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LAND USE COMMISSION  
STATE OF HAWAI'I  
ACTION MEETING  
A12-795 WEST MAUI LAND COMPANY, INC.-)  
KAHOMA RESIDENTIAL, LLC. )  
\_\_\_\_\_)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for an action meeting at the Maui Arts & Cultural Center, Haynes Meeting Room, One Cameron Way, Kahului, Maui, Hawai'i, commencing at 9:30 a.m. on March 7, 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.  
HEIDI BIGELOW, WMLC, Inc.

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

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

Intervenor: MICHELE LINCOLN

Intervenor: ROUTH BOLOMET

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1 March 7, 2013

2 CHAIRMAN CHOCK: Good morning, everybody.  
3 I'd like to call this meeting to order. Our first  
4 item of business on the agenda is the adoption of  
5 minutes. Do I have a motion to approve? (inaudible)  
6 Moved and seconded. Any opposed to the adoption of  
7 the minutes? The minutes have been adopted. Our  
8 executive director will cover our tentative meeting  
9 schedule, Dan.

10 MR. ORODENKER: Thank you, Mr. Chair.  
11 March 21st we're tentatively scheduled for further  
12 disposition on this matter if such is necessary.

13 April 4th Maui R&T we're accepting the EIS  
14 or they're asking us to accept the EIS, excuse me.  
15 That will be here once again on Maui at the Maui  
16 Marriott Courtyard. April 5th Kunia Loa Farmlands  
17 tentative site visit and meeting. That's on O'ahu.  
18 April 18th, Waiko Industrial Investment, LLC  
19 decision-making at the Maui Marriott Courtyard.

20 April 19 on O'ahu Ko Olina Development, LLC  
21 boat ramp status report. And discussion and approval  
22 of the revised administrative rules.

23 May 2, 3 Waiko Industrial Investment, LLC  
24 Adoption of Order, if that has not occurred at that  
25 point in time. And any further proceedings for

1 Ka'ono'ulu Ranch.

2 CHAIRMAN CHOCK: Thank you, Dan. This is  
3 an action meeting on Docket No. A12-795 West Maui Land  
4 Company to reconsider and deliberate on the  
5 reclassification of approximately 16.7 acres of land  
6 from Ag to Urban in Lahaina, Maui. Will the parties  
7 please identify themselves for the record.

8 MR. GEIGER: Good morning, Chair,  
9 Commissioners. James Geiger on behalf of the  
10 Petitioner who is represented here by Heidi Bigelow.

11 MR. GIROUX: Good morning. James Giroux,  
12 deputy corporation counsel County of Maui representing  
13 the Department of Planning, County of Maui.

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

18 MS. LINCOLN: Michele Lincoln, Intervenor.

19 MS. BOLOMET: Routh Bolomet, Intervenor.

20 CHAIRMAN CHOCK: Good morning, everyone.

21 Let me briefly update the record. On February 22,  
22 2013 the Commission granted Petitioner's Motion to  
23 Reconsider Decision and Order adopted January 14, 2013  
24 and deny Intervenor Bolomet's motion that the LUC not  
25 take petitions that contain allodial titled lands and

1 her motion seeking an Order Charging the Petitioner  
2 All Costs Associated with these Hearings.

3 On February 27, the Commission mailed the  
4 March 7 meeting agenda to the parties and the  
5 statewide and Maui mailing lists. On March 1 the  
6 Commission received County of Maui's List of Exhibits  
7 amendment No. 3, Exhibits 14 and 15.

8 On March 4th the Commission received  
9 Intervenor Bolomet's Motion to Enter into the Record  
10 all of Intervenor Bolomet's Exhibits, Filings and  
11 Testimonies as well as Public Testifiers Clare Apana,  
12 Exhibits and Testimonies submitted during the  
13 evidentiary hearings for A12-795 and receive  
14 Intervenor Bolomet's Motion to Enter into the record  
15 missing documents left out of the Petition and to put  
16 the LUC on notice.

17 Let me briefly describe our procedure for  
18 today on this docket. First, I will call anyone  
19 wishing to provide public testimony to proceed to our  
20 witness box where you will be sworn in prior to your  
21 testimony.

22 On completion of public testimony Chair  
23 will then consider Intervenor Bolomet's motions and  
24 render decisions on them. Chair will then entertain  
25 Commissioner Inouye's motion from the February 22nd

1 meeting to allow limited evidence, presentations on  
2 the proceedings regarding Mr. Lee's amended testimony  
3 and the County of Maui's Exhibits 14 and 15.

4           Petitioner will then present its argument.  
5 Once Petitioner has completed its presentation the  
6 order will be as follows: Maui County Department of  
7 Planning, State Office of Planning followed by  
8 Intervenor Michele Lincoln and Intervenor Routh  
9 Bolomet. Any questions regarding our procedure for  
10 today? Mr. Geiger?

11           MR. GEIGER: No questions on the procedure,  
12 Chair.

13           MR. GIROUX: No questions.

14           CHAIRMAN CHOCK: Parties, any questions?  
15 Okay.

16           MR. ORODENKER: Public testifiers  
17 "Veronica" Cheromeke, Robin Knox followed by Ciara  
18 Quam.

19           CHAIRMAN CHOCK: Good morning, "Veronica".  
20 I need to swear you in. Do you swear to tell the  
21 truth?

22           THE WITNESS: "Victoria".

23           CHAIRMAN CHOCK: "Victoria". Sorry.

24           THE WITNESS: Yes, I do.

25           CHAIRMAN CHOCK: Could you please state

1 your name and tell us you address and then proceed.

2 THE WITNESS: My name is Victoria  
3 Cheromeke. I live at 383 Halua Road, Wailuku.

4 CHAIRMAN CHOCK: Go ahead.

5 THE WITNESS: First, I'm a little nervous.  
6 I apologize. My name is Victoria Cheromeke and I've  
7 lived on Maui for 25 years. I bought my first home in  
8 2002, an old plantation home in Wailuku Town.  
9 Becoming a homeowner was truly a life-changing  
10 experience, one that inspired me to become a Realtor.  
11 I've helped many renters become homeowners in the last  
12 10 years. My primary goal as a realtor is to enable  
13 others to realize this dream for themselves.

14 Real estate values are so high on Maui and  
15 the challenges for first-time buyers are so huge that  
16 I've found myself volunteering in many arenas over the  
17 years to fight for the cause of affordable housing.

18 It is not easy to help Maui's workforce  
19 become homeowners. I view this advocacy as part of my  
20 job. I've served on the affordable housing committee  
21 of the Realtors Association of Maui since 2005, was  
22 named Chair in 2007 and continue in that capacity  
23 today.

24 I volunteered extensively housing for the  
25 local person, FACE, Na Hale o Maui and I currently



1 serve on the family selection committee for Habitat  
2 for Humanity. I'm leading a task force composed of  
3 realtors and lenders which is supported by the Maui  
4 County Department of Housing and Human Concerns. We  
5 banded together to get Maui condos back on the  
6 HUD-approved list. These are all tools we need to  
7 help our residents become homeowners on Maui.

8           Buying one's first home on Maui is not  
9 easy. Even with the current lower market values and  
10 historically low interest rates prices are still  
11 higher than most of the country.

12           This year I am lucky to get entry-level  
13 buyers into condos for under \$200,000. And that will  
14 soon be impossible. Finding houses under 500,000 that  
15 are in decent condition and will qualify for a loan is  
16 becoming harder every month. Yesterday I pulled the  
17 active listings in Lahaina, Na Pili, Kahana and  
18 Honokowai priced under 500,000.

19           There are only four on the entire west side  
20 and they are not pretty. I've attached the MLS  
21 printouts for your review. One is bank owned. One is  
22 a short sale. One has extensive fire damage, and  
23 several, if not all, have illegal additions.

24           And most important several, if not all  
25 four, will have difficulty qualifying for a loan.

1 These four properties are what an entry level buyer  
2 has to choose from if they want a single-family home  
3 in West Maui.

4 CHAIRMAN CHOCK: Please summarize.

5 THE WITNESS: It is important to realize  
6 the distinction between affordable housing and low  
7 income housing. And I would also like to comment on  
8 the Plan D restrictions. I feel that the 1, 3 and  
9 5-year deed restriction's not sufficient. They  
10 subsidize the first homeowner only. Please support the  
11 Homeowner Residential Project.

12 CHAIRMAN CHOCK: Thank you for your  
13 testimony. Parties, any questions? Commissioners?  
14 Thank you for your testimony.

15 MR. ORODENKER: Robin Knox followed by  
16 Ciara Quam and Patricia Nishiyama.

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

20 CHAIRMAN CHOCK: Please state your name and  
21 address and then proceed.

22 THE WITNESS: My name is Robin Knox. My  
23 address is 28 Waikalani Place, Kihei, Hawai'i.

24 CHAIRMAN CHOCK: Robin, I'm sorry before  
25 you begin. I forgot to mention for the members of the

1 public wishing to provide testimony, this Petition has  
2 been going on for some length of time and we've had a  
3 lot of testimony on it. So Chair's going to be  
4 limiting public testimony today to 1 minute.

5 THE WITNESS: Thank you, Chair.

6 CHAIRMAN CHOCK: Go ahead.

7 THE WITNESS: I read on the agenda that you  
8 were reconsidering -- and in the Petitioner's Motion  
9 for Reconsideration, that you're reconsidering  
10 questions and that the Petitioner has put forward that  
11 compliance with the new County of Maui stormwater  
12 regulations will resolve the water quality issues.

13 I would like you to know that that Maui  
14 County Code 15 chapter 111, pages 1115 and 1116  
15 section 15-111-3H say that these are minimum  
16 standards. They're required whether or not there's a  
17 water quality problem. And that additional standards  
18 and design criteria may apply for water quality  
19 limited segments including sensitive waters such as  
20 those in the Hawaiian Islands Humpback Whale National  
21 Marine Sanctuary which the Project waters are in.

22 And it says specifically, "The design  
23 solution will be contingent upon the pollutants found  
24 to be impacting such water bodies and the regulatory  
25 status of those waters."

1 I previously testified to you that the  
2 State's 2008 and 2010 Water Quality Report to EPA and  
3 Congress said that the regulatory status of the waters  
4 is that they're impaired and they're not meeting their  
5 designated uses including aquatic life support which  
6 supports traditional Hawaiian practices such as  
7 having coral, fish, and limu.

8 So I just wanted you to know. I gave you a  
9 copy today of the 2012 report that just came out in  
10 December. It continues to show all the waters that  
11 are gonna receive stormwater and/or wastewater from  
12 this Project continue to be impaired. And their  
13 regulatory status is they're not meeting or supporting  
14 designated uses with the pollutant load present today.  
15 That still remains.

16 The stormwater regs do not change the  
17 regulatory status. In fact, they confirm that  
18 additional design standards are needed and that we  
19 don't have the information available yet to determine  
20 what that design standard is. Thank you.

21 CHAIRMAN CHOCK: Robin, we have a copy of  
22 the report and your testimony. Thank you very much.  
23 Parties, any questions?

24 MR. GEIGER: No questions.

25 CHAIRMAN CHOCK: Commissioners, any

1 questions? Intervenor Bolomet.

2 MS. BOLOMET: Yes. There's a chart on here  
3 for marine waters and for stream waters, Maui stream  
4 waters. Can you explain what this is?

5 THE WITNESS: If you look on -- there's a  
6 cover page. If you go to the second page which says  
7 at the bottom of page 57 it explains the codes that  
8 are in those charts. If there's an (N) it means it's  
9 not attaining the uses. If there's an (A) it means  
10 it's attaining the uses. If there's a (?) question  
11 mark it means we don't know.

12 And then each stream is given a status, a  
13 regulatory status which is by numbers 1 through 5.  
14 And the significant ones are numbered 3 "not enough  
15 data to evaluate" and No. 5 that the data shows that  
16 the "uses are not being attained" and that this "TMDL  
17 study is required" to figure out what pollutant load  
18 and design standards are.

19 So for Kahoma Stream the stream is impaired  
20 for turbidity. It has a "V" because it was done by  
21 visual assessment. And it still has that code 5 which  
22 means we need to do a study in order to determine what  
23 kind of sediment controls are needed there.

24 If you look at page 85 it has -- I starred  
25 the segments at Honokowai and Ka'anapali that that

1 received the sewage from the sewage treatment at  
2 Lahaina. And those segments have many impaired  
3 pollutants and do require the TMDL study. So we do  
4 not know how much we need to reduce the pollutant load  
5 yet because those studies have not been done.

6 And then lastly, on pages 77, 78 you see I  
7 starred the segments for Mala Wharf. They are not  
8 meeting standards again for turbidity, nutrients, and  
9 other pollutants. And they are listed regulatory  
10 status 5, not meeting, not attaining uses for more  
11 than one or more use and needing a TMDL study.

