court, you know, tell the
9 circuit court, "Well, you know, they weren't clear
10 enough."

11 Have the circuit court remand the whole
12 thing back again. We have to do sort of this process
13 again to simply pull out what those findings are. But
14 it's also important because by requiring this it also
15 enables decision-makers such as yourself to really
16 look closely at the findings you made.

17 When you're forced to actually have those
18 facts specified, frankly, you know, it causes one to
19 look at those findings and say yes or no. Yes, that
20 really was a basis for my decision. Or, well, you
21 know what, maybe this was not a true basis for my
22 decision when I actually look at the specific facts
23 that I was going to cite as the basis for denial.

24 So there's -- so we prefer that you resolve
25 this issue now rather than go up on appeal and force

1 us -- we certainly do not want to raise this issue for
2 the first time on appeal without at least giving you
3 an opportunity to fix that.

4 CHAIR CHOCK: One minute.

5 MR. YEE: And so based upon these three
6 issues of the audited financial statements, the open
7 space recreational area, and the lack of specificity
8 in addition to all the issues we've raised in our
9 pleadings which we'll rest on, we hope you will at
10 least reconsider and make amendments to your Decision
11 and Order. Thank you.

12 CHAIR CHOCK: Thank you, OP. Ms. Lincoln,
13 five minutes.

14 MS. LINCOLN: Thank you. The LUC did not
15 deny an affordable housing Project. The Land Use
16 Commission denied a Petition that did not meet the
17 decision-making criteria for land use
18 reclassification.

19 In the same way that the Petitioner and OP
20 look at that land as vacant and fallow, I see it as a
21 playground, a park, natural beauty for clean and
22 healthful environment that is supported by the minutes
23 that I produced from the community plan's minutes that
24 describe this land as open space, leaving it a natural
25 environment.

1 That was the intent of the community plan.
2 That was what the deliberation of all those pages was
3 to keep it a park or open space. Routh sees it as a
4 pharmacy of medicinal plants and her family's history.

5 The Commission's responsibility is to
6 evaluate all of these in the light of the decision
7 making criteria. The Petitioner says that we've only
8 provided arguments, not fact. Yet they produce an
9 exhibit here with the No. 6 on the pole. Do you know
10 how many No. 6 on the poles are in my neighborhood
11 alone? Just because you give something an exhibit
12 number does not make it factual or true.

13 OP's statement that the Commission has the
14 option of imposing appropriate conditions, "option" is
15 the word here. The County has conditions. The State
16 has conditions. Conditions mean it doesn't meet the
17 criteria, therefore, you would have to do this to make
18 it meet the criteria. The conditions are red flags
19 not green lights. It's the Land Use Commission's to
20 take into responsibility all those different views and
21 then render a righteous decision.

22 A lot of previous Ag land is sitting vacant
23 and fallow since the closing of the mills and the
24 plantation. The Commission has to look at the ability
25 of the land to produce, not the landowners. Or what

1 they're doing is setting a precedent for future
2 landowners to let their lands sit vacant and fallow as
3 a means to an end for reclassification. By denying
4 this Petition you're in your rights to do that.

5 One of the things that OP brought up was
6 that, which was not a land use criteria, is that the
7 Lahaina Wastewater Reclamation Facility, if you deny
8 it based on that it's going to deny future for pending
9 projects. That is not a land use criteria. The land
10 use criteria is is there adequate infrastructure? No,
11 there's not. That justifies denial.

12 A precedent is not a rule. You do not have
13 to change the rules regarding the financial situation.
14 It'd be like a wild west town and having the same laws
15 just is there a sheriff man enough to enforce them?
16 The rules are there for the financial capability.
17 It's just a matter of how they were presented in the
18 past, but that is not a rule. That's a precedent.

19 They're saying that the Commission has
20 approved petitions in the past without proof. The
21 global crash, financial crash of 2008 would establish
22 that past financial decisions aren't always so good.

23 It's the Petitioner's burden of proof on
24 multiple levels regarding financial capability, not
25 just the unaudited balance, but there's no projected

1 cost analysis, no marketing analysis, no evidence to
2 support of how they're going to be able to get funding
3 in regards to loans.

4 The third thing is -- I thought had more
5 than 5 minutes. Just to bring up the point they said
6 that they weren't given -- if issues were raised in
7 its examinations of the Petition's completeness at the
8 hearings.

9 My Exhibit 8, the DVD, has Ricky Hokama's
10 comment: "Chairman, you know, if they're gonna ask us
11 these types of things I would expect them to come up
12 with a detailed marketing analysis to show they can
13 perform with what they're asking us to approve.

14 I *did* question Heidi Bigelow on the
15 financial evidence and nothing was added as far as
16 evidence in response to that. So OP is somehow
17 blaming the Commission for the Petitioner's lack of
18 burden of proof. It's like blaming a teacher that
19 your homework isn't completed.

20 CHAIR CHOCK: One minute.

21 MS. LINCOLN: As far as the unlawful
22 evidence that was presented by the Commission, they
23 talked about -- Paul Singleton said about the soil
24 being permeable to water and a slight erosion hazard.

25 The stormwater criteria that, if you read

1 the law 15-11 -- 111-3 "The purpose of water quality
2 criteria is to reduce the pollution associated with
3 stormwater runoff from a new development." It doesn't
4 mean it eliminates it. It reduces it. We're
5 protecting Mala. It is a cultural place. It is a
6 commercial place. It is a place where our children
7 go. We are protecting a very precious last part of
8 our reef in Lahaina.

9 In regards to their illegal presentation of
10 the General Plan, the General Plan states in footnote
11 No. 41, "Unit counts may be further defined through
12 entitlement process and response to infrastructure and
13 environmental constraints."

14 There's infrastructure. There's not
15 adequate infrastructure. And there are environmental
16 constraints. There's a concern for Mala. Therefore
17 that footnote can negate what was said in the General
18 Plan.

19 Also regarding the West Maui Community Plan
20 that it says until there's a new update the original
21 community plan still stands. So that is an open space
22 designation which is still an agricultural accepted
23 use.

24 CHAIR CHOCK: Please summarize.

25 MS. LINCOLN: We need to keep our islands

1 beautiful. And we need to keep it sustainable.
2 Sustainability needs to be a reality, not just some
3 political catch phrase. The Governor's New Day
4 Sustainability Plan can start here and now but it
5 needs to start with somebody.

6 There's this kid's movie. The message of
7 the movie is, "The strong man stands up for himself.
8 A stronger man stands up for others." I'm not asking
9 you to do what's popular. I'm not asking you to do
10 what's easy. I'm asking you to do what's pono. Do
11 what is right and keep this in Ag designation. Thank
12 you.

13 CHAIR CHOCK: Thank you, Ms. Lincoln.
14 Ms. Bolomet, five minutes.

15 MS. BOLOMET: As you know I've handed in
16 many, many documents. I spent a long time reading
17 through all these laws. The thing that got me the
18 most was I'd read one thing and then I'd hear
19 something else.

20 When I read the Petition I read that
21 everything was in there accurately. But when you read
22 between the lines and you look at the footnotes you
23 would see that when you check the footnotes it was in
24 conflict with what they were saying.

25 Then the Petitioner's witnesses would get

1 up and they would testify under oath that what they
2 put into the Petition is correct, which was a total
3 misrepresentation of the area, of the history of the
4 area.