12 So what this tells you is that nobody can  
13 determine what the design standards for either  
14 wastewater or stormwater discharge because nobody's  
15 done the study to figure out what the limit on the  
16 pollutant load is. But we do know that the waters are  
17 impaired and they're not meeting the State water  
18 quality standards as required under the Clean Water  
19 Act.

20 MS. BOLOMET: And that's before this  
21 Project?

22 THE WITNESS: That is before this Project.  
23 So we know the total pollutant load needs to go down  
24 from what it is today.

25 MS. BOLOMET: And what about with the

1 detention basin that's being suggested?

2 THE WITNESS: Those basins are minimum  
3 design standards. They may have to be larger. They  
4 may have to have additional kinds of infrastructure.  
5 They might have to go the more natural systems like  
6 infiltration. And there have been cases where you  
7 just have to say: We can't have the project because  
8 the water quality in this area cannot take any more  
9 pollution.

10 MS. BOLOMET: Thank you.

11 CHAIRMAN CHOCK: Commissioners, any  
12 questions? Next testifier.

13 MR. ORODENKER: Ciara Quam followed by  
14 Patricia Nishihara followed by Bruce Uu.

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

18 THE WITNESS: Yes.

19 CHAIRMAN CHOCK: Thank you. Your name and  
20 address.

21 THE WITNESS: Ciara Quam, 5095 Napili Hau  
22 Street, suite 202 Lahaina.

23 CHAIRMAN CHOCK: One minute. Go ahead.

24 THE WITNESS: Aloha, good morning. My  
25 name's Ciara Quam. I'm with Quam Properties Hawaii.

1 We have a family owned and operated Real Estate Office  
2 in Napili. I am primarily here to say that I'm 28  
3 years old and my generation and generations two years  
4 older, two years younger, cannot even begin to think  
5 of owning property on West Maui.

6 I'm born and raised on the island. I have  
7 two keikis myself. I have a lot of clients that are  
8 in the public eye: Police officers, fire fighters.  
9 They have 2, 3, 4 kids and they're basically  
10 professional renters. There is nowhere for them to  
11 even think or fathom of owning a home in West Maui  
12 where they're born and raised for generations to come.

13 Their parents, grandparents, they all hui  
14 together in one big house which, you know, excuse me,  
15 I'm nervous, but a lot of us are thinking that it's a  
16 cultural thing. It's "we all live together because we  
17 love to." No. We all like to live separately and  
18 live close to our family, yes. But that is how we  
19 have to survive, you know. And that's pretty much the  
20 summary of it.

21 Then going into what the other testifier  
22 was talking about as far as, there is one condominium  
23 on the entire island of Maui that's HUD FHA approved.  
24 So 3 and-a-half percent, 3 percent is out the window.  
25 You're talking 20 percent down to buy a condo. It's



1 just outrageous.

2 Like she was saying as well in West Maui  
3 four properties. I'm sure you've all seen pictures of  
4 these properties. They're not liveable. They need at  
5 least -- I mean and I'm just kind of gauging here --  
6 but 50,000 plus to even make it inhabitable and  
7 healthy. Then you're thinking of mold and the water  
8 quality and all these types of things.

9 MR. ORODENKER: One minute.

10 THE WITNESS: Sorry. To summarize we need  
11 this. If anything for, you know, my generation and  
12 for our kids. This is very important for our  
13 community.

14 CHAIRMAN CHOCK: Thank you for your  
15 testimony. We appreciate it. Parties, any questions?  
16 Commissioners? Next witness.

17 MR. ORODENKER: Patricia Nishiyama followed  
18 by Bruce Uu followed by David Green.

19 PATRICIA NISHIYAMA  
20 being first duly sworn to tell the truth, was examined  
21 and testified as follows:

22 THE WITNESS: Yes.

23 CHAIRMAN CHOCK: Would you please share  
24 your name and address.

25 THE WITNESS: My name is Patricia

1 Nishiyama, 320 Kaeo Place, Lahaina, Maui.

2 CHAIRMAN CHOCK: Thank you. One minute.

3 THE WITNESS: Aloha kakahiaka to all of you  
4 who sits on this Land Commission. My name is Patricia  
5 Nishiyama, aka Aunty Patty Nishiyama, born and raised  
6 in Lahaina. I am representing Na Kupuna o Maui. I  
7 come before you to let you know that Na Kupuna o Maui  
8 supports this housing development because it is for  
9 the low income people. Habitat housing, low income  
10 and middle income housing is very much needed.

11 We want to thank Peter Martin and also West  
12 Maui Land Company for giving the community this  
13 opportunity in owning an affordable housing. May Ke  
14 Akua bless him. Na Kupuna o Maui humbly asks you Land  
15 Commissioners to please say yes to this Kahoma  
16 affordable Project.

17 We need it badly in Lahaina for those who  
18 can afford it, not afford affordable housing what they  
19 say it is. It's for low income habitat and middle  
20 income. Make this pono and move forward. Mahalo and  
21 God bless you all. Thank you.

22 CHAIRMAN CHOCK: Thank you for your  
23 testimony Aunty Patty. Parties, any questions?  
24 Commissioners? Aloha.

25 THE WITNESS: Aloha, mahalo.

1 CHAIRMAN CHOCK: Next testifier.

2 MR. ORODENKER: Bruce Uu followed by David  
3 Goode followed by Kyle Ginoza.

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

7 THE WITNESS: My name is Bruce Uu, 249  
8 Kupa'a Street, Paia, Maui.

9 CHAIRMAN CHOCK: Proceed. One minute.

10 THE WITNESS: Thank you. Testifying in  
11 favor of this Project, I think we heard earlier about  
12 we had four homes that is not liveable or needs  
13 improvements in the Lahaina area. We heard another  
14 testifier saying how generations live within  
15 generations not by choice. I'm one of 'em. Two kids,  
16 three grandkids, two nephews, same house.

17 I was asked the last time I testified why  
18 not another project, why not this Project? And after  
19 I thought about it it is because it is in a perfect  
20 place. When you're growing up poor you don't know.  
21 You just having fun regardless of what you paying.  
22 You can walk to surf. Yo can walk to school. You can  
23 walk to shopping. You can walk to the drug store.  
24 You can walk to Lahaina. This is an absolute best  
25 case scenario for any place. It's a walkable,

1 liveable community and something we really need.

2 We had the affordable housing policy in  
3 place in Maui County and we hardly made any homes.  
4 It's not working. We asking, I'm asking you guys to  
5 approve, the 201H Project for homes that is needed  
6 anywhere on the island.

7 MR. ORODENKER: One minute.

8 THE WITNESS: Specifically Lahaina. Thank  
9 you.

10 CHAIRMAN CHOCK: Thank you for your  
11 testimony. Parties, any questions?

12 MS. BOLOMET: Can I ask a question of the  
13 last testifier?

14 CHAIRMAN CHOCK: No. Commissioners, any  
15 questions for Mr. Uu? Thank you for your testimony.  
16 Next testifier.

17 THE WITNESS: Thank you very much.

18 MR. ORODENKER: David Goode followed by  
19 Kyle Ginoza and then Clare Apana.

20 DAVID GOODE  
21 being first duly sworn to tell the truth, was examined  
22 and testified as follows:

23 THE WITNESS: Yes, sir.

24 CHAIRMAN CHOCK: Your name and address for  
25 the record please.

1           THE WITNESS: David Goode, 73 Kahului  
2 Place, Kula. Mr. Chair, I have written testimony as  
3 well.

4           CHAIRMAN CHOCK: One minute, please  
5 proceed.

6           THE WITNESS: Good morning, Chair, members  
7 of the Commission. My name's David Goode. I'm the  
8 Director of the Department of Public Works for the  
9 County of Maui. I submitted written testimony but  
10 I'll summarize here briefly.

11           Our department administers the County's  
12 grading and erosion control ordinances. In January of  
13 last year the mayor signed two ordinances which  
14 allowed the department to administer and regulate  
15 water quality from stormwater. The rules -- the  
16 ordinance requires rules to be promulgated in order to  
17 become effective. Those rules were adopted on  
18 November 25th, 2012.

19           The rules essentially state in their  
20 "purpose" section that they will establish controls of  
21 stormwater runoff pollution to the maximum extent  
22 practical.

23           Long-term water quality is generally  
24 impacted by the volume and frequency of discharge  
25 pollutants. Therefore the water quality of the ocean

1 would be impacted more by runoff from smaller frequent  
2 storms which water quality measures should be designed  
3 to mitigate water quality impacts. Note the  
4 ordinances and rules were essentially pushed --

5 MR. ORODENKER: One minute.

6 THE WITNESS: -- and helped, if I may,  
7 Mr. Chair, were pushed behind the EPA, NOAA and the  
8 Department of Health Clean Water branch. Hand in hand  
9 we worked with them to put this package together.

10 Preliminary calculations for the Project  
11 indicate that the stormwater detention basin will  
12 serve for both quality and our new -- will serve the  
13 quality rules and also our existing quantity rules.

14 Therefore, Mr. Chair, we believe that the  
15 Project and the stormwater system as designed will  
16 meet our rules and serve to protect stormwater  
17 quality.

18 CHAIRMAN CHOCK: Thank you for your  
19 testimony, Mr. Goode. Parties, any questions?  
20 County? County, would you mind speaking into the mic  
21 please.

22 MR. GIROUX: Mr. Goode, we heard testimony  
23 that these rules would not protect the nearshore  
24 waters. Can you explain how the county is going to  
25 administrate these rules in order to ensure the

1 protection of the nearshore waters?

2 THE WITNESS: Mr. Chair, in answer to the  
3 question the county will require detailed plans,  
4 calculations be submitted in accordance with the  
5 rules. We're already doing that since November 25th  
6 last year. We've already handled a handful of such  
7 requests already. So they will be reviewed by  
8 engineers to see they meet the listed standards. Then  
9 our -- under construction our inspectors will verify  
10 that they're built in accordance with the approved  
11 plans.

12 MR. GIROUX: Is the County authorized to  
13 have more stringent standards imposed during these  
14 processes if it's found that the federal government or  
15 any other agency requires more stringent standards?

16 THE WITNESS: Well, any time the federal  
17 government or state government imposes more stringent  
18 standards we have to follow those. Or if they have  
19 processes, say through NPDES permits, then they would  
20 administer those.

21 MR. GIROUX: No further questions.

22 CHAIRMAN CHOCK: State?

23 MR. YEE: We had heard testimony previously  
24 that the Project would meet the county low-impact  
25 development rules through the oversizing of the

1 detention or perhaps retention basin. Are there other  
2 requirements in addition to that that also need to be  
3 met under your rules for this Project, if you know?

4 THE WITNESS: What I do know is that  
5 there's a number of ways to handle the requirements  
6 under the rules. Oversizing the basin can be part of  
7 that as well as the location of the outlet of the  
8 basin. You can imagine the basin filling up with  
9 stormwater. Typical design without our quality rules  
10 had a small pipe coming out of that basin at the  
11 bottom of the basin to the middle of basin. So the  
12 stormwater came in, had a chance to go out slowly,  
13 basically at the same rate that existed prior to the  
14 development.

15 That type of design would not be allowed  
16 under our new quality rules. We'd want the outlet at  
17 the top so it had a chance to fill up, settle, allow  
18 for pollutants to dissipate in some manner.

19 The preliminary design for this particular  
20 basin showed the outlet at the top. So it appears  
21 that it will meet our new rules subject to final  
22 verification, verification through final construction  
23 plans.

24 MR. YEE: Thank you. Nothing further.

25 CHAIRMAN CHOCK: Ms. Lincoln, any



1 questions? Ms. Bolomet?

2 MS. BOLOMET: Yes, I do.

3 CHAIRMAN CHOCK: Go ahead.

4 MS. BOLOMET: Did you receive comments on  
5 the regs that said on the Leeward side there are more  
6 impacts from less frequent larger storms?

7 THE WITNESS: I'm sorry? Did I receive  
8 comments in reference to?

9 MS. BOLOMET: To the regulations that said  
10 on the Leeward side there are more impacts from less  
11 frequent, larger storms.

12 THE WITNESS: I don't recall those specific  
13 comments, but in general that's what the rules do.  
14 They handle less frequent -- or they handle frequent  
15 storms. As far as less frequent storms that's not the  
16 opinion of the EPA and not the opinion of the  
17 Department of Health when we put our rules package and  
18 our ordinances together. Again, our ordinances and  
19 rules work hand in hand with those two agencies.  
20 That's the way they saw it.

21 MS. BOLOMET: So are you saying that  
22 there's -- there are measures that will assure the  
23 state water quality standards are met?