5 Because of their footnotes I went to SHPD
6 and I started digging through the files to read all
7 those things that they were referring to. And I
8 found a letter from the DLNR chairperson that said
9 that from the convergence of Kanaha and Kahoma Rivers
10 all the way below the Petition Area was a 37th, Kahoma
11 Terrace System which included all kinds of terraces
12 and even a graveyard that went back 700 years. It was
13 all connected.

14 We showed you within the report, the Robert
15 Conley report, which was part of their archaeological
16 footnotes that said that there was a train track. And
17 from the train track up they pinpointed different
18 areas which we found.

19 So we went into their Petition, which I
20 thought the State was supposed to do that. I thought
21 president County was supposed to do that. That's
22 what taxpayers' money pays for. It's for them to
23 nitpick and make sure they actually dotted their i's
24 and crossed their t's. But instead Michele and I did
25 that.

1 Here's another thing that just drove me
2 crazy. From the very beginning I kept saying,
3 "There's no jurisdiction." Why did I say that?
4 Because they have not proven ownership. This binder
5 right here (indicating) is the documents from Land
6 Court Application 439. It was put into -- started
7 1919 by Pioneer Mills.

8 In the '90's they started transferring
9 their illegal encroachment onto lands to Kahoma lands.
10 This paper right here says, "Welch" on it. It's from
11 their attorneys. And it's got the number for the TMK
12 24510 portion of 5. That's this property we're
13 talking about.

14 This hasn't been settled yet. This is the
15 documents I filed on January 24th of this year with
16 the Land Court. We're still debating all of this.
17 This part hasn't even come up yet. This is the part
18 that's over Waikuli.

19 So they're telling you they own these
20 lands. They don't own these lands. We own these
21 lands. We're not talking about ownership *per se*.
22 We're now talking about jurisdiction. Do you have the
23 jurisdiction to look at a petition from a petitioner
24 who doesn't even have the land in ownership yet?

25 They can go to the Bureau of Conveyance. I

1 can go to the Bureau of Conveyance and file anything
2 for \$30. The Bureau of Conveyance just records
3 something. It does not check for accuracies.

4 So Pioneer Mills makes a warranty deed. A
5 warranty deed is nothing more than, say, "I warrant
6 that I can give you these lands." And then what they
7 do they start these chain of titles where they're
8 giving lands -- easements to the State, easements to
9 the utility companies. Then --

10 CHAIR CHOCK: One minute.

11 MS. BOLOMET: -- there's various exchanges
12 going on with lands. But it doesn't make that --
13 there's an ownership they're just creating a chain of
14 title. There was never \$1 paid to the allodial
15 landowners. There's no leases. There's no
16 agreements. So it's impossible for this body to even
17 look at this Petition because they don't have the
18 right to even bring it to you.

19 The Petitioner keeps asking you to throw
20 out all the evidence I brought in. I don't know how
21 to submit evidence. Nobody's instructed me how to do
22 it. I thought I'd give it to Riley, I'd get it
23 stamped, it's submitted. I thought a public testifier
24 comes and gives you public testimony, it's submitted.
25 That's all I know.

1 The *pro se* laws by the Supreme Court says
2 that that's all I need to know. It's up to you guys
3 to show me how to do it. I didn't go to school for
4 this. All I'm doing is giving you all the things that
5 we found to show you how even though they don't want
6 you to accept my evidence, they now want you, after
7 the evidentiary period, to accept theirs and not even
8 anything that's been proven or audited.

9 They want you to take their word for what
10 they're doing but not look at the evidence that we're
11 submitting. And all I know is how to read the black
12 and white. So I hope you take into consideration what
13 really is the truth and what really is happening and
14 understand that you do not have the jurisdiction to
15 even look at this Petition. Thank you.

16 CHAIR CHOCK: Thank you, Ms. Bolomet.
17 Petitioner, rebuttal 5 minutes.

18 MR. GEIGER: Thank you very much. You were
19 asked to make a "righteous decision". That's not the
20 criteria that you get to apply in making your
21 decision. You have to follow the statutes. You have
22 to follow the rules. And the statutes and rules don't
23 say anything about "righteous". The statutes and
24 rules provides criteria.

25 And then you go based on the information

1 that has been admitted into evidence that it's in the
2 record before you and you make a determination. And
3 then your determination has to be Findings of Fact,
4 Conclusions of Law. So that if somebody took a look
5 at it later on they could figure out how you guys came
6 to the decision that you came to.

7 State Office of Planning is right. If you
8 took a look at this Findings on these Conclusions and
9 this Decision you can't figure out how you got from
10 step A to step B to step C.

11 And the County's right. Part of the reason
12 we can't figure out how you got there is because
13 nobody said when you were deliberating this particular
14 matter or even when you were presented with the
15 Findings of Fact, Conclusions of Law, what it was in
16 there that you agreed with, what you didn't agree
17 with, where it was in the record and how it was to be
18 performed.

19 That just isn't in here. So that's the
20 problem. That's why we're here on the
21 reconsideration. And I think if you folks
22 dispassionately take a look at this, as you must, you
23 would agree that this, the Petition, the Findings of
24 Fact, Conclusions of Law can't stand and that the
25 Petition could be granted. I thank you very much.

1 CHAIR CHOCK: Thank you, Petitioner.
2 Commissioners, any questions for any of the parties
3 before we proceed with taking up this Motion for
4 Reconsideration? Commissioners, any questions for the
5 parties? (Pause). No questions. Commission, what is
6 your pleasure regarding this motion?

7 COMMISSIONER BIGA: Mr. Chair.

8 CHAIR CHOCK: Commissioner Biga.

9 COMMISSIONER BIGA: Listening to all the
10 public testimonies, and it's been numerous times there
11 was mention about balancing acts. Each testimony that
12 I heard I know there's a lot of emotion behind it.
13 Even though voting the way I did back in December I
14 need to know that I made the right decision in the way
15 I voted.

16 Being from Maui I understand. Born and
17 raised in Lahaina I understand more. So I need to
18 make sure that I made the right decision the way I
19 voted back in December.

20 So with that said, Chair, A12-795 West Maui
21 Land Company, Inc. -Kahoma Residential LLC, I move to
22 reconsider.

23 CHAIR CHOCK: There's a Motion to
24 Reconsider. Is there a second?

25 COMMISSIONER McDONALD: Second.

1 CHAIR CHOCK: Moved and seconded. Any
2 discussion? Commissioner Heller.

3 VICE CHAIR HELLER: Yes. Two comments that
4 I'd like to make. First. Is that I want to make it
5 clear that in general I think motions for
6 reconsideration are a waste of time. Most of the time
7 a Motion for Reconsideration simply asks us to go back
8 and readdress issues that we've already addressed and
9 decided. And I certainly don't want to encourage
10 people to do that. I think it just takes up time
11 unnecessarily and it's not a productive exercise.

12 However, when a Motion for Reconsideration
13 is actually based on some new development that has
14 occurred since the close of the evidence, then there
15 may be a valid reason to go back and take another
16 look. And in this particular situation I think there
17 are some material things that *have* happened since the
18 close of the evidence.

19 And, therefore, I think in this *unusual*
20 situation reconsidering our decision *is* warranted but
21 I want to at the same time express that I'm not
22 encouraging the filing of motions for reconsideration
23 in general. In fact I would *discourage* them in
24 general because I think most of them are a waste of
25 time.

1 Second. I want to be clear that the motion
2 that's actually on the table right now is simply a
3 motion to go back and take another look at our
4 Findings and Conclusions and Decision and Order.
5 Whether or not we decide to change the bottom line is
6 a matter that will be determined at some later date
7 when we take that further look after all the
8 Commissioners have had a chance to review the record
9 carefully and to consider whatever needs to be
10 considered.