24 THE WITNESS: Our rules address, quite  
25 simply, the water quality of stormwater as required by

1 the state and the federal government.

2 MS. BOLOMET: Okay. You just said that  
3 you, you're putting, like, the holes at the top so the  
4 water will go out of the top like an overflow, but it  
5 gives it time to settle. Is that still in the Kahoma  
6 Stream where it's all concrete? How does it settle  
7 down if it's all concrete?

8 THE WITNESS: I can't address Kahoma  
9 Stream.

10 MS. BOLOMET: But that's what this Project  
11 is about.

12 THE WITNESS: This Project is adjacent to  
13 Kahoma Stream. The way this basin is designed has the  
14 outlet someplace. There's too much water it's gotta  
15 overflow. That pipe is at the top rather than the  
16 middle or bottom which is more commonly done.

17 MS. BOLOMET: But this Project will affect  
18 Kahoma Stream and impact Kahoma Stream which will then  
19 impact Mala which has all the limu that's gathered and  
20 the coral that's used for medicine, ceremonies and for  
21 food.

22 THE WITNESS: I can only state that the  
23 design of the Project will capture more water than it  
24 currently does.

25 MS. BOLOMET: Okay. You said that it will

1 dissipate. So since we know it's not going to filter  
2 down through soil because it's concrete, that means --  
3 you're saying it's gonna dissipate into the air like  
4 vaporize so it will become air pollution for the  
5 people that are living right next to this stream?

6 MR. YEE: I'm going to ask for  
7 clarification on the question. I believe the concrete  
8 she's referring to is in the Kahoma Stream.

9 MS. BOLOMET: Yes.

10 MR. YEE: Not the detention or retention  
11 basin that's in there. Just so we're clear what the  
12 'it' she's referring to.

13 MS. BOLOMET: I'm referring to the Kahoma  
14 Stream and also the retention basin, from what I read,  
15 can only take a portion of the runoff and dissipate  
16 it. There will be some that still goes into the  
17 Kahoma Stream as far as heavy metals and oils and that  
18 sort of thing. I was told it wasn't a hundred percent  
19 guaranteed that it was going to clean up all the  
20 waters before it went down into the ocean.

21 CHAIRMAN CHOCK: Ms. Bolomet, why don't you  
22 restate your question and let's dispense with this  
23 testifier please.

24 MS. BOLOMET: Okay. All right. So will  
25 the pollutants that's being dispensed from the

1 retention basin into the Kahoma Stream, will it be  
2 clean, like a hundred percent clean, before it goes  
3 into the retention -- or into the Kahoma Stream, which  
4 is concretized, so that there won't be air pollution  
5 to the people that are living in this proposed  
6 community?

7                   Is that what the regulations that you're  
8 talking about will do?

9                   THE WITNESS: The regulations will control  
10 the amount of pollutants released in nearshore waters  
11 to the maximum extent practical. That's exactly  
12 what's stated in the rules. That's exactly what EPA  
13 and DOH want us to do.

14                  MS. BOLOMET: So you're guaranteed  
15 100 percent?

16                  THE WITNESS: That's not what I said.

17                  MS. BOLOMET: I just wanted to make sure  
18 you didn't. Will an environmental scientist review  
19 the plans and do the inspection?

20                  THE WITNESS: I don't know what the  
21 definition of an "environmental scientist" is. But  
22 either a licensed professional engineer will develop  
23 the plans, could develop the plans in conjunction with  
24 an environmental scientist.

25                  And then the inspections will be done by

1 our trained inspectors with assistance by their bosses  
2 who are civil engineers.

3 MS. BOLOMET: Okay. Thank you.

4 CHAIRMAN CHOCK: Commissioners, any  
5 questions? Thank you, Mr. Goode. Next testifier.

6 MR. ORODENKER: Kyle Ginosa followed by  
7 Clare Apana after Sherri Dodson.

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

11 THE WITNESS: I do.

12 CHAIRMAN CHOCK: Name and address please.

13 THE WITNESS: My names is Kyle Ginoza. I  
14 work at 2200 Main Street, suite 100, Wailuku 96793.

15 CHAIRMAN CHOCK: Thank you. 1 minute.

16 THE WITNESS: Hi. My name is Kyle Ginoza.  
17 I'm the director of the Department of Environmental  
18 Management for the county of Maui. Under my purview  
19 is the wastewater reclamation division which is in  
20 charge of the county sewer system. I'd like to speak  
21 to the available sewer capacity for the Project.

22 The rated capacity for the Lahaina  
23 treatment plant is 9 million gallons per day. We are  
24 currently running at about 4.1 million gallons a day.  
25 This Project, my understanding, is on the order of

1 23,800 gallons per day, roughly is what they would  
2 contribute to our existing flows.

3 And while we do not reserve allocation  
4 before building permits, if they were to come in now  
5 or in the foreseeable future there would be ample  
6 capacity to connect to our system. And we would be  
7 able to accommodate the Project.

8 You know, we are currently operating under  
9 Environmental Protection Agency and Department of  
10 Health permits. We are in compliance with those  
11 permits currently. Thank you.

12 CHAIRMAN CHOCK: Thank you. Thank you for  
13 your testimony, Kyle. Parties, any questions?

14 MS. BOLOMET: I have a question.

15 MR. GEIGER: No, questions.

16 CHAIRMAN CHOCK: County?

17 MR. GIROUX: Kyle, what is your  
18 understanding if at the time of building permit that  
19 they come in and you do *not* have capacity? What's  
20 your understanding of the duties of the Petitioner?

21 THE WITNESS: May I?

22 CHAIRMAN CHOCK: Please.

23 THE WITNESS: So what we do is we ask for  
24 the proposer to contribute to any kind of expansion in  
25 capacity that would be required. So if at the time of

1 the building permit we do not have capacity, then we  
2 ask that the proposer or Petitioner come in to help  
3 contribute to expansion.

4 MR. GIROUX: No further questions.

5 CHAIRMAN CHOCK: State?

6 MR. YEE: Nothing.

7 CHAIRMAN CHOCK: Intervenors, any  
8 questions? Ms. Bolomet?

9 MS. BOLOMET: Yes.

10 CHAIRMAN CHOCK: Go ahead.

11 MS. BOLOMET: What is the current reliable  
12 average dry weather capacity?

13 THE WITNESS: I don't know that number  
14 offhand. But....

15 CHAIRMAN CHOCK: If you don't know you  
16 don't know.

17 THE WITNESS: Okay.

18 CHAIRMAN CHOCK: You can answer by saying  
19 you don't know.

20 MS. BOLOMET: And where did you get the  
21 rate 9 mgd's figure from?

22 THE WITNESS: That's what's we have with  
23 the state Department of Health.

24 MS. BOLOMET: So up till now, up till  
25 hearing you say this, everything that I've read

1 including some of the LUC reports, it said 4.5. What  
2 was 4.5 mgd's versus this 9? I've never seen 9  
3 anywhere.

4 THE WITNESS: I'm not sure what you're  
5 referring to about 4.5 being the capacity.

6 MS. BOLOMET: They said it was maximum  
7 capacity before you start going into overage using the  
8 overload, the backup wells and stuff.

9 THE WITNESS: We did not publish a 4.5  
10 figure for the capacity of the Lahaina Treatment Plant  
11 so I don't know where that figure came from.

12 MS. BOLOMET: It came from the engineer's  
13 report.

14 CHAIRMAN CHOCK: Which engineer? Which  
15 report?

16 MS. BOLOMET: CH-2 M.L.

17 MR. GIROUX: I object as far this is not  
18 testimony.

19 CHAIRMAN CHOCK: This is a public  
20 testifier. He's not been admitted as an expert. So  
21 your questions should be limited based on what he  
22 testified to this morning in terms of his one minute  
23 public testimony.

24 MR. BOLOMET: Okay.

25 CHAIRMAN CHOCK: Commissioners, any



1 questions? Thank you, Mr. Ginoza.

2 THE WITNESS: Thank you.

3 CHAIRMAN CHOCK: Next witness.

4 MR. ORODENKER: Clare Apana followed by  
5 Sherri Dodson followed by Janet Six.

6 CHAIRMAN CHOCK: Good morning, Clare.

7 CLARE APANA

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

10 THE WITNESS: Do I swear to tell the truth?

11 CHAIRMAN CHOCK: That's what I asked you.

12 THE WITNESS: Yes.

13 CHAIRMAN CHOCK: Thank you. Name and  
14 address.

15 THE WITNESS: Clare Apana, Wailuku, Maui  
16 260 Halenani Drive, Wailuku, Maui.

17 CHAIRMAN CHOCK: One minute.

18 THE WITNESS: Thank you. I'd first like to  
19 say that the CIA rules, guideline rules I think  
20 they're very good that you brought them up,  
21 Mr. Geiger, because you should look at your CIA. It  
22 does not meet the requirements of those guidelines.  
23 And I worked extensively with this company. They  
24 alter and delete things out of the testimony without  
25 telling people.

1           And at that time in their history they did  
2 not actually have people necessarily sign off on their  
3 reports. I know this because I was one of their  
4 reports interviews. So I think that's a good idea.  
5 Thank you.

6           I just would like to bring a little bit of  
7 more information about Mr. Michael Lee, Kumu Michael  
8 Lee -- Kahu Michael Lee. And that is to say I've  
9 submitted something into testimony which shows you --  
10 because we don't have Burial Council on Maui that's  
11 functioning now --

12           MR. ORODENKER: One minute.

13           THE WITNESS: -- is that he is a cultural  
14 and lineal descendant of this land. His grandmother  
15 lived in Lahaina in Panaewa, which touches this  
16 property. So in cultural practice in the Burial  
17 Council this counts when you are a lineal accident of  
18 the land.

19           And I want to say that he is the real deal.  
20 His assessments have proven true from people who live  
21 in the area, the history of Pele and the Pele Clan,  
22 the stories of this place, the iwi that were on the  
23 property in the Keawe Iwi land, the LCA. They have  
24 been all documented that they were all there and they  
25 have been moved. And then there are some that are

1 still secret that people will not say. And this came  
2 from Wilmont Kahaiali'i who is an area resident and  
3 cultural practitioner.

4 CHAIRMAN CHOCK: Thank you, Clare.  
5 Parties, questions?

6 MS. BOLOMET: One question.

7 CHAIRMAN CHOCK: Ms. Bolomet.

8 MS. BOLOMET: So are you saying that Kahu  
9 Lee has a great uncle that lives over there?

10 THE WITNESS: Yes. He has -- actually  
11 right near I believe Michele Lincoln's neighborhood,  
12 in her neighborhood is a street. And that street was  
13 named after Michael Lee's fourth great uncle. So his  
14 family is directly connected to here. It is no  
15 coincidence that he has come here to this area.

16 In our cultural practice the ancestors call  
17 for assistance. It's no coincidence they called him.  
18 I know you didn't know this and he was maybe, you know  
19 Hawaiians don't always want to tell you everything  
20 about their families. But his family roots are so  
21 deeply connected to this land, and the protection of  
22 this land is natural for him.

23 MS. BOLOMET: Is there a allodial title  
24 that's associated with this uncle?

25 MR. GEIGER: Chair, I think we're getting

1 beyond where the direct testimony was. We're also  
2 getting matters of title which I think the Chair--

3 CHAIRMAN CHOCK: I've already ruled on  
4 that.

5 MS. BOLOMET: All I'm trying to establish  
6 is that he wasn't a visitor in that they had land and  
7 they lived there.

8 CHAIRMAN CHOCK: I think we've got the  
9 point with respect to that issue. Commissioners, any  
10 questions for Clare Apana? Thank you, Clare.

11 THE WITNESS: Thank you very much.

12 MR. ORODENKER: Sherri Dodson followed by  
13 Janet Six.

14 SHERRI DODSON  
15 being first duly sworn to tell the truth, was examined  
16 and testified as follows:

17 CHAIRMAN CHOCK: Name and address.

18 THE WITNESS: Sherri Dodson, 970 Lower  
19 Main. I'm back again to ask the Commissioners to  
20 approve this Project. This is the only Project that  
21 Habitat has in the works in Lahaina. It's the only  
22 opportunity that we've been afforded to grant  
23 affordable housing to Lahaina residents.

24 I believe the occupants of this affordable  
25 housing project will make great neighbors to this

1 subdivision. In our past subdivisions all our  
2 neighbors have enjoyed our families.

3           When you wait so long for a house you tend  
4 to put more effort into building it and keeping it up.  
5 I know that all the families in this Project will do  
6 the same. I know that open space is something that's  
7 important. But when we have so many people who are in  
8 dire need of housing, homeless people, there's a young  
9 woman who was killed in Kihei the other day, she was  
10 homeless, crossing the road.

11           MR. ORODENKER: One minute.

12           THE WITNESS: We want to be able to provide  
13 houses for these people. And this Project because it  
14 is 25 to 160 percent median income, will give so many  
15 people an opportunity. So again I plead with you to  
16 approve this Project.

17           CHAIRMAN CHOCK: Thank you for your  
18 testimony. Parties?

19           MS. BOLOMET: I have a question. You keep  
20 bringing up different homeless people, that they can't  
21 afford housing. How would they be able to afford any  
22 kind of housing if they're in a financial situation  
23 that make themselves homeless already?

24           THE WITNESS: Homeless people aren't  
25 always unemployed. Several of our families, I'd say

1 probably about half dozen of our families, who were  
2 previously homeless not because they aren't hard  
3 working people but because they have some medical  
4 emergency.

5 I was on welfare and not homeless  
6 because -- I was homeless, I had to move in with my  
7 parents because I had kidney failure. A lot of people  
8 things happen to make them homeless not because  
9 they're lazy or not working. Just circumstances  
10 arise. And they're hard working. They can't come up  
11 with the first and last month's rent. They can't come  
12 up with a downpayment. So they've worked with  
13 Habitat. We only require 1 percent downpayment.

14 So they work with Habitat and we're able to  
15 get them into homes directly out of homelessness.

16 MS. BOLOMET: Thank you.

17 CHAIRMAN CHOCK: Commissioners, any  
18 questions? Thank you for your testimony.

19 MR. ORODENKER: Janet Six. That is the  
20 last signed up testifier.

21 THE WITNESS: Saving the best for last.

22 CHAIRMAN CHOCK: Name and address.

23 THE WITNESS: I swear to tell the truth.  
24 My name is Janet Six. My address is 2675 Kaupakalua,  
25 Haiku, Maui.

1                   CHAIRMAN CHOCK: Go ahead. One minute.

2                   THE WITNESS: Okay. I'm an archaeologist  
3 by training and anthropologist but I've lived here  
4 since 1978. I have a Ph.D. from the Ivy League and I  
5 can't afford anything to live anywhere. That said, I  
6 think this area is really ag land. It's on top of  
7 Kahoma which means 'thin and hollow'.

8                   In 1940 the plantations mapped the  
9 waterways. It's the karst system. When it rains it  
10 recharges and impacts the Mala Wharf. It used to have  
11 Alamihi Fishpond to mitigate that. That's gone. It  
12 was filled in in 1920. So we're talking about putting  
13 in basins and all these -- we just saw the rain. My  
14 driveway got washed out Upcountry. So you know what  
15 happens when we get these storms.

16                  We need to think smart, develop areas with  
17 percolating parking lots, things that allow it to  
18 recharge. I'm not anti-development at all. I'm  
19 anti-fast paving quick and concretizing the waterways  
20 and not understanding the karst system which is mapped  
21 in by SOES. You can go online and look at it. It's  
22 very edict, very scientific. Michael Lee is emic.  
23 He's of a native intelligence. We need both  
24 perspectives to be sustainable.

25                  I've lived here a long time. Why is

1 housing so expensive? Who drove it up? Why can no  
2 one afford anything? Is this really the answer? Do I  
3 need to be homeless so that I can get a 1 percent  
4 down? 'Cause currently at the college I make \$36,000  
5 a year. So who is this housing for? I would love to  
6 see affordable housing.

7 MR. ORODENKER: One minute.

8 THE WITNESS: That said, I go on the  
9 property as a non-cultural practitioner, as a cultural  
10 anthropologist and archaeologist. I see the  
11 push-pile. That means there were cultural features.  
12 I've seen Michael Lee do cultural practices there.  
13 I've also seen him do them on places that are not  
14 under threat of development. He is the real deal. He  
15 was given knowledge that no matter how much I go to  
16 school I'll never get. It was given by his kupuna.  
17 They hear things.

18 I asked the magic 8 ball where I was going  
19 to college. We all have a belief system. We need to  
20 make room for other people's belief systems. And my  
21 Ph.D. is on plantation, hydrological despotism and  
22 stealing of the water on the Big Island in Ka'u. So  
23 that's my layer of expertise.

24 I excavated Mo'okula. I'm familiar with the  
25 sinkholes and the karst system. I'm a testifier on



1 the Stanford Carr project working with Edward  
2 Frederickson as well. So feel free to ask me  
3 questions. Thank you.

4 CHAIRMAN CHOCK: Thank you. Parties,  
5 questions? Commissioners, any questions? Thank you  
6 for your testimony.

7 THE WITNESS: Thank you very much. Is  
8 there anyone else in the public wishing to provide  
9 testimony? Please come forward at this time.

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

13 THE WITNESS: I do.

14 CHAIRMAN CHOCK: Please state your name,  
15 your address and proceed.

16 THE WITNESS: Good morning. My name is  
17 Zeke Kalua, 116 Halenani Drive, Wailuku. My name's  
18 Zeke Kalua. I'm the executive assistant to Mayor Alan  
19 Arakawa. I'm here today to provide for his support of  
20 this Project. West Maui community is not a rubber  
21 stamp community.

22 We have advocates for and against many  
23 different projects. And because of this there's never  
24 been anything that's gone in this community that  
25 hasn't had some form of community review.

1           This Project represents infill in an area  
2 that was built out as a plantation camp originally.  
3 Anywhere on any state on any island in the State of  
4 Hawai'i you will touch land and you will find  
5 something culturally important.

6           But in cases over here on Maui where we  
7 have built around them respectfully and safely, we've  
8 provided for jobs and for homes for people that can't  
9 be here today because they're working right now two or  
10 three jobs to find something.

11           I am 37 years old this month. I get paid  
12 what is considered a professional wage in a  
13 professional job. I can't afford a house. And I've  
14 represented the West Maui community for 13 years now.

15           I'm a former resident of Olowalu, 806A  
16 Olowalu Village Road. Because the people who owned  
17 the house couldn't pay the property taxes, I had to  
18 move out of the house because they had to sell it.  
19 Majority of the people that want these houses are the  
20 ones that work in this area. When I worked in West  
21 Maui --

22           MR. DAVIDSON: One minute.

23           THE WITNESS: -- thank you. When I worked  
24 in West Maui I would have loved to live in West Maui  
25 but 500- to 700,000 a year was what was available and

1 what is still available.

2           So if we don't look forward to how we're  
3 gonna provide for nearly 3,000 students in the West  
4 Maui community today, what's gonna be available for  
5 them in the years to come?

6           The State Land Use Commission has denied  
7 projects with less information than has been provided  
8 here today even when the community was opposing it.  
9 So where do we stand on our future? Are we not going  
10 to allow people to give birth at the hospital? Are we  
11 not gonna allow children an opportunity to buy homes  
12 and live here where they're from, where they're born  
13 and they're raised?

14           This is the real dilemma that we're facing.  
15 A majority of Lahaina was at one point swampland. And  
16 water basins like this were put in so that habitation  
17 could happen, people could build and live in homes.  
18 So unless we're going to completely put up the word  
19 "moratorium" to stop any future development in the  
20 West Maui community, then we need to start looking at  
21 the merit of the Project and see if that can stand.

22           The basins that these people, these  
23 developers will be looking at, are gonna be what's  
24 sensitive to the area. Contrary to popular belief, in  
25 the state of Hawai'i I would challenge anyone on this

1 Commission to find an area where a basin creates vapor  
2 to dissipate flood waters.

3 CHAIRMAN CHOCK: Please summarize.

4 THE WITNESS: In the last 12 years West  
5 Maui has had extreme floods twice. And I have  
6 documentation of all that in my office. It's one of  
7 the drier sides of the island as is most west sides of  
8 all of the islands in the state of Hawai'i.

9 So to say that we are going to flood out  
10 Mala Wharf and we're going to create more discharge  
11 into the water is askew, is it realistic? Should we  
12 stop the boats operating out of Mala Wharf as well?  
13 And that's the real question.

14 As long as humans need to habituate, as  
15 long as we need to create homes for people to live in  
16 there will always be what is in the best of the  
17 community. That's where we were at today with this  
18 Project. Thank you.

19 CHAIRMAN CHOCK: Thank you for your  
20 testimony. Parties, questions? Commissioners?  
21 Mahalo for your testimony. Anyone else in the  
22 audience wishing to provide testimony at this time  
23 please come forward. Okay.

24 All right. I think Intervenor Bolomet has  
25 brought a number of additional motions to enter into

1 the record. The first motion that you brought is to  
2 enter into the record all exhibits, filings and  
3 testimonies as well as public testifiers, Clare Apana  
4 exhibits and testimony submitted during the  
5 evidentiary hearings for A12-795.

6 Chair has received your pleadings as has  
7 everyone on this Commission. Do you have anything to  
8 add in addition to your pleadings?

9 MS. BOLOMET: No. I just wanted to make  
10 sure that I didn't mess up this time. So that's a  
11 reminder for me too to make sure I formally put  
12 everything on the record that I need to.

13 CHAIRMAN CHOCK: Parties, I'm assuming no  
14 one has any comment?

15 MR. GEIGER: Well, I have a question.  
16 First of all, I wasn't served with this particular  
17 motion. I just was able to read a copy from  
18 Mr. Giroux this morning. But I'm not clear. Is the  
19 motion to add each of these as a new exhibit for  
20 Ms. Bolomet? If so then we would have an objection to  
21 that because --

22 CHAIRMAN CHOCK: So noted. County?

23 MR. GIROUX: No objection.

24 CHAIRMAN CHOCK: State?

25 MR. YEE: State objects.

1           CHAIRMAN CHOCK:  Intervenor Lincoln, any  
2 comments?

3           MS. LINCOLN:  No.

4           CHAIRMAN CHOCK:  Chair is going to rule and  
5 deny the motion as being untimely.  Your next motion I  
6 believe is to --

7           MS. BOLOMET:  Can I ask a question?  Does  
8 that mean I don't get to add all my things onto -- or  
9 are we going to do a formal procedure for me to add  
10 everything, Michael Lee's August 1st amended  
11 testimony?

12           CHAIRMAN CHOCK:  We've already ruled two  
13 weeks ago to --

14           MS. BOLOMET:  To do that?

15           CHAIRMAN CHOCK:  -- to bring your expert  
16 in.

17           MS. BOLOMET:  So I don't need that.  Okay.

18           CHAIRMAN CHOCK:  No.  We will hear Mr. Lee.  
19 I believe your next motion is to enter into the record  
20 missing documents left out of your Petition and to put  
21 the LUC on notice.  Again, we've received your written  
22 pleading.  I've read it.  My colleagues have read it.  
23 Is there anything in addition to your written pleading  
24 that you would like to add?

25           MS. BOLOMET:  I just want to make sure that

1 throughout this proceeding I noticed that there's  
2 select documents that are put in and select documents  
3 that are left out. And those select documents that  
4 are left out are the very reasons why you shouldn't be  
5 accepting of this Petition or you shouldn't be  
6 approving this Petition.

7           So I've always said from the beginning, you  
8 know, if it's going to meet all the criteria then and  
9 they could prove what they were saying with their  
10 warranty deeds, then I'd step away. But we keep  
11 finding that they're leaving information out which was  
12 part of the criteria for even putting in the Petition.

13           They left out very specific parts of their  
14 warranty deed which had the clause that was subject to  
15 allodial title claims and people making cultural and  
16 traditional claims which are all the things that your  
17 Decision and Order was based on as well.

18           So I just wanted to put it on the record  
19 that that was left out. And it should have been put  
20 in when the Petition was brought in.

21           CHAIRMAN CHOCK: Thank you for your  
22 comments. Parties? Mr. Geiger.

23           MR. GEIGER: We would object for two  
24 reasons. One, this is the fourth time now we've got  
25 title issues come up. And you've already ruled three

1 times it's not proper. We object for that reason.

2 The second reason we would object is  
3 because the particular exhibit that is attached, which  
4 is identified as Exhibit 4 to the motion, at least on  
5 the part that I got was incomplete. Didn't have legal  
6 descriptions. But it turns out that that document  
7 already is in the record as Exhibit 30 and was  
8 admitted without any objections on July 19 when we  
9 began this.

10 CHAIRMAN CHOCK: Thank you. County?

11 MR. GEIGER: So it would be cumulative.

12 CHAIRMAN CHOCK: Count any comment?

13 MR. GIROUX: No. We object based on the  
14 same basis.

15 CHAIRMAN CHOCK: State?

16 MR. YEE: OP objects as untimely.

17 MS. LINCOLN: No comment.

18 CHAIRMAN CHOCK: Ms. Lincoln no comment.

19 Okay. Chair's going to rule again on the basis of  
20 timeliness that this motion is denied.

21 Okay. Two weeks ago, Ms. Bolomet, we ruled  
22 unanimously based on a motion that was offered by  
23 Commissioner Inouye to hear from your expert Michael  
24 Lee on his amended testimony filed August 1. Are you  
25 ready to proceed?