11 So we're not making a bottom line yes or no
12 decision on the Project right now. All we're making
13 is a decision that we will take another look. And
14 with that clarified I'm going to support the Motion
15 for Reconsideration.

16 CHAIR CHOCK: Thank you, Vice Chair Heller.
17 Commissioner Inouye.

18 COMMISSIONER INOUE: Yes. Just to expand
19 a little bit. I wanted to make sure that if we do
20 reconsider this that the evidence that we're going to
21 hear, the more evidence is, one, as Commissioner
22 Heller pointed out, is new evidence.

23 And secondly to be fair to the Intervenors
24 that they will have an opportunity, if there is a flaw
25 in the record, to present the testimony that the

1 Petitioners claim is not in the record, to put it in
2 the record to talk about those. Thank you.

3 CHAIR CHOCK: Thank you, Commissioner
4 Inouye. Any other comments, Commissioners? Would the
5 executive officer please poll the Commission.

6 MR. ORODENKER: Thank you, Mr. Chair. The
7 motion is to approve the motion to reconsideration --
8 Motion for Reconsideration. Commissioner Biga?

9 COMMISSIONER BIGA: Yes.

10 MR. ORODENKER: Commissioner McDonald?

11 COMMISSIONER McDONALD: Aye.

12 MR. ORODENKER: Commissioner Matsumura?

13 COMMISSIONER MATSUMURA: Yes.

14 MR. ORODENKER: Commissioner Heller?

15 VICE CHAIR HELLER: Yes.

16 MR. ORODENKER: Commissioner Inouye?

17 COMMISSIONER INOUE: Yes.

18 MR. ORODENKER: Commissioners Teves,
19 Contrades and Makua are absent. Chair Chock?

20 CHAIR CHOCK: Yes.

21 MR. ORODENKER: Mr. Chair, the motion
22 carries unanimously.

23 CHAIR CHOCK: The next item on our agenda
24 is a motion filed by Intervenor Bolomet asking the LUC
25 to not take petitions that contain allodial title

1 lands. I will start with any public testimony on this
2 motion. Is there anyone in the audience wishing to
3 provide testimony on this item, please come forward.
4 Good morning.

5 KANELOA KAUMANU

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

8 THE WITNESS: Yes.

9 CHAIR CHOCK: Your name and address.

10 THE WITNESS: My name is Kaneloa Kaumanu.
11 222 Waihe'e Valley Road, Wailuku, Maui.

12 CHAIR CHOCK: Aloha, Mr. Kaumanu. Two
13 minutes for testimony.

14 THE WITNESS: Yes. Well, in 1838 the
15 Declaration of Rights was given to -- was produced by
16 the mo'i to declare three groups of people that had
17 vested rights in Hawai'i. That was the mo'i himself,
18 which was the king, the ali'is and the maka'ainana.

19 1840 they legislated to have solidified in
20 the kingdom and they represent -- they had three
21 representations. One was the mo'i himself, which was
22 the Judiciary and the government of Hawai'i. The
23 ali'is was the House of Nobles. The maka'ainana or
24 the commoners was represented the House of
25 Representatives.

1 What this means is that vested rights was
2 given to us as maka'ainana. We have vested rights
3 nobody can take away from us. It's solidified also in
4 the State: Law HR7-1, HRS 172 2-11. These things are
5 there, our rights to traverse, our rights to gather
6 basically because these are vested rights given to us.

7 The other thing I looked at whether or not
8 Hawai'i was ever, or the Hawaiians were ever
9 naturalized by the United States. According to the
10 1900 debate in Congress that did not happen. As today
11 still has not happened. Hawaiians are still native
12 tenants of Hawai'i. They do not belong to the United
13 States. That's all documented. You wanna go check it
14 out you can find it.

15 So what happens to these allodial titles,
16 they still stand. According to law allodial titles
17 still stand against any other titles. The titles that
18 are produced today, the western titles, are only paper
19 titles meaning that they have really no force of law.
20 All they did was pay some money, if they had paid any
21 money, for supposedly these lands.

22 But to be an allodial title there can only
23 be one owner. If you look at the laws in Hawai'i it
24 states that even the person, the person that receives
25 the LCA, the royal patent, even though he be dead, he

1 still remains as the only owner. Otherwise the title
2 of allodial cannot.

3 If there's more than one owner on the
4 property or to the title it is not considered
5 allodial. Allodial means absolute.

6 So they solidified in the kingdom that the
7 person who received the royal patent and Land
8 Commission Awards was the only owner of the property.
9 A lot of these LCAs that they bring up in royal
10 patents are kuleana, are allodial titles. If you
11 checked out the titles when you look at them from the
12 Bureau of Conveyance it says "allodial".

13 CHAIR CHOCK: Please summarize.

14 THE WITNESS: So the thing is allodial
15 cannot be sold. You guys don't have the allodial
16 titles. They have color of title which is nothing.
17 There is no real deed. They have no real clear title
18 and they cannot because the person who had the title
19 is not alive.

20 CHAIR CHOCK: Mahalo, Mr. Kamaunu.
21 Parties, any questions for this testifier?
22 Petitioner?

23 MR. GEIGER: No questions.

24 CHAIR CHOCK: County? State?

25 MR. GIROUX: No questions.

1 MR. YEE: No questions.

2 CHAIR CHOCK: Intervenors, any questions?
3 Commissioners? Thank you for your testimony. Let's
4 start with you, Ms. Bolomet, regarding your motion.
5 Do you have any comments that you'd like to add to the
6 brief you've already filed?

7 MS. BOLOMET: Yes. Do I have to do it in 2
8 minutes?

9 CHAIR CHOCK: Why don't you take 5 minutes.
10 We have your brief. We've read it. So you don't need
11 to restate everything word-for-word. But if you
12 wouldn't mind summarizing.

13 MS. BOLOMET: Okay. Basically my kupuna
14 were the ali'i. They had to give up their lands in
15 order to get the lands that they have. In the
16 constitution -- in the kingdom constitution that's
17 where they were allowed to have in perpetuity these
18 lands for giving up the other lands that they once
19 owned which makes up the Crown Lands and the
20 government lands.

21 Now, on a title, allodial title, it either
22 says ana allodial or less than allodial. On all the
23 lands that I brought up on this property in this
24 Petition those are ana allodial other than the grants.
25 The grants only had a certain amount of time. Then it

1 goes back by law to the owner of the ahupua'a.

2 Now the owner of the ahupua'a for Mo Ali'i
3 and Aki, which is what, part of this Petition Area,
4 belonged to Victoria Kamamalu. Victoria Kamamalu died
5 without any heirs. So all her lands went to her
6 father. Her father was married to my grandmother.
7 When he died I got -- she got 50 percent dower rights
8 which now comes down to us.

9 So it's still in Victoria Kamamalu's name.
10 You can still see it on the TMK maps. They can't get
11 rid of it. It's there because that's the owner. The
12 color of title is just a piece of paper where
13 someone's telling you, "Yeah, I have the right to
14 transfer this," but they really don't. Only the owner
15 has the right, the allodial title owner. That would
16 be Princess Kamamalu. She's gone.

17 What do I have? I have a lifetime
18 interest. I can use the land for however I wish for
19 my lifetime. And I don't wish to put 68 houses on it.

20 So what we're trying to show you is with
21 allodial title lands there's many law cases -- I put
22 in all the cases. I put in the treaties that shows
23 how the courts can't, don't even try to get around any
24 kind of allodial lands given by the King of Spain for
25 Foster and Elam vs. Nielson or in the Guadalupe, the

1 Treaty of Guadalupe Hidalgo where it was California.

2 And the United States still recognizes the
3 original owners of those Mexican lands. They can't
4 get around it.

5 Yet the Petitioner keeps trying to get you
6 to believe that they have the rights to this. What
7 I'm saying is when it comes to allodial title lands
8 whether it's in Hawai'i or in the 48 states, the
9 ruling in Foster vs. Nielson is that the US
10 Government, its agencies and its agents do not have
11 the authority to assert their jurisdiction on these
12 types of lands.

13 So if the Supreme Court, the US Supreme
14 Court says that, if the treaties say that, if the US
15 Constitution says that you're not allowed to -- that
16 treaties are the supreme law of the land which
17 recognizes allodial title lands belonging to the
18 original owner, if the HRS 172-11 says that allodial
19 title lands will enure to the lineal descendant and
20 will always be binding, if the Hawaiian kingdom law
21 that these lands came from says that they're always
22 binding and not even the king can take them back, why
23 can this Commission do it?

24 Why does this Commission and how does this
25 Commission have the authority to assert their

1 jurisdiction over something that not even the US
2 Supreme Court can do? That's what I'm asking you to
3 look at.

4 And for that are reason I've looked
5 everywhere. I've looked in your rules. I've looked
6 in the constitutional rules. I've talked to different
7 attorneys. And basically this is what they told me.
8 "Well, those are the rules but nobody follows them."
9 Well, no, no. Mr. Geiger just told you you've got to
10 follow the law.

11 So I'm asking you to do the same because
12 the law is what's written, not what we want, how we
13 want to interpret it, you know. That's what I keep
14 hearing here is you know it's only right when you give
15 us what we want. That's what I hear from the
16 Petitioner.

17 But we're just saying, Michele and I are
18 saying, "Wait. We read the laws." We're not asking
19 you to do anything but follow the laws that we're
20 interpreting as English. We're asking you to follow
21 US laws. I'm not even asking you to follow Hawaiian
22 Kingdom laws. I'm asking you to follow the US laws
23 which happens to mirror the Hawaiian Kingdom laws if
24 you look at the footnotes that I included.

25 So for that reason I'm asking this agency

1 of the U.S. government to not assert their authority
2 or their jurisdiction onto allodial title land which
3 in many cases already in lawsuits nobody's ever
4 prevailed in trying to do that.

5 Only in Hawai'i do we kind of look the
6 other way. And I'm asking you, yes, to be pono,
7 follow the laws. Because you know what? In the
8 Constitution of the United States it still says, "In
9 God We Trust." It still says "God" on our dollars.
10 We are still being asked to hold the law to the
11 highest level.

12 And the thing that gets me is that it's
13 like do you want the little people to follow the laws.
14 But then the people who have a little bit of money
15 they want you to do, like, do them some favors and
16 look the other way. But all of us have to follow the
17 laws otherwise there's anarchy.

18 How do we hold true a constitution if only
19 some of us follow it? We all have to follow it. You
20 know, if all of us drove crazy on the freeway there'd
21 be a lot more accidents. It's because the majority of
22 us don't drive crazy that we have very few accidents.

23 It's because the majority of us do follow
24 the laws and the Constitution. Not all of us know it.
25 I know a lot more about the Constitution after going

1 through this process because I just didn't understand
2 the process.

3 I couldn't understand how lands that were
4 given to my kupuna, and they were told by the king
5 that it would be theirs in perpetuity.

6 In Black's Law Dictionary it says,
7 "Allodial titles are given in perpetuity." Not even
8 escheating or eminent domain, taxes, none of that
9 could be put on allodial title lands. That's in the
10 law dictionary.

11 So why is it that we could do something
12 different here in this venue? I'm not asking you to
13 decide if this is my land or not. I'm asking you to
14 look at what kind of lands these are. And allodial
15 title lands are the lands that I'm asking you to not
16 -- if a petition comes in with it, to not look at that
17 petition.

18 Have 'em do it on lands that are not
19 allodial title lands where you *do* have the
20 jurisdiction. There's plenty of it out there. And
21 there's a lot of good projects that could be done on
22 those lands.

23 I'm just asking you please consider so that
24 we don't have to go to a higher court to make sure
25 this is done. Please let's just do it now and follow

1 the laws, and put it into your rules as one of the
2 criteria for being allowed to put in a petition.

3 Thank you.

4 CHAIR CHOCK: Thank you, Ms. Bolomet.
5 Petitioner.

6 MR. GEIGER: Just real briefly I'll make
7 two points. They're both in the brief, but I want to
8 emphasize the points that were in the brief that we
9 filed in opposition.

10 No. 1. This court -- this Commission,
11 rather, is a creation of a legislative body, the
12 Hawai'i State Legislature. Your powers and your
13 jurisdiction derive from your enacting legislation
14 which in this case is Chapter 205.

15 You're given the power to classify all land
16 in the State of Hawai'i in one of four different
17 districts: Ag, Urban, Rural and Conservation. That's
18 your power.

19 Your power isn't to say: Well, we have to
20 decide is it allodial title part of all the lands or
21 not. You've been given the power to classify all
22 lands so you're entitled to do that.

23 The second thing I'd remind the Commission
24 is that this very argument was made and we went
25 through this in this very room back July 19 last year.

1 And the Chair ruled that this Commission wasn't going
2 to take up issues of title because it didn't have the
3 jurisdiction. That's correct. It doesn't have
4 jurisdiction to take matters of title which you're
5 being asked to do. So we'd ask that you deny the
6 motion. Thank you.

7 CHAIR CHOCK: County?

8 MR. GIROUX: We concur. Again, we don't
9 believe that this is the time or place to be taking up
10 these types of issues. It clouds the decision-making.
11 It doesn't allow us to look at the real purpose, the
12 legislative purpose of this body, and to look at
13 whether or not we are going to be looking at lands
14 that are going to be proper for urbanization versus
15 lands that are very important to our agricultural
16 system.

17 CHAIR CHOCK: Thank you. OP?

18 MR. YEE: The Office of Planning also
19 opposes the motion. When Ms. Bolomet first sought to
20 intervene, you placed no restrictions on her
21 intervention except one. That was that the issue of
22 title was not going to be litigated in our forum.

23 Ms. Bolomet has the right to go to circuit
24 court and seek quiet title but that's not here. It's
25 not an issue of seeking a ruling from a higher court.

1 She's simply seeking a ruling from the wrong court.

2 So we would oppose the motion.

3 CHAIR CHOCK: Thank you, OP. Ms. Lincoln.

4 MS. LINCOLN: Just from what I heard right
5 now Routh is not asking for you to decide on the title
6 of whether she's the allodial title owner of this
7 land. She's asking you to decide whether the Land Use
8 Commission is within its rights to decide on any
9 allodial title lands. And this is allodial title
10 land. Whether it's her's or not we're not asking you
11 to determine that. She's asking a different question.
12 So I just want to bring that up. She's not asking you
13 to decide whether *she's* the allodial title owner.

14 She's just asking whether you're willing to
15 uphold the law regarding allodial title lands being
16 able to be determined by this Land Use Commission.
17 Thank you.

18 CHAIR CHOCK: Thank you, Ms. Lincoln.
19 Ms. Bolomet, brief rebuttal?

20 MS. BOLOMET: Yeah. Mr. Geiger says that
21 you have the right to make determinations on all
22 lands. Well, that's correct. All lands within the
23 jurisdiction of the United States. So if you can tell
24 me that you have jurisdiction on lands in Australia,
25 in Germany, in France, in Spain and all countries

1 where there's allodial title lands, then I will agree
2 you have the authority to place onto these lands.