1 MS. BOLOMET: Yes.

2 CHAIRMAN CHOCK: Okay.

3 MS. BOLOMET: Is this the time where I ask  
4 to put it on the record?

5 CHAIRMAN CHOCK: It will be on the record.

6 MS. BOLOMET: Oh, okay. So I don't have to  
7 say anything else.

8 CHAIRMAN CHOCK: Did you want to offer him?

9 MS. BOLOMET: Yes. I would like to offer  
10 Michael Lee at this time and to formally put his  
11 testimony on the record. Would this include his  
12 written testimony as well?

13 CHAIRMAN CHOCK: Yes.

14 MS. BOLOMET: Okay. Thank you.

15 MR. GEIGER: Chair, point of clarification.  
16 I assume we're talking about the August 1, 2012  
17 testimony of Mr. Lee, right?

18 CHAIRMAN CHOCK: August 1, 2012 testimony  
19 of Mr. Lee to be clear, amended testimony. So after  
20 you're done we're going to give the parties an  
21 opportunity to also cross-examine your witness and  
22 then you'll have a chance for rebuttal. State, you  
23 had a question?

24 MR. YEE: Actually my understanding of the  
25 prior Order was that the amended written testimony was

1 admitted into evidence; that there was no further  
2 direct of this evidence but merely the right of the  
3 parties to cross-examine based solely upon the new  
4 information provide.

5           So that we will not be reopening the record  
6 for any discussion but only with respect to allow --  
7 the idea, I think, was simply because Petitioner had  
8 argued, "I never cross-examined on the new  
9 information, the amended written testimony because I  
10 didn't know, because it wasn't admitted into the  
11 record."

12           CHAIRMAN CHOCK: That is what we said. I  
13 think you could state that a lot more clearly than I  
14 can. So maybe just for the benefit of everybody here  
15 maybe you can summarize that in layman's terms in one  
16 sentence. (audience chuckles).

17           MR. YEE: The amended written testimony was  
18 submitted into the evidence. Mr. Lee is present to be  
19 cross-examined upon the new information submitted in  
20 that new document. So I believe we will be beginning  
21 with Petitioner's cross-examination. And that  
22 Ms. Bolomet will have the ability to redirect solely  
23 as to the cross-examination by the other parties.

24           CHAIRMAN CHOCK: Okay. Mr. Geiger, you  
25 okay with us proceeding in that manner?

1 MR. GEIGER: That was my understanding  
2 also.

3 CHAIRMAN CHOCK: Ms. Bolomet, you okay?

4 MS. BOLOMET: Yes.

5 CHAIRMAN CHOCK: Okay. Geiger, 20 minutes.  
6 We're not talking an hour and-a-half on this witness.

7 MR. GEIGER: Okay, Chair, I will try to do  
8 it as quickly as I can.

9 CHAIRMAN CHOCK: Appreciate it.

10 (Mr. Lee taking witness stand)

11 MR. LEE: Do you want to swear me in?

12 CHAIRMAN CHOCK: I will swear you in.

13 Thank you, Mr. Lee. Good to see you again.

14 MR. LEE: Good to see you again.

15 MICHAEL LEE

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

18 CHAIRMAN CHOCK: Always nice to have you  
19 here. Maybe you could state your name and address  
20 just for the record.

21 THE WITNESS: My name's Michael Kumukauoha  
22 Lee. My address is 91-1200 Keaunui Drive unit 614  
23 'Ewa Beach, Hawai'i 96706.

24 CHAIRMAN CHOCK: Proceed.

25 CROSS-EXAMINATION

1 BY MR. GEIGER:

2 Q Mr. Lee, because we have some limited time  
3 here if you could please confine your answers to my  
4 questions that will help us. Will you do that?

5 A Sure.

6 Q As I understand you're here because we're  
7 asking you questions only about the 9-page written  
8 direct testimony dated August 1.

9 A That is correct.

10 Q And in there, as I understand it, you  
11 assert that this Project is going to impact cultural  
12 practices, archaeological finds and water quality, by  
13 extension, which would impact the limu gathering,  
14 correct?

15 A That is correct.

16 Q Let's talk about the cultural practices so  
17 you and I are on the same page. You would agree with  
18 me that the Petition Area is 16.7 acres in size?

19 A That is correct.

20 Q You would agree with me that the Petition  
21 Area runs from what is identified as an old cane haul  
22 road mauka, also known as Mill Street mauka?

23 A That is correct.

24 Q You would agree with me that the boundaries  
25 of the Petition on the north or toward Lahaina, excuse

1 me -- toward Ka'anapali is the access road adjacent to  
2 the Kahoma Stream Flood Control Channel?

3 A That is correct.

4 Q And on the south it's a residential area.

5 A That is correct.

6 Q Now, the first time you went to the  
7 Petition Area was June of 2012, correct?

8 A June of 2012.

9 Q And you had not performed or done any  
10 cultural practices on the Petition Area before that  
11 time.

12 A That is correct.

13 Q The last time when we asked you about this  
14 I think you testified you'd been there about eight  
15 times. Have you been back there since then?

16 A Yesterday doing a cultural practice.

17 Q So you've now been there nine times.

18 A That is correct.

19 Q Now, I think you have told us that you did  
20 practice in the West Maui area for a number of years  
21 before last June.

22 A That is correct.

23 Q But none of those practices did you  
24 practice on the Petition Area.

25 A That is correct.

1           Q       Now, you would agree, wouldn't you, that  
2 you do not collect limu within the Petition Area?

3           A       You're talking about the development area  
4 or Mala Bay?

5           Q       I'm talking about the Petition Area that  
6 we've identified as being 16.7 areas. You'd agree you  
7 don't collect limu in that area.

8           A       I don't but my grandfather did.

9           Q       He collected limu in the Petition Area?

10          A       That is correct. Because it's called limu  
11 'ele'ele. It's a green freshwater limu. It's my  
12 paternal grandfather who lived in this area. I talked  
13 about my maternal grandfather who taught me when I was  
14 a little boy. But this area goes back to my family  
15 for 160 years.

16          Q       Your paternal grandfather told you that he  
17 actually collected limu in that area.

18          A       That's correct. He lived with us for two  
19 months in about 1971-72 when I was 12 or 13 years old  
20 on Summer Street. And was with us 24/7 for two  
21 months. He had a little get-together how-to-paint  
22 classes and how to whittle and stuff like that.

23          Q       Did he ever take you with him when he  
24 gathered?

25          A       No, he did not. It was just the olelo

1 stories that he passed on.

2 Q All you know is that he gathered at Kahoma  
3 Stream, correct?

4 A In the Kahoma Stream, that is correct.

5 Q You couldn't tell us where exactly in  
6 Kahoma Stream.

7 A I could not tell you where exactly,  
8 Mr. Geiger.

9 Q Are you -- did you make inquiry of  
10 Ms. Bolomet when she first set foot on the Petition  
11 Area?

12 A No, I did not.

13 Q Are you aware of any Native Hawaiian who  
14 has attempted to restore the soils in the Petition  
15 Area?

16 A I am not aware of that.

17 Q I want to talk to you about the libation  
18 stone that you have identified. First of all, I think  
19 you would agree, would you not, that it is located on  
20 a pile of other stones, correct?

21 A That is correct.

22 Q I think you previously called that or  
23 agreed that it was a push pile.

24 A It certainly looks that way.

25 Q Are you aware of any other Native Hawaiian

1 who has performed any ceremony in connection with this  
2 libation stone?

3 A No, I am not.

4 Q Are you aware or did you know that the SHPD  
5 was made aware of the libation stone?

6 A Prior to our testimony on it? Is that --  
7 I'm just trying to clarify your question.

8 Q Sure. That's a good question. Before your  
9 last testimony when you testified on October 4th.

10 A Right.

11 Q Or 4 and 5.

12 A Right.

13 Q Were you aware that the SHPD had been made  
14 or had been given knowledge of your claims concerning  
15 the libation stone?

16 A Only that Routh Bolomet Petitioner (sic)  
17 did write to a person within the SHPD notifying them  
18 that the study was, like, incomplete. That's the  
19 extent of my knowledge.

20 Q Did you have an opportunity to review  
21 Exhibit 41 which was -- actually I showed to you at  
22 the last time you testified?

23 A Yes.

24 Q You understand that there were statements  
25 in there that the SHPD was made aware of the practice.



1           A       Correct. Right.

2           Q       You understand that the SHPD disagreed with  
3 you --

4           A       That is correct.

5           Q       -- concerning the cultural practices?

6           A       That is correct.

7           Q       I want to talk to you a little bit about  
8 the archaeological finds --

9           A       Right.

10          Q       -- that you claim are going to be impacted.

11          A       Right.

12          Q       I think you've limited them to three which  
13 would be the existence of a he'iau.

14          A       Right.

15          Q       The iwi or burial sites?

16          A       That's correct.

17          Q       And then, finally, I believe it was the  
18 libation stone.

19          A       That is correct.

20          Q       Let's talk first about the he'iau.

21          A       Right.

22          Q       Again, the presence of the he'iau was made  
23 known to the SHPD, correct?

24          A       Correct.

25          Q       Again, SHPD in Exhibit 41 stated that they

1 did not find evidence that that was a he'iau, correct?

2 A Correct.

3 Q I believe that your written testimony you  
4 indicated that the he'iau, you observed the he'iau and  
5 it was on top of the surface, correct?

6 A Correct.

7 Q But in your testimony last October you  
8 indicated that, in fact, it's buried somewhere below  
9 the push pile.

10 A It's -- if you came to that site you would  
11 see there's an eclectic group of big boulders and  
12 small boulders. So to make an exact determination is  
13 very difficult because, as you did say, that they did  
14 bulldoze that area for many years during the time of  
15 the sugarcane company.

16 Q Do you remember testifying on October 5th  
17 when I asked you about this --

18 A Okay.

19 Q -- about the stone that came from property.  
20 And you said that, "You have a feature which is below  
21 and a push pile pushed over it."

22 A That is correct.

23 Q So you're telling the Commission that the  
24 feature is down below the push pile.

25 A A portion of it is below it, that is

1 correct.

2 Q Well, in answering me you didn't say, "Oh,  
3 but there's also a portion above," did you?

4 A No, I did not.

5 Q Can you provide -- strike that. Other than  
6 your testimony as to how you view this push pile or  
7 pile of stones, do you have any -- strike that. I  
8 think that ultimately I believe your testimony was  
9 that you didn't need to dig beneath the stones to know  
10 a he'iau was there.

11 A Yes.

12 Q Now, let's talk about the iwi.

13 A Yes.

14 Q I think in September --

15 A Yes.

16 Q -- September 8th you were on the site and  
17 you identified specific locations where iwi -- where  
18 you believed iwi were.

19 A With Rory Frampton and his associate.

20 Q Mr. Frampton and his associate marked those  
21 area?

22 A That is correct.

23 Q In addition to they took GPS --

24 A That is correct.

25 Q -- sightings for the area?

1           A       That's correct.

2           Q       You understand that that area, those areas  
3 were excavated to bedrock.

4           A       That is correct.

5           Q       And understand that the archaeologist who  
6 did the excavation found no evidence of iwi at that  
7 time.

8           A       Undetermined, yes.

9           Q       Well, if we look at Exhibit 41 --

10          A       Mm-hmm.

11               CHAIRMAN CHOCK: Mr. Lee, do you have a  
12 copy of Exhibit 41?

13               THE WITNESS: No.

14               CHAIRMAN CHOCK: Petitioner, can you make  
15 that available?

16               THE WITNESS: Thank you, Chair.

17               MR. GEIGER: Chair, this is my only copy so  
18 I'm going to have to go over if that's okay with  
19 the Chair and Mr. Lee?

20               CHAIRMAN CHOCK: Sure.

21               MS. LINCOLN: I have a copy that he could  
22 use. Exhibit 41.

23               CHAIRMAN CHOCK: Do you need an additional  
24 copy?

25               MR. GEIGER: Doesn't make any difference.

1 If Mr. Lee would rather use that that'd be fine.

2 (document handed to Mr. Lee)

3 CHAIRMAN CHOCK: It doesn't matter. Thank  
4 you, Ms. Lincoln.

5 MS. LINCOLN: That way he can reference  
6 yours.

7 MR. GEIGER: For the record, Mr. Lee has  
8 been handed a copy of Exhibit 41.

9 CHAIRMAN CHOCK: So noted.

10 MR. GEIGER: And we are focusing on the  
11 part of the exhibit that begins at the bottom of page  
12 2 and goes over to page 3. The section is titled  
13 Sub-surface Testing Burial Investigation.