3 But I don't think you can answer yes to
4 that question. And that's where this comes down to.
5 I'm not asking you to go outside of your -- I'm just
6 asking you to stay inside your jurisdiction. And this
7 is outside of the jurisdiction. I'm not asking you to
8 be the courts. The courts already decided it.

9 I'm just asking you to look at the cases
10 that shows that there is no jurisdiction on these
11 lands by the United States. That's all I'm asking you
12 to do. But they keep bringing up that this somehow is
13 within your jurisdiction. Well, if it was there would
14 be a treaty.

15 And why is it that the World Court in 2001
16 acknowledged that the United States, all they could do
17 was apply kingdom law because they're still here
18 illegally on these lands. They don't have a treaty.
19 There's no agreement.

20 So if it's an illegal occupation your
21 jurisdiction is really over your citizens, not over
22 foreign lands. So that's why in the beginning I tried
23 to explain, obviously not well enough because it kept
24 getting rejected as I was trying to explain ownership,
25 I wasn't trying to explain ownership. I was trying to

1 explain the concept of how -- this is a foreign
2 country. And your jurisdiction is over your citizens.

3 Now, within the resolution that's within
4 the United States they made up these rules saying,
5 "Oh, yeah. You can do this." But no you can't. You
6 can dispute if one neighbor hits the other neighbor,
7 but you can't dispute it if it has to do with land.

8 If you go to the federal court there was
9 many cases that were kicked out. It said they didn't
10 have the jurisdiction over real estate. Well, why?
11 Why doesn't the district court have jurisdiction over
12 real estate, you know, and Hawai'i real estate?

13 So if the courts cannot show that there's
14 jurisdiction over allodial title lands, I'm just
15 saying then this agency does not have the jurisdiction
16 or the authority to assert their jurisdiction.

17 I'm just asking you to follow the rules
18 that's right there in black and white and not to take
19 a perception of somebody who's trying to get something
20 onto lands that's not theirs. And it's not theirs
21 because they don't have the allodial title. They
22 don't have the blood line.

23 It only enures. 172-11 Hawaii Revised
24 Statutes says, "It enures only to the lineal
25 descendant or who the awardee appointed it to."

1 That's it. It doesn't say: Later when developers come
2 and they could go and buy allodial title lands. You
3 can't buy allodial title lands. Kaneloa explained.
4 It only belongs to the owner. And the owner's dead.
5 They've been dead a long time ago. They never made
6 treaties with the United States. And they've never
7 made any deals or agreements with the current
8 Petitioner.

9 So for that reason I hold to my argument
10 that this agency doesn't have the authority to assert
11 their jurisdiction. And please check all the work
12 that we've submitted. Because if I'm wrong I'll be
13 the first one to back away. That's what I told
14 Mr. Geiger before I even became an intervenor. "Show
15 me how you are the owner and I'll back away. Maybe my
16 grandpa gave it to you." But he could never produce
17 that.

18 And we went through so many records. I
19 spent thousands of hours, thousands just going over
20 this one, 16-acre area looking for: Where did I make
21 the mistake? Where am I wrong? And I can't find it.

22 So because of that that's why I'm so
23 passionate. And I'm just asking you so that we don't
24 waste any more time. I would much rather have my
25 hands in the soil growing food than being here going

1 through the law books on things that I don't even
2 understand. Getting better at it. But still I'd
3 rather be feeding people and helping people get jobs
4 and helping to put people into homes.

5 We have the same goals. I'm just going
6 about it a little bit different. I'm going about it
7 from a culture point of view and trying to bring back
8 all the knowledge and capture all the wisdom that my
9 kupuna had that made Lahaina once so sustainable that
10 foreigners everywhere wanted to come in to get a piece
11 of it.

12 Today so many people still want to come
13 back here and have a piece of it. There's magic
14 there. And there's so much wisdom that needs to be
15 uncovered. And that's all I'm trying to do.

16 But I keep getting stopped by people
17 telling me, "These aren't your lands. I've got a
18 color of title or a warranty deed and I've got
19 insurance." So I told 'em, "Go collect your
20 insurance, your title insurance."

21 CHAIR CHOCK: Please summarize.

22 MS. BOLOMET: I'm going to put the farm on
23 there. So, please, let's just not have to waste any
24 more time on this. If we can make this a rule then we
25 can all move forward and you won't have to see me

1 again. That will be a bonus.

2 CHAIR CHOCK: Thank you, Ms. Bolomet.
3 Commissioners, any questions for the parties, for
4 Ms. Bolomet? Chair's already rendered a decision on
5 this motion in our previous proceedings regarding our
6 jurisdiction and authority not being within the powers
7 of the LUC. And that any challenges to allodial title
8 or proper ownership of the lands should be taken up
9 with the appropriate legal jurisdiction. So Chair's
10 going to deny your motion at this time.

11 Last item on our agenda with respect to
12 A12-795 regarding Intervenor Bolomet's Motion seeking
13 an Order to Charge the Petitioner with all Costs
14 Associated with these Hearings. Ms. Bolomet, would
15 you like to proceed with the presentation on your
16 motion.

17 MS. BOLOMET: Yes.

18 CHAIR CHOCK: Five minutes.

19 MS. BOLOMET: As we were going through this
20 process, when we started questioning Mr. Dega, and I
21 started getting deeper and deeper into the questions
22 because I actually *did* understand the subject matter,
23 and I could see that they were telling a lot of
24 tales. They were not telling the whole truth. And I
25 knew it because I know the subject.

1 I was accused of overextending these
2 hearings. Mr. Geiger said, "At the end I'm going to
3 ask that you pay for all these things." Well, you
4 know what? The door swings both ways. Why is it that
5 an intervenor needs to pay for something when they're
6 trying to bring truth to light so that you can see a
7 whole 'nother side to an argument?

8 The Intervenor -- I mean the Petitioner
9 gave you a Petition that was inaccurate. Until this
10 day they have never -- they're submitting all kinds of
11 new evidence. But did they correct any of the
12 evidence that was wrong? They never offered an
13 apology. The never offered a change. Nothing. I'm
14 appalled by what I see.

15 And yet I'm the one, you know, it was like
16 the bully on the legal block saying, "I'm going to
17 show you, Intervenor. You stand up to us we're going
18 to make sure you get charged." And I'm saying we did
19 a really good job showing you guys the other side of
20 the barrel here.

21 And we -- because we did that they should
22 pay for all the costs involved. Yes, this was
23 extended. But if they did their job right in the
24 beginning we wouldn't have had these long, extended
25 hearings. It was because they were hiding the truth.

1 And we had to pull it out. And we had to reveal it to
2 you so that you could understand what was going on.

3 And maybe I didn't do a good enough job,
4 you know. But I know some people heard what I said
5 and what we were showing. And some people saw the
6 letters from SHPD.

7 Like I said, you know, I'm being told that
8 I didn't submit the evidence. I don't know how to
9 submit the evidence. I thought I did submit the
10 evidence. I thought people get up and they told the
11 oath. We go and have something that gets stamped and
12 it's submitted. Nobody to date has told me, "No,
13 you've gotta do this. You gotta do that."

14 Mr. Geiger who's so, so hounding on doing
15 things properly, gives you a financial statement that
16 doesn't even have any kind of auditing on it to prove
17 that what they're saying is true.

18 Well, in Rules of Evidence it says in order
19 to submit that as prima facia evidence you need to
20 have something audited. You can't just hand something
21 in and expect a group to expect it to be true. You
22 have to have proof. You have to have it checked.

23 So everything that we submitted we had to
24 give you, like, proof where we found it and that it
25 was accurate.

1 I think we did an amazing job doing that.
2 And as a result I'm just saying if there's a policy
3 that would have -- that would cause an intervenor to
4 be charged for bringing truth to light, then why isn't
5 there a policy that those that are trying to hide the
6 truth be charged all the expenses?

7 Because I spent thousands of dollars. And
8 I spent a whole lot of hours. And I didn't work all
9 the time that I was doing this. We both spent a lot
10 of money on printing. We don't have somebody paying
11 us to do this. We racked up some serious expenses.

12 CHAIR CHOCK: One minute.

13 MS. BOLOMET: And we have proven that they
14 didn't meet the criteria. So this is the whole
15 reasoning that I have for putting in this proposal or
16 motion.

17 CHAIR CHOCK: Thank you, Ms. Bolomet.
18 Petitioner, any response?

19 MR. GEIGER: Certainly. Again, this
20 Commission has to follow the rules that it's adopted.
21 And there is a rule that allows for assessment of fees
22 for this process. And if you can find under that rule
23 that there's some basis to shift the fees then you're
24 entitled to do so.

25 But the rule presently provides that the

1 Petitioner, which is my client, is to pay all these
2 costs. And it has to date. So there isn't any sort
3 of basis to shift fees onto the Petitioner 'cause
4 they've already paid 'em.

5 The second thing says the Commission can
6 assess a reasonable fee requiring reimbursements if
7 there's an inexcusable absence of a party from a
8 boundary amendment proceeding. There you can get
9 things in addition which would be airfare, room fees,
10 et cetera. We haven't had any inexcusable absences so
11 there's just no basis for the motion that is being
12 sought. And in order to grant the motion there has to
13 be a basis.

14 The other thing I'd point out is that there
15 were a number of cases cited. And I spent a bit of
16 time going through all the cases that Ms. Bolomet
17 cited because I thought well, maybe she has something
18 in there that will support what she's asking for.

19 And out of all of those cases, only three
20 cases -- none of them dealt with costs -- only three
21 dealt with fees. And in each one of those cases it
22 was an action to recover under a civil rights claim in
23 either an Article III, Federal District Court or some
24 sort of state court for judicial proceeding. And in
25 each case they denied the fees.

1 So there just is no basis for granting this
2 motion. And we would ask that it be denied.

3 CHAIR CHOCK: County?

4 MR. GIROUX: No comments.

5 CHAIR CHOCK: State?

6 MR. YEE: State opposes the motion. There
7 is no basis for the assessment of a party's fees to be
8 assessed against another party.

9 CHAIR CHOCK: Ms. Bolomet, Ms. Lincoln?

10 MS. LINCOLN: As an Intervenor I am not
11 interested in getting reimbursed or compensated for
12 the hundreds of hours or my money that I spent because
13 I did it in wanting justice to be served and just to
14 show you a picture of that. You guys do your
15 community service. I will consider that my community
16 service.

17 However, in support of Routh I don't quite
18 understand because I do remember that threatening
19 written evidence that was produced by the Petitioner
20 saying that he was gonna hold Routh responsible for
21 delaying the proceedings.

22 So I guess I don't understand why he would
23 be able to threaten her with that. That's, I guess,
24 I'm unclear on. Because he stated all the laws and
25 not one of those rules that he just stated gave him

1 the right to do that to her back in August or
2 September when he did that. I just kinda feel like
3 that should be looked at.

4 And not that I want compensation or
5 anything but just that how can he threaten Routh with
6 compensation when he just told us there's no laws to
7 do that. Now he's coming back, he's saying it's not
8 admissible. So just a question more than anything.

9 CHAIR CHOCK: Thank you, Ms. Lincoln.
10 Ms. Bolomet, very brief rebuttal if you have one.

11 MS. BOLOMET: Well, I think the bottom line
12 is I'm looking for fairness, you know. They're asking
13 you for a Motion to Reconsider. And out of fairness
14 you're giving it to 'em. And I'm all for it. But
15 let's make sure that we're getting this right. But
16 shouldn't the fairness be where, you know, I saw that
17 not just as trying to apply rules. It was applying a
18 threat.

19 The message was: Don't stand up to any
20 developers. You're gettin' a little too close and we
21 don't like it. That's what I heard. Now, they didn't
22 do that to Michele. Because if it was to the
23 Intervenors, she did just as good as me. Why me?
24 That was a threat. And I'm just saying we can't do
25 this. We have to have a level playing ground.

1 And I'm just, I'm just saying that if we
2 continue to move down this road, this path and it
3 appears that everything that's being asked in favor
4 for the Petitioner, why would any intervenors come up
5 and show you their side which could be so helpful to
6 you?

7 Because I think all of you come here and
8 give your time because you want to make Hawai'i
9 better, not because you just want to spend time doing
10 this. We're all trying to make Hawai'i better in our
11 own way. But when a proceeding gets clouded like
12 this, you know, other people I know would step away.
13 But because I understand what they're doing I don't
14 step away.

15 I didn't grow up here in Hawai'i. I grew
16 up in the Mainland where they make you fight for your
17 rights. You stand up and you have a voice. When I
18 came back here I couldn't understand why my relatives
19 weren't standing up and having a voice because they
20 have the rights to.

21 So I'm doing it for all of us. And I only
22 do where I feel like I have, where it's correct and
23 it's pono to do it. So I'm asking you that, you know,
24 to either stop this kind of threatening things to
25 individuals, you know, and have some kind of

1 repercussions for it, or make 'em pay. Make 'em do
2 what they were asking me to do to show that the door
3 swings both ways.

4 CHAIR CHOCK: Thank you, Ms. Bolomet.
5 Commissioners, any questions for any of the parties or
6 Ms. Bolomet? Any comments? Okay. Chair again will
7 dispense with this motion and deny based on the fact
8 there's no basis to bring this motion forward at this
9 time.

10 Like to let the parties know that with
11 respect to the Petition -- with respect to the Motion
12 for Reconsideration we will be deliberating on that
13 item on March 7, Thursday. Please make a note March
14 7, Thursday.

15 In the meantime, Commissioners, if you
16 wouldn't mind reviewing the record and we'll reconvene
17 at that time to take up the motion -- I'm sorry -- to
18 take up the whole idea of reconsideration.

19 Parties, any questions? Petitioner?

20 MR. GEIGER: Just so I'm clear. And I
21 think based on some of the comments the Commissioners
22 made before the vote, is the Chair going to have
23 deadlines by which if we wish to submit anything to
24 supplement the record we need to do it by? And if so
25 what are those deadlines?

1 Second thing what exactly is the Commission
2 looking for so far as our presentation at the March 7
3 proceeding?

4 CHAIR CHOCK: Do you guys have any deadline
5 in mind from staff -- can you give us just a brief
6 recess in place to kind of work that out. (recess in
7 place) (gavel)

8 Okay. So what we're doing here, we're not
9 going to be taking any new evidence. We're just going
10 to be coming back for reconsideration. If the
11 Commissioners have any questions of the parties we'll
12 be asking question at that time.

13 We'll also be taking closing arguments
14 again. So each party will go for 15 minutes. You can
15 present another round of closing arguments. Any
16 questions? Petitioner.

17 MR. GEIGER: No questions. I guess you'll
18 leave it to the parties' discretion as to whether they
19 think they should have one of their witnesses present
20 in case the Commission needs to hear from that person?