14 Q Do you see that, Mr. Lee?

15 A I do.

16 Q Okay. If you look at the third full  
17 paragraph on page 3 it states that "As noted the  
18 locale one trench was culturally sterile. No burials  
19 or cultural materials were found in this trench."  
20 Correct?

21 A That's what it says here.

22 Q That's not inconclusive. That's a very  
23 conclusive statement, isn't it?

24 A No, is isn't. Because I'm a cultural  
25 monitor for the Rail and for Hunt Development. And in

1 that we screen. And there was no screening that was  
2 done. So it is definitely inconclusive.

3 When you take a big backhoe and what's in  
4 the middle of that backhoe you're not screening, you  
5 don't know if there are bone fragments. We found many  
6 bone fragments on the Rail project. And I was onsite,  
7 especially the Chinatown site where my family was.

8 And because there was no screening you  
9 can't absolutely say that you didn't have bone  
10 fragments because you didn't go through the step of  
11 screening.

12 Q So you disagree with that statement?

13 A I disagree with that statement.

14 Q Okay. And the basis is there was no  
15 screening.

16 A There was no screening.

17 Q And you acknowledge that the same statement  
18 was made for the second trench.

19 A Yes. And the same thing for the second  
20 trench would be when we do the cultural monitoring for  
21 these places we do screening.

22 Q Okay. You would acknowledge that SHPD said  
23 or concurred with the assessment that there were no  
24 burials present in the two locations at that time.

25 A Based on the protocol that you did I can

1 understand. But they did not do screening so they  
2 cannot absolutely say there wasn't bone fragments  
3 there. It's undetermined based on my knowledge.

4 Q I recognize you disagree. But isn't it  
5 correct that SHPD agreed with the assessment?

6 A Oh, they agreed with the assessment, that  
7 is, Mr. Geiger.

8 Q Thank you. And they agreed with the  
9 assessment that there had never been any burials or  
10 evidence of any burials at any time.

11 A That is incorrect, Mr. Geiger. Because  
12 according to testimony today brought in by Clare Apana  
13 in oral testimony dated October 19, 1994 to Ray H.  
14 Joe, director of engineering for Army Department Corps  
15 of Engineers.

16 The head at that time of DLNR clearly  
17 states in his letter, Keith Ahui, in this letter and I  
18 quote "Archaeological Inventory Survey of the Kahoma  
19 Stream Flood Project control area was conducted prior  
20 to the construction of the original flood control  
21 features phase 1 archaeological survey of Kahoma  
22 Stream Flood Control Project Area Lahaina.

23 R. Connolly, 1974. During this survey evidence of" --

24 Q Sir, I appreciate what you're reading but  
25 my question was --

1 (Speakers overlapping)

2 A It's not supposed to be a question --

3 Q No, no. My question was specifically --

4 A -- he says there is based on this thing  
5 that there is and please stay within the Project flood  
6 control area. And this is the head of DLNR which I'm  
7 relating to your -- you opened the door. The DLNR,  
8 based on this letter, knew that the terraces based on  
9 this Connolly report, was on both sides of the flood  
10 control stream area. They had the TMKs. They're  
11 talking about the concretized flood control, Kahoma  
12 Stream Flood Project.

13 And the head of DLNR states very  
14 specifically, "So long as our understanding you stay  
15 in your site area you will not affect the cultural  
16 significant project areas on both sides of the  
17 stream."

18 So I would disagree with you, Mr. Geiger.  
19 Because according to the institutional memory of  
20 October 19, 1994 they let the Army Corps of Engineers  
21 know with the Connolly report of 1974, that they were  
22 going to endanger these significant features as a  
23 complex if they went outside the zone. This was  
24 submitted by Clare Apana today in her testimony. So I  
25 disagree.



1           Q       Again, let me focus on my question which  
2 was specifically with regard to Exhibit 41.

3           A       Right.

4           Q       The trenches that were dug at the two  
5 locations or the four locations, actually -- two  
6 trenches dug in four locations -- that you  
7 specifically identified last September.

8           A       Correct.

9           Q       Isn't it correct that SHPD agreed that no  
10 burials had existed in those two locations at any  
11 time?

12          A       For a limited -- I will preface it this  
13 way, Mr. Geiger -- for a limited institutional  
14 knowledge based on the lack of supporting evidence of  
15 finding of fact here the answer would be yes.

16          Q       I recognize you disagree.

17          A       Yes. But that's the way I can answer.  
18 Mr. Geiger, I cannot answer it truthfully under oath  
19 any other way. So that is my answer. It will have to  
20 stand.

21          Q       Let me ask you: Would you also agree that  
22 the SHPD conducted a surface review of the property on  
23 September --

24          A       Yes, they did.

25          Q       -- of 2012?

1           A       Yes, they did.

2           Q       In the surface review in September 2012  
3 they again found no evidence of burials.

4           A       That's what they wrote, Mr. Geiger.

5           Q       Same thing is true with regard to the  
6 heiau. They found no evidence --

7           A       That's what they wrote, Mr. Geiger. I  
8 would concur what they wrote.

9                   THE REPORTER: Mr. Lee, would you let me --  
10 give me a few seconds.

11                  CHAIRMAN CHOCK: Guys, if you stop just  
12 interrupting each other and let each other finish so  
13 she can take the transcript accurately.

14                  MR. LEE: Thank you, Chair.

15                  MR. GEIGER: I appreciate it. We  
16 apologize. I'm trying to hurry through this --

17                  MR. LEE: We apologize to our 'script  
18 taker'.

19                  MR. GEIGER: And we just did it  
20 again...(pause)

21                  CHAIRMAN CHOCK: No problem. Take your  
22 time, Mr. Geiger.

23                   (Commissioner Biga now present)

24                  MR. GEIGER: Chair, I find that a little  
25 incongruous with your earlier statements made. I'm

1 still trying to push through this as quickly as I can.

2 (general laughter)

3 Q (By Mr. Geiger) Mr. Lee --

4 A Yes, Mr. Geiger.

5 Q -- isn't it correct that the libation stone  
6 you speak of, you identified as coming from a  
7 particular area in the Kahoma Stream complex map in  
8 the Connolly report?

9 A Yes, I did.

10 Q Now, I want to focus a little bit on the  
11 water quality aspects. As I understand your  
12 testimony, your written testimony, there were really  
13 two aspects. One is that the Project will impact the  
14 underground streams.

15 The second is that Project will have runoff  
16 from stormwater that will enter the Kahoma Stream  
17 channel, go down and ultimately cause, or may cause  
18 damage to the limu, correct?

19 A That is correct, Mr. Geiger.

20 Q Let me first talk about the underground  
21 streams. As I understand your concerns, your concern  
22 is that the water that would hit the surface if it is  
23 hard-scaped will not be -- will not allow to percolate  
24 and hit the streams, correct?

25 A You are correct, Mr. Geiger.

1           Q       That would, of course, mean that there  
2 would have to be a path between the surface and the  
3 underground streams, correct?

4           A       Can you clarify word "path".

5           Q       Well, a conduit. Some way to get from the  
6 surface to the underground streams, right?

7           A       Correct.

8           Q       Okay. And I think you told us that you'd  
9 had an opportunity to review the testing reports that  
10 were entered into the evidence in this case.

11          A       That is correct.

12          Q       And there were testing reports where there  
13 were actually excavations made?

14          A       Correct.

15          Q       And there were reports where there were  
16 actually borings, where they actually drilled or tried  
17 the core down, correct?

18          A       Correct.

19          Q       And I believe that all the evidence now  
20 shows that there were 21 different pits and three  
21 borings. Is that consistent with your recollection?  
22 We had 19 before. We've had two more since then.

23          A       Okay. I take your word.

24          Q       I believe that the record shows, and  
25 correct me if I'm wrong, that of these 21 pits, 17 got

1 all the way down to rock. Couldn't go any deeper.

2 A Mm-hmm.

3 Q Is that correct?

4 A Right.

5 Q Would you agree with me that when you hit  
6 caprock water's not going to go through caprock?

7 A I would disagree with that. I highly  
8 disagree. Calcium carbonate is one of the reasons why  
9 they call it 'caprock'. It's not the basaltic rock.  
10 And even with basaltic rock you have numerous dikes  
11 according to the Sterns water map in this area.

12 The dikes in its course, all rock is  
13 porous. That's how we get the water coming from the  
14 mountain to the sea. Whether it's basaltic or  
15 caprock, calcium carbonate, it actually percolates  
16 through the rock.

17 Q And by the way, if you don't like 'caprock'  
18 would you agree that they had igneous rock?

19 A Igneous rock, even with igneous rock over  
20 time, water, it's semi-permeable. It's no totally  
21 solid. I mean we're not talking about granite where  
22 there are no porous features within the igneous rock.  
23 They are formed by gas bubbles. And those gas bubbles  
24 allow permeation to flow through.

25 Q You're not a hydrologist.

1           A       No, I'm not. I'm a Native Hawaiian  
2 cultural practitioner. But I'm answering the best I  
3 can with the limited knowledge I have, Mr. Geiger.

4           Q       And you would agree you don't know how long  
5 it would take for water to go through caprock.

6           A       Normally it takes, like, for the mountain  
7 system from the mountain to the sea about nine months.

8           Q       To go -- when it hits the underground  
9 stream, correct?

10          A       Correct.

11          Q       Okay. But here we're talking about getting  
12 to the underground stream. And you can't tell this  
13 Commission that by putting these structures, hardscape  
14 on this particular Project Area, that it's going to  
15 have any real impact on the water reaching the  
16 underground streams.

17          A       Can you -- your definition of something  
18 "structure". I did not understand.

19          Q       Hardscape?

20          A       Yeah, hardscape. Could you please  
21 redefine.

22          Q       Concrete?

23          A       Concrete. Okay. It will have a -- can I  
24 tell you it will have a definite impact because number  
25 one we need the percolation. Your premise is we don't

1 need the percolation, but we need the percolation. If  
2 you were to put a more expensive grade, they have  
3 asphalt in grades, that allow percolation, we would  
4 get the percolation that goes through which we need.

5           Okay. What I don't like about your  
6 'hardscape' is whether it's in the channelized stream  
7 or within the Project site area, is it pushes all the  
8 water faster off the sub-surface. And it collects  
9 faster in the retention basin which means it's going  
10 to be faster and it's not going to be given time to  
11 percolate.

12           The bad thing about the construction of  
13 that stream is they could have put boulders and rocks  
14 to shore up the sides so there wouldn't be cave-ins.  
15 It would have allowed for natural penetration to  
16 re-percolate and regenerate that aquifer you're  
17 talking about.

18           That's a good thing because it allows time  
19 for the settling of the water, at least 6 feet to go  
20 under before super saturation. Again, I'm not a  
21 hydrologist. I'm a Native Hawaiian cultural  
22 practitioner.

23           But what it does is the time factor of the  
24 volume -- we've been in a ten-year drought. That's a  
25 fact. Most people don't know that. That's why we

1 haven't had a lot of water. But as a cultural  
2 practitioner I can say when you have long periods of  
3 drought, you look at Australia, it comes by huge  
4 floods that make it up in a very short time.

5 So this is why, this is the danger of this  
6 Project that most people don't understand. I'll stop  
7 because you have a lot of questions.

8 CHAIRMAN CHOCK: Mr. Geiger, before you  
9 have a lot more questions we need to take a short  
10 break for our court reporter. You've exceeded 20  
11 minutes. When we come back from our recess I'm going  
12 to give you an additional five minutes to finish with  
13 this witness. Let's take a 5-minute break for Holly  
14 and we'll be right back.

15 MR. GEIGER: Okay.

16 (Recess was held. 10:50 -10:57)

17 CHAIRMAN CHOCK: If we could have  
18 everybody's attention we're going to reconvene.  
19 Appreciate everybody's cooperation, respect and aloha.  
20 Mr. Geiger, 5 minutes. That's above and beyond the  
21 20.

22 MR. GEIGER: I understand. Thank you,  
23 Chair and I appreciate it.

24 CHAIRMAN CHOCK: You're welcome.

25 Q (By Mr. Geiger): Mr. Lee, I want to focus



1 you now on your cultural assessment which is on pages  
2 4 to 8 of your testimony. Are you familiar with that?

3 A Yes.

4 Q Did you intend this to be a cultural impact  
5 assessment under Chapter 343?

6 A The way you state it "cultural impact" no.  
7 It's a Native Hawaiian cultural assessment.

8 Q Thank you.

9 A If you want me to go further it is  
10 basically --

11 Q Sir, I don't have a question pending.

12 A All right.

13 Q Thank you.

14 MR. GEIGER: With that, Chair, I'll pass  
15 the witness.

16 CHAIRMAN CHOCK: County?

17 CROSS-EXAMINATION

18 BY MR. GIROUX:

19 Q Mr. Lee, good morning. I just want to  
20 start to, just as an apology that anything I say if it  
21 offends you that it's only because of my ignorance.