21 CHAIR CHOCK: We're not going to be
22 reopening for new evidence.

23 MR. GEIGER: Okay. Fine.

24 CHAIR CHOCK: County, any questions? OP?

25 MR. YEE: No questions.

1 CHAIR CHOCK: County?

2 MR. GIROUX: Just for clarification. As
3 far as the Findings of Fact and Conclusions of Law is
4 there going to be any opportunity to, I guess, try to
5 pinpoint which of those facts the parties have any
6 problems with?

7 I think one of the problems with the
8 discussion was that the way that the Order was
9 actually adopted there wasn't really time for us to
10 file a Chapter 91 procedure where all of the parties
11 would submit objections to the Findings of Fact and
12 Conclusions of Law. I'm just asking for that
13 clarification.

14 COMMISSIONER INOUE: Mr. Chair, can I move
15 to go into executive session?

16 CHAIR CHOCK: I was just going to ask to do
17 that. I'll second the motion. We're going to take a
18 brief executive session. All the parties can leave
19 and we'll call you back in the room. I'm sorry. Can
20 we vote. All in favor of going into exec session?

21 VOTING: "Aye."

22 CHAIR CHOCK: Any opposed? (None)

23 (Executive session held 11:20.

24 Commissioner Matsumura no longer present)

25 CHAIR CHOCK: Okay. We're back on the

1 record. Thank you, parties, for your indulgence when
2 we sort through these procedural process matters.

3 COMMISSIONER INOUE: Mr. Chair, can I make
4 kind of an unusual, potentially unusual motion?
5 Before I do can I ask some questions of the parties?

6 CHAIR CHOCK: Absolutely. Commissioner
7 Inouye.

8 COMMISSIONER INOUE: If we open up the
9 proceedings just specifically on the new evidence
10 that's presented in the affidavits and all the filings
11 that's come in, and to allow Intervenors to fix that
12 one potential defect in the record, can that be done
13 in a morning?

14 In other words, I'm just asking if the
15 parties feel that they can do that in a morning
16 because I don't want to open it up.

17 CHAIR CHOCK: Mr. Geiger.

18 MR. GEIGER: From Petitioner's standpoint
19 as far as just offering in, I guess it would be the
20 documents that were referenced, I think that could be
21 done in a morning.

22 The bigger difficulty is that if the
23 written testimony of Mr. Lee is going to be offered,
24 then we would need to do some cross-examination
25 concerning some of the parts of his testimony as to

1 his qualifications to make those statements. I'm not
2 sure that would be completed in a morning.

3 COMMISSIONER INOUE: Okay. How much time
4 would you need to do that?

5 MR. GEIGER: I would guess we could
6 complete the whole process within a day plus the
7 arguments I would assume, unless the Commission's
8 going to need time to review the record.

9 CHAIR CHOCK: You're saying you need one
10 day for one witness?

11 MR. GEIGER: Well....

12 CHAIR CHOCK: A full day?

13 MR. GEIGER: I would anticipate that my
14 examination, just given Mr. Lee's testimony when he
15 previously was here and how he responded to questions,
16 I would guess that my questioning of him will take
17 some time. And I don't know that all the parties
18 would be able to complete it in half a day.

19 MS. BOLOMET: Can I ask a question?

20 CHAIR CHOCK: Hang on. Commissioner Inouye,
21 why don't you proceed with whatever questions you have
22 for the parties.

23 COMMISSIONER INOUE: So that goes for all
24 the parties 'cause it's going to require all the
25 parties cooperating with that.

1 MR. YEE: If I can address it briefly. I
2 assume what you're referring to with the defect is the
3 amended written testimony of Michael Lee?

4 COMMISSIONER INOUE: Yes.

5 MR. YEE: All I would ask or suggest is to
6 the extent that there is any necessary
7 cross-examination or other evidence in direct response
8 to those particular things, that they be restricted to
9 the new information contained in the amended testimony
10 as well as, frankly, if there's any further response
11 regarding the General Plan, the new General Plan, that
12 that also be redistricted solely to the new evidence
13 being provided.

14 The Office of Planning does not anticipate
15 any extensive cross-examination as a result of either
16 those two pieces of evidence for itself.

17 CHAIR CHOCK: County, any comments?

18 MR. GIROUX: I don't see us running long.
19 I think Mr. Geiger is going to take the brunt of
20 cross-examination. If there's anything it's just
21 going to be tidbits as far as cross.

22 CHAIR CHOCK: Ms. Lincoln, any comments on
23 that?

24 MS. LINCOLN: Pardon my ignorance, but when
25 I read the Motion to Reconsider it didn't say

1 introduce any evidence. So the two pieces that we're
2 to be referring to, the Petitioner gets to provide new
3 evidence even though it's nowhere -- but he did
4 provide the two pieces, the wastewater law and the
5 General Plan. That was submitted after the
6 evidentiary portion. So they've already unlawfully
7 submitted --

8 CHAIR CHOCK: We're talking about Michael
9 Lee and his testimony --

10 MS. LINCOLN: Oh, okay.

11 CHAIR CHOCK: -- and his exhibit, not
12 anything else right now, and whether or not we can get
13 through that in a morning and allow enough time for
14 the parties to cross-examine the evidence.

15 MS. LINCOLN: Regarding the Michael Lee
16 question.

17 CHAIR CHOCK: Yes.

18 MS. BOLOMET: Chair, I just need clarity.
19 I'm still not following exactly. Was that the only
20 part of the evidence that wasn't submitted correctly?
21 Can you tell me what am I supposed to do to submit it
22 correctly? Because I still don't understand that.

23 COMMISSIONER INOUE: Well, the argument
24 from the Petitioner is that because it was not offered
25 into evidence he didn't have a chance to cross-examine

1 the evidence. He thought it's not in evidence so he
2 didn't have a chance to cross-examine on that
3 evidence.

4 MS. BOLOMET: What part, though, wasn't?
5 It was like the genealogy -- everything that was in
6 there we talked about in the transcripts. So I don't
7 understand which party he's referring to.

8 MR. GEIGER: The Findings of Fact and
9 Conclusions of Law made specific reference to the
10 portion of the testimony concerning a cultural
11 assessment that Mr. Lee provided. That was not part
12 of his direct testimony. We did not cross him on it
13 because it was not in the record.

14 So if they're going to offer the amended
15 testimony of Mr. Lee, we would, of course, like the
16 opportunity to point out what has to be in a cultural
17 assessment to be a valid cultural assessment, et
18 cetera.

19 And as I said, Chair, I apologize. I will
20 do it as quickly as I can. But just given the answers
21 that we received previously I can anticipate it may
22 take some time.

23 MS. BOLOMET: I can actually answer that.
24 Maybe we don't even have to go through it. Article
25 XII section 7 a cultural practitioner is not held to

1 the same level as an expert who is somebody who goes
2 and interviews a cultural practitioner.

3 Their criteria that he's trying to set upon
4 Kahu Lee is that he has to follow this academic way of
5 presenting information. But Kahu Lee is a
6 practitioner.

7 How do you put into a framework when Tutu
8 Pele comes and whispers in his ear? And how do you --
9 how do you find out if that's true or not? And what
10 makes *him* (indicating Mr. Geiger) qualified to decide
11 what Kahu Lee is providing is correct or not?

12 That's why Article XII, section 7 is very
13 specific in saying that we don't have to have permits.
14 We don't have to have licenses. We don't have to have
15 certain types of education. There's no definition on
16 the framework. So why would we have to do that?

17 COMMISSIONER INOUE: Ms. Bolomet, that's
18 not what I'm asking about. I'm not trying to get into
19 the meat of it. I'm just trying to see if we need to
20 give a little bit more time to, if you will, fix the
21 record to make sure that we have the record complete
22 and everybody had their chance to present the
23 evidence, to offer the evidence, and to have the right
24 to cross-examine. That's all I'm asking. I'm not
25 going into the merits of it.

1 Mr. Chair, I'll make the motion.

2 MR. GIROUX: Chair, if I can --

3 CHAIR CHOCK: Yes.

4 MR. GIROUX: As far as the County's
5 concerned we would probably offer Mr. Spence just for
6 if there's any questions regarding the Maui Island
7 Plan. We would offer somebody possibly from the
8 Public Works Department to answer any questions about
9 the water quality rules.

10 CHAIR CHOCK: Thank you, County. Anything
11 else?

12 MR. GIROUX: I think that would be the
13 extent of our Witness List and Exhibits.

14 COMMISSIONER INOUE: Chair, I'll make the
15 motion to allow the very limited opening of evidence
16 to get these two pieces of new evidence, only what was
17 presented, nothing else new, with Mr. Yee's even
18 limited exception.

19 And I'm going to make the motion that it be
20 done in a morning. I'm not talking about a whole day.
21 The evidentiary portion's going to be done in a
22 morning.

23 In other words, I don't want this to be an
24 extended proceeding beyond what it's already been.
25 But I wanted to make sure everybody had the

1 opportunity to present all the evidence into the
2 record so we have a complete record.

3 CHAIR CHOCK: Okay. Thank you,
4 Commissioner Inouye. Is there any second?

5 COMMISSIONER BIGA: Second.

6 CHAIR CHOCK: Any discussion?

7 VICE CHAIR HELLER: Yes.

8 CHAIR CHOCK: Vice Chair Heller.

9 VICE CHAIR HELLER: I understand the point
10 of saying we want to get through this in a morning.
11 But with the lineup of parties that we have here I
12 think we need to give each party a specific time limit
13 or else we're going to run into the problem of what
14 happens if the cross-examination of Mr. Lee takes
15 longer than expected. And then do the other parties
16 run out of time because the morning is over?

17 So I'd like to suggest a friendly
18 amendment. That if we're going to restrict it to a
19 morning we put a specific time limit on each party,
20 something like 90 minutes for the cross-examination of
21 Mr. Lee and then each of the other parties to have 15
22 minutes. Something that defines it party by party so
23 we don't run into problems of how that morning gets
24 used up.

25 COMMISSIONER INOUE: I agree with that

1 friendly amendment.

2 CHAIR CHOCK: Commissioners, any other
3 comments? Commissioner Inouye.

4 MR. HAKODA: You accepted the amendment?

5 COMMISSIONER INOUE: Yes, I accepted.

6 CHAIR CHOCK: Dan, will you poll the
7 Commission. Restate the motion.

8 MR. ORODENKER: I'm sorry, Mr. Chair. I'm
9 having a little trouble with the amendment. The
10 proposed amendment is for 90 minutes for...

11 VICE CHAIR HELLER: To limit any
12 cross-examination of Mr. Lee to 90 minutes by the
13 Petitioner. And to 15 minutes by each of the other
14 parties.

15 MR. ORODENKER: Let me see if I get this
16 right then. The motion is allow limited reopening of
17 the evidence to hold an evidentiary hearing of
18 Mr. Lee's testimony and new evidence presented in the
19 motions for reconsideration to be heard in the
20 morning.

21 The amendment was to limit the
22 cross-examination of Mr. Lee to 90 minutes by
23 Petitioner and 15 minutes for each of the other
24 parties. Do I have that correct, Commissioner Inouye?

25 COMMISSIONER INOUE: Yes.

1 MR. ORODENKER: Commissioner Biga?

2 COMMISSIONER BIGA: Yes.

3 MR. ORODENKER: Commissioner Heller?

4 VICE CHAIR HELLER: Yes.

5 MR. ORODENKER: Commissioner Matsumura is
6 excused. Commissioner McDonald?

7 COMMISSIONER McDONALD: Yes.

8 MR. ORODENKER: Commissioners Teves,
9 Contrades and Makua are also absent.

10 Chair Chock?

11 CHAIR CHOCK: Yes.

12 MR. ORODENKER: Mr. Chair, the motion
13 carries unanimously.

14 CHAIR CHOCK: So we're going to reconvene
15 on March 7th to take Michael Lee, the opportunity for
16 the parties to cross-examine. And based on the
17 outcome of our reconsideration of that day staff will
18 prepare a D&O.

19 And there will be a review period between
20 the March 7th meeting and March 21/22 meeting for
21 adoption. Any other questions, parties?

22 MR. GIROUX: Chair, is there any limitation
23 on the two other county witnesses? I expect a really
24 small just introductory, just to get that on the
25 record just so they can introduce the document and

1 possibly address the issues of whether or not the Maui
2 Island Plan incorporated any idea about this Project,
3 and whether the water quality rules would be
4 beneficial to the reef and ecosystem surrounding this
5 area.

6 CHAIR CHOCK: Commissioners, any thoughts?
7 Chair's a little reluctant to open it up beyond
8 just Michael Lee at this point. We're going to be
9 butting into our 365-day time requirement.

10 MR. GIROUX: Should we just submit that in
11 writing I guess is what I'm asking? Basically
12 foundation.

13 VICE CHAIR HELLER: If I could ask a
14 question. I don't know that there's any challenge to
15 the authenticity of the county documents. So I don't
16 know that the foundation is really a critical
17 question.

18 MR. GIROUX: I think more of my concern is
19 that there's Findings of Fact that state that there
20 may be effects on the nearshore waters because of this
21 Project. And our offer of proof would be that the
22 water quality rules would address those issues as far
23 as protecting the nearshore waters.

24 And that the Maui Island Plan, there's
25 findings that this Project is inconsistent with the

1 General Plan. And our offer of proof would be that
2 the Maui Island Plan as adopted by the Council has
3 actually anticipated this Project, therefore making it
4 consistent with the General Plan.

5 MR. GEIGER: Chair, if I may? The
6 Petitioner has no objection to the County doing this
7 by way of some of short writing. I think that's
8 probably the best way to handle it because otherwise
9 the record's going to be incomplete as to we have
10 these documents but then what does that mean in
11 context? So I think it would be appropriate.

12 MS. BOLOMET: Will there be time for
13 rebuttal? They keep introducing new stuff.

14 CHAIR CHOCK: County, would you be okay
15 with just submitting the exhibits and then presenting
16 argument on the 7th?

17 MR. GIROUX: That's fine.

18 CHAIR CHOCK: Okay. We'll take it that
19 way. Okay. Any other questions for March 7th?

20 MS. LINCOLN: Just my question which I
21 asked earlier and you said it wasn't the time. What
22 exactly is the Hawaii Administrative Rule regarding a
23 Motion for Reconsideration in regards to evidence, new
24 evidence? Can you share that with me so I can look it
25 up?

1 CHAIR CHOCK: I don't know what the rule is
2 off the top of my head. (pause) It's in section
3 15-15-63 you can read up to....

4 MS. LINCOLN: 15-15-63 shows you can show
5 new evidence for motion to reconsider?

6 CHAIR CHOCK: Yes. Okay. We're adjourned.
7 We'll see you back on March 7th.

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9 (The proceedings were adjourned at 12:00 noon)

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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 22nd day of February 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