22 A You have to do your job. Thank you.

23 Q I just want to have a few things clarified  
24 as far as the cultural practices that we're talking  
25 about. Would you agree that this property has gone

1 through lots of changes over the years?

2 A I would.

3 Q I guess as far back as the 1800s this  
4 property was in agriculture, is that correct?

5 A The latter half of the 1800's. But when  
6 you go to the 1850s and 1830s it was definitely part  
7 of a lo'i terrace system.

8 Q So there was lo'i until about the 1850s in  
9 this area.

10 A That's correct. It transitioned out.

11 Q Okay. When you say "transitioned out" is  
12 that as far as the transition it went from lo'is to  
13 sugarcane?

14 A Yeah, the Great Mahele.

15 Q So during the Great Mahele this property  
16 was already in sugarcane cultivation.

17 A That is correct.

18 Q And there was no taro on this property?

19 A On this property, yes, no taro. But below  
20 and above, yes, there was taro.

21 Q And at that time there was still a stream  
22 running through this property.

23 A That is correct. You are correct.

24 Q After the Great Mahele the sugarcane, as  
25 far as your understanding, was done by hand?

1           A       Yes. They brought in laborers over  
2 successive generations. That is correct.

3           Q       Okay. And these cultivation practices also  
4 evolved, is that correct?

5           A       That is correct.

6           Q       They evolved to include machinery?

7           A       That is correct, over time.

8           Q       Do you know when this type of machinery was  
9 introduced into the harvesting of or cultivation of  
10 sugarcane?

11          A       No, I do not. No, I do not.

12          Q       Are you aware of those practices that were  
13 used for cultivation?

14          A       No, I do not.

15          Q       Is it fair to say that there was a lot of  
16 plowing and bulldozing going on?

17          A       That would be fair to say.

18          Q       How long do you think or do you know --

19          A       I do not know.

20          Q       -- that that happened? Are you aware of  
21 the end of sugarcane cultivation on this property?

22          A       It seems around the late '80s early '90s  
23 where basically the companies were coming to an end  
24 somewhere in the '80s or '90s. They were kind of  
25 phasing out in sections. That's my understanding.

1           Q       Is this coincidental to the development of  
2 the Kahoma Flood Project?

3           A       It seems to -- there's a marriage between  
4 those two concepts I would agree.

5           Q       Okay. So when the Kahoma Flood Project  
6 went in, you're not aware of any continued  
7 agricultural activity on this property?

8           A       No, I'm not. I'm not aware.

9           Q       To your understanding or knowledge the  
10 advent of the installation of that flood stream  
11 project basically cut off all of the stream water  
12 coming onto this property, is that correct?

13          A       The control of it, yes, from the mountain  
14 side, the top side, yes.

15          Q       And at that time are you aware as far as  
16 the levels of water that was going through there?

17          A       I'm not.

18          Q       So you don't know if those waters were  
19 sustaining any type of biota I guess is the word?

20          A       Sub-surface or in the near coastal shore  
21 region?

22          Q       Well, I'm talking about the stream --

23          A       The stream, okay.

24          Q       -- that flowed through the property.

25          A       The answer is no I would not.

1           Q       As far as any ability to testify as to what  
2 was gathered from that stream after the 1990s --

3           A       There's no way I would know--

4           Q       -- you have no information for us.

5           A       I wouldn't know. Prior to with my  
6 grandfather walked around the place I couldn't. You  
7 are correct.

8           Q       When I say "biota" we would be talking  
9 about certain types of fish?

10          A       Yes. 'O'opu.

11          Q       'O'opu.

12          A       Right.

13          Q       Any other type of fish that we would know  
14 about?

15          A       Yeah. There probably would be little  
16 mollies inside there brought during the sugarcane  
17 days. And there would be other creatures that come up  
18 during the October seasonable period of transitioning.

19          Q       And these would be types of shrimp or ...

20          A       Exactly. 'Opae.

21          Q       'Opae.

22          A       'Opae.

23          Q       Crustations.

24          A       Yes.

25          Q       Okay. And then the other biota that we

1 were talking about where I guess fauna, like I said,  
2 part of my ignorance --

3 A No, no, no.

4 Q -- is that we're talking about certain  
5 types of limu.

6 A That is correct.

7 Q And one of 'em you mentioned was?

8 A 'Ele'ele.

9 Q 'Ele'ele?

10 A Yeah.

11 Q So is there other type of limu?

12 A Oh, yeah. There are different freshwater  
13 limus that -- kalawai, that we use for medicine.  
14 Yeah. So there are different varieties that we use  
15 from the very high mountains to the mid areas and as  
16 we start to go down to the wai.

17 Q I just want to focus on the area of this  
18 property.

19 A Okay.

20 Q So would the 'ele'ele be in the mid-section  
21 where we think this property is?

22 A Yes, there would be.

23 Q And what about the other?

24 A The other ones would be a little more  
25 topside. They love where the waterfalls come crashing

1 down and all that spray.

2 Q So we would be talking about almost past  
3 the level of Lahainaluna, then, because the --

4 A Right.

5 Q -- waterfalls are above the mountains of  
6 Lahainaluna.

7 A Right.

8 Q As far as your understanding is, is that  
9 there still is fish in the stream above --

10 A That's correct, way above.

11 Q -- this Project?

12 A Right.

13 Q That would be again above Lahainaluna.

14 A That is correct.

15 Q And recently you've had the opportunity to  
16 see the Kahoma Flood Stream Project?

17 A Some of it, yes.

18 Q In the area that is slightly above this  
19 Project?

20 A Yes. Yes we have. Rory Frampton took us  
21 up a little bit above, yeah.

22 Q And you've also seen the area below it,  
23 right?

24 A Yes. Definitely.

25 Q And in those areas you didn't see any

1 'ele'ele, did you?

2 A No.

3 Q It's hardened to the point where no limu  
4 exists on that river bed.

5 A With that concretized, yeah, with the  
6 concretized section absolutely not.

7 Q And as far as your observation is is that  
8 there was no 'o'opu or any other type of --

9 A In that section? No.

10 Q So is it fair to say that as far as your  
11 cultural practices that it was the Corps of Engineers  
12 and their diversion of the water from this property  
13 that interfered with, possibly ended your cultural  
14 practices on that?

15 A It didn't end it you have to understand.  
16 It can come back at any time. If we pull out of that  
17 concrete the spores will come back. It's reproductive  
18 vegetation. The 'ele'ele will come back you pull out  
19 all that concrete. You put in big rocks and boulders  
20 to be the holding of the sides and you take away the  
21 dams above it'll all come back. So it's not dead and  
22 gone forever.

23 Q I agree with you there. It's just that you  
24 understand that concrete establishment is not under  
25 the control of this developer.



1           A       That's correct. Army Corps of Engineers I  
2 believe put that in.

3           Q       And that they would not be able to in any  
4 way influence the removal of that project.

5           A       That is correct.

6           Q       Mr. Lee, there's an issue about a he'iau on  
7 the property.

8           A       Uh-huh.

9           Q       Was there a time when this he'iau was  
10 ordered to be demolished at any time?

11          A       No. You'd have to understand this would be  
12 a family he'iau dedicated to the Pele Clan. We know  
13 that Pu'ulena, which is directly adjacent to the  
14 property, that pu'u, Tutu Pele is known in folklore to  
15 have visited it. What people don't know is *Opelu*  
16 *Ha'alili* is buried up there. His birthplace was  
17 Kahoma on that Project area. His iwi is up there.

18                   So as far as, you know, we have something  
19 called wahikapu and wahipana.

20          Q       Can I just clarify something?

21          A       Yeah.

22          Q       The locations that you just described are  
23 not on the Project Area, right?

24          A       That is correct. So if you just want to  
25 focus on the Project Area we can do that.

1 Q I'm just clarifying.

2 A Okay.

3 Q I'm sorry to interrupt.

4 A So what this is is it's a sacred place just  
5 to the family. There's something in Hawaiian called  
6 niele or kolohe which is people are nosey to where  
7 it's not your business. If it's a family private  
8 thing they wouldn't go out to everybody and talk about  
9 it. Yeah?

10 Q As far as this he'iau, has you family gone  
11 up there to restore this in the past?

12 A It's nowhere in the process. So we're not  
13 going to do anything until the law determines what  
14 this process is all about in due process. That's  
15 premature. But we are continuing the practices at  
16 least eight times to continue our cultural practices  
17 there. Presence. We do have presence there.

18 MR. GIROUX: I have no further questions.  
19 Thank you.

20 CHAIRMAN CHOCK: State.

21 CROSS-EXAMINATION

22 BY MR. YEE:

23 Q Mr. Lee, I don't have a lot of questions.

24 A Sure.

25 Q But there are going to be times in which

1 you're going to know what the question is before I  
2 finish saying --

3 A Okay. So I'll be quiet. (audience  
4 laughter)

5 Q Just for the sake of our court reporter.

6 A I appreciate that for our 'recorder'.

7 Q Now, you've identified, I believe, two  
8 surface archaeological sites: The he'iau and libation  
9 stones, correct?

10 A Correct.

11 Q And you suspect that there are sub-surface  
12 archaeological sites as well, correct?

13 A Correct.

14 Q You've not been able to identify,  
15 affirmatively identify, a specific iwi or sub-surface  
16 archaeological site, but suspect that they exist  
17 somewhere in the Petition Area, correct?

18 A Correct.

19 Q In other developments -- so let me move  
20 away from this particular Petition Area. In other  
21 developments where surface archaeological sites have  
22 been found, some of those developments have been  
23 allowed to move forward on the condition that the  
24 surface archaeological sites are preserved, correct?

25 A That is correct.

1           Q       In other developments in which sub-surface  
2 archaeological sites are suspected but not identified,  
3 those projects have been allowed to move forward with  
4 the condition that archaeological monitoring exist  
5 during groundbreaking or ground-disturbing activities,  
6 correct?

7           A       Correct.

8           Q       In fact those are common conditions?

9           A       I would say that is very correct.

10          Q       Now, I understand you're opposed to this  
11 particular reclassification. But if the  
12 reclassification moves forward over your disagreement,  
13 would you believe that the Land Use Commission should  
14 require that these two surface archaeological sites be  
15 preserved and that there be archaeological monitoring  
16 during job-disturbing activities?

17          A       Correct.

18                   MR. YEE: I have nothing further.

19                   CHAIRMAN CHOCK: Ms. Lincoln, any questions  
20 for this expert?

21                   MS. LINCOLN: Yes.

22                                   CROSS-EXAMINATION

23 BY MS. LINCOLN:

24          Q       Just a couple follow up questions from  
25 Mr. Giroux. Are you aware that there was a waterfall

1 directly above the Petition Area adjacent to where the  
2 retention was at one time before they diverted the  
3 stream?

4 A I've heard about it.

5 Q Okay. Have you ever heard a stream channel  
6 alteration plans where they could divert the water?  
7 They wouldn't necessarily have to take out the  
8 retention basin. They would not have to take out the  
9 channelized stream, but there are permits that the  
10 developer could pull to divert the water and restore  
11 the water to the land?

12 A This is the first time I've heard it. I've  
13 not been aware of that.

14 Q Mr. Lee --

15 A Yes.

16 Q -- could a Hawaiian cultural practice event  
17 be of a spiritual nature and take place without  
18 leaving physical evidence?

19 A It definitely could have, yes.

20 Q Would it surprise you that on the first  
21 Sunday of May 2012 what I would describe as witnessing  
22 on the Petition Area as angels and demons, five  
23 teenagers witnessed the same event on the Petition  
24 Area but in a different location and they described  
25 the same event as the night marchers.

1           A       I wouldn't be surprised in that area.

2           Q       Would it surprise you that prior to  
3       witnessing this event one of the Hawaiian teenagers  
4       has been under a spirit of oppression and threatened  
5       his own life?

6           A       I wouldn't be surprised at the projects  
7       right there.

8           Q       Would it surprise you that on the evening  
9       of February 22, 2012 after consulting you regarding  
10      the fire in the tree on the property and my  
11      experience, that when I went to relate your  
12      explanation of the night marchers to my husband, we  
13      witnessed at that exact moment, a loud explosion, a  
14      flash of light. And the transformer on our street put  
15      out all of the Lahainaluna area's electricity for  
16      approximately six hours?

17          A       I wouldn't be surprised.

18                 MR. GEIGER: Chair, I want to make an  
19      objection. This is well beyond whatever the scope of  
20      my cross was. And we're having actually testimony  
21      from Ms. Lincoln as opposed to the witness.

22                 CHAIRMAN CHOCK: I don't recall in any of  
23      Mr. Lee's testimony him submitting to any kind of  
24      night marchers on the property.

25                 MS. LINCOLN: He didn't. But we were

1 talking about things of a spiritual nature and that  
2 they -- not necessarily physical evidence.

3 CHAIRMAN CHOCK: He's here on redirect, on  
4 what he presented previously. I don't believe he  
5 spoke to night marchers on the property.

6 THE WITNESS: I did.

7 MS. LINCOLN: He spoke to --

8 THE WITNESS: I must correct the Chair. I  
9 talked about my assessment of the burn patterns that  
10 took place when my family, the Pele Clan, walked  
11 across the property burning all the grass. And I had  
12 a graphic. And we brought that graphic. You can call  
13 them night marchers. You can call them fire walkers.  
14 But I did testify in October 4th to that with it  
15 showing behind me that.

16 CHAIRMAN CHOCK: I'm going to give you a  
17 little latitude.

18 MS. LINCOLN: Okay.

19 Q I just want to know why these things don't  
20 surprise you. I won't go on with that line. But why  
21 doesn't this --

22 A Because --

23 Q -- please go on.

24 A -- this is wahikapu. This is a sacred  
25 place. Most other places that the state attorney

1 general mentioned, they may be wahi pana, special.  
2 But there's wahi kapu which is sacred. So there's a  
3 big difference. This is like causes of standing of  
4 eminent harm. You build homes on the path of the fire  
5 walkers. When they come again the next time people  
6 will be in danger. And that's my concern.

7           When I testified the last time it was  
8 brought up for mitigation that would I be okay if we  
9 just protected the site. At that time I said yes, I  
10 would. But in hindsight I have to really say no I  
11 wouldn't because cause of standing of eminent harm for  
12 health and safety of all those people and all those  
13 homes that will be built next to the he'iau.

14           It's the same as Maui Lani where I've had  
15 to go do exorcisms there or Mauiwaena Intermediate on  
16 4/4/12, for dozens of different locations by the  
17 principal because it's on a wahi kapu burial site. So  
18 I would say no this is not a safe place to put houses  
19 next to.

20           Q       Okay. We'll move on from that. Do you  
21 collect seaweed as part of your cultural practices?

22           A       Yes, I do.

23           Q       As a cultural practitioner how does Mala  
24 and the Petition Area relate to one another?

25           A       The connectivity is I use that seaweed as



1 ho'okupu or offering bringing it to the libation  
2 stone. So that's the connectivity of the place. When  
3 we collect and do an awa ceremony we want water from  
4 that place, the mana of that place. We want seaweed  
5 from that place as the first best fruits to offer.

6 So if -- you know, the destruction of that  
7 limu directly effects the cultural practice to that  
8 property.

9 Q Did you look at the exhibit presented in  
10 regards to the new stormwater treatment criteria?

11 A Yes, I did.

12 Q In light of that new evidence do you feel  
13 like that is protecting your limu?

14 A You know, I was asked that the last time  
15 around. And I said: So long as there was a retention  
16 basin it was okay. But, again, in hindsight after  
17 thinking about it and seeing the 2012 state of Hawai'i  
18 Water Quality Monitoring Report dealing specifically  
19 with this area that our Robin Knox brought in today, I  
20 would have to say definitely not because we're past  
21 the tipping point.

22 And it has already been established in that  
23 report that the pollution levels are threatening the  
24 existing biota in the ocean. So it directly affects.  
25 It's a cumulative situation. And the concretizing,

1 which is not the fault of the Petitioner for this  
2 Project, but the Army Corps of Engineers made it  
3 worse.

4           So I would not -- I would say that even  
5 with the retention situation there it causes imminent  
6 harm to my limu based on these Findings of Facts.

7           Q       The Petitioner's Motion to Reconsider on  
8 page 6, No. 7 made a statement to the effect that "No  
9 established traditional and customary practice was  
10 identified." Did you read the Petitioner's CI  
11 interviews with the cultural consultants?

12          A       Yes, I did. I read appendices CIA  
13 Petitioner's Exhibit 7. I looked at Ewalani Shim,  
14 Hiola Sigwataria (phonetic) Earl Ray Kahiku, Harold  
15 Kaniho and Joseph Light.

16          Q       Were the consultants ever questioned in  
17 regards to cultural practices?

18          A       No, they were not.

19          Q       Okay.

20          A       And they did not say there was no cultural  
21 practice done in the Project site here. They were  
22 never questioned about it. And they did not give a  
23 definitive answer, even a partial answer based on what  
24 I've just said.

25          Q       You had made some comments earlier about

1 exhuming Hawaiian burials and the protocol for that.  
2 Are you aware that SHPD came onto the site after the  
3 bulldozer excavation and only observed the empty holes  
4 and the dirt piles?

5 A I was not aware of that.

6 Q Okay. Is this the proper protocol of SHPD  
7 relating to exhuming burials?

8 A I cannot speak to what SHPD does that may  
9 come after the fact. That may be a proper protocol.  
10 But as a cultural monitor there was an archaeologist  
11 there, Mike Dega. I believe it's in the report, which  
12 is required to be there. So they followed existing  
13 Hawai'i State law.

14 But definitively to make a definitive  
15 statement that to exclude any iwi or fragments, they  
16 cannot do it because they did not sift.

17 Q Okay. Thank you. My final question: From  
18 your own family's oral history of the Petition Area,  
19 do you believe that it is of significant historical  
20 and cultural significance?

21 A Very much so. And also testimony that was  
22 brought in by one of the uncles, Uncle Herman I  
23 believe, definitely shows that this stream project was  
24 very spiritually important by the testimony that was  
25 put in today.

1 MS. LINCOLN: Thank you.

2 CHAIRMAN CHOCK: Any redirect, Ms. Bolomet?

3 MS. BOLOMET: Yes, please.

4 REDIRECT EXAMINATION

5 BY MS. BOLOMET:

6 Q You were able to review the boundary notes  
7 for this Petition Area?

8 A Yes. Yes, I was.

9 Q Even the ones missing out of the  
10 archaeological reports submitted by Mr. Dega?

11 A Yes.

12 Q And in there did they have any notice about  
13 lo'is, kula patches, ko'olina patches, rock walls?

14 A Yes, they did.

15 Q Wouldn't you say that that would show that  
16 there was agricultural inhabitation?

17 MR. YEE: I'm going to object as outside  
18 the scope of the cross-examination. I'm doing this  
19 really not so much because I'm worried about his one  
20 question as much as I'm concerned where we're going to  
21 go after this question.

22 CHAIRMAN CHOCK: Well said.

23 MR. BOLOMET: Where am I going with that?  
24 I'm just, I'm clarifying because he said that he  
25 didn't -- in his testimony just now he said that he

1 couldn't be sure that there was actual or -- no, you  
2 said that there was sugarcane during the time of the  
3 Mahele --

4 A Can I answer that?

5 Q -- and so it was incorrect.

6 A It was said in the 1990s not the 18-- it  
7 was a timeframe thing. What I mentioned was recently  
8 I guess within the past 1990s in the early stuff. I'm  
9 not talking about what happened in the past when I  
10 made that comment.

11 Q So I'm just trying to --

12 CHAIRMAN CHOCK: Limit your redirect to the  
13 scope of his previous testimony.

14 Q (By Ms. Bolomet): Okay. All right. You  
15 mentioned that there was 'opae and other fish in the  
16 streams.

17 A Yes.

18 Q When you were doing your native cultural  
19 practitioner assessment when you originally went on  
20 the property, right above the bypass did you see any  
21 of the -- well, can you tell us what you saw there?  
22 In the stream?

23 A Above the Project Area where Rory Frampton  
24 originally showed us where, we had done an assessment  
25 before that. And I did see 'opae above. But the

1 question was, "Do you see it currently now in the  
2 Project area site?" So it was "no there" but "above  
3 yes". I think I said this.

4 Q Okay. Opelo Ha'ali'i that's your tutu?

5 A Yes.

6 Q Your 17th tutu, generation tutu?

7 A Yes.

8 Q And was he born on the Project site?

9 A Yes.

10 Q And is the he'iau the memorial of his  
11 birth?

12 A It is a remembrance of that birth.

13 Q So the cultural practices that you're doing  
14 there currently, is that for him or for any other  
15 persons?

16 A It's for the entire clan, for him, number  
17 one, but for the entire clan. It's to call them to  
18 come.

19 Q Okay. Can you tell us what different  
20 Native Hawaiian cultural practices look like that you  
21 would see on this or not see on this property?

22 A You want me to give you just...

23 Q An example?

24 A An example. Okay. Before the sun comes up  
25 we do a prayer. And we actually have what is

1 ohailona. We can see into the future. So if someone  
2 saw me there just standing there waiting for the sun  
3 to come up they would never even think that anything  
4 was taking place. I'm able, if a stone akua no'o,  
5 which means it -- not all stones talk. They don't.

6 But if it was impregnated -- now how did  
7 they impregnate? The first born of a family of  
8 ancient past would be offered up as a sacrifice. And  
9 that baby, the stone would be placed on a living child  
10 in ancient kahiko times and kill the child with the  
11 stone on it. And it would transfer the iwi under  
12 chant into the stone.

13 So then that stone would be impregnated  
14 with a human soul. And this is the matrix of  
15 kahuna-ism. So ancient stones do have souls of human  
16 beings. And you may want to call them -- Michele  
17 Lincoln and other things, "demons".

18 So I can put my hand on certain stones and  
19 I will know if there's a human entity or demonic  
20 entity, if you want to put it that way, or an aumakua  
21 that exists in the stone. Or if it's a vessel stone  
22 to transfer like mo'o nanea. There's a mo'o stone to  
23 transfer that entity into it, take it to another place  
24 and transfer it out of it like a jar.

25 So these are things that the ordinary

1 person would never know is taking place there.

2 Q Are there any of these stones on the  
3 property right now, the Petition Area?

4 A We -- yes. Well, there's that memorial  
5 stone. But you have a stone that is on your -- yes,  
6 that is part of it which you carry all the time. We  
7 also have a mo'o stone that belongs to that property  
8 that currently isn't there to be activated until  
9 purpose driven, unless you're going to start up the  
10 lo'i and you want the mo'o to clear the underground  
11 corridors.

12 Then we would do an awa ceremony to take  
13 that spirt into the stone, bring it up to the  
14 property, transfer it into the property for it to do  
15 its work.

16 Q Okay. And are there any other kind of  
17 practices like touching plants or...

18 A Yeah. I could. If you had the native  
19 plants from the oils itself you could just run your  
20 finger on top of the plant and receive the oil in a  
21 prayer and take it into your body. Or if you walked  
22 and there was a popolo bush with the blueberry on it  
23 you could say a prayer, with your left hand pick it  
24 for healing. And no one would know that you are  
25 actually conducting a cultural practice as you walked



1 through the property.

2 Q So what you're saying is cultural practice  
3 can actually exist on the property now even though  
4 nobody's seen it happen.

5 A Part of it is understanding what is the  
6 cultural practice you are practicing at the time.

7 Q Okay. How old is the he'iau on the  
8 property?

9 A This goes back a thousand years. Kumulipo  
10 chant 11.

11 Q Are you aware of the cultural practitioner  
12 Wilmont Kahaiali'i?

13 A I am.

14 Q Are you aware that he knows of iwi that is  
15 on the Petition Area as we speak?

16 A I am.

17 Q And are you aware that West Maui Land  
18 Company removed some of the iwi and would not give it  
19 back to their family in the past?

20 A I am aware of that.

21 Q And are you aware -- or is that why nobody  
22 wants to reveal where the iwi are right now?

23 A I cannot speak to that because I cannot  
24 know the intentions of others in their mind.

25 Q Okay. You said you're not a hydrologist.

1           A       That is correct.

2           Q       So how did you get your limited information  
3 on rock formation?

4           A       On rock formation?

5           Q       Permeation.

6           A       Oh, that's from olelo from my grandfathers,  
7 both maternal and paternal grandfathers. You see, we  
8 cultural practitioners when we do our assessment we  
9 are basically going on the mo'olelo that we were told  
10 and taught, what is called kahuna o maka cause and  
11 effect empirical knowledge. What you see. And they  
12 explain it to us.

13                   So we're not certified by the state under  
14 Article XII section 7 as a Hawaiian cultural  
15 practitioner. Nor has the Hawai'i State Supreme Court  
16 ever ruled on Article XII section 7 that we have to  
17 follow, say, go to UH, take four years of Hawaiian and  
18 be certified to do what we do.

19                   How we are recognized is through our  
20 practice of doing what we were taught on a regular  
21 basis. I've been doing that for over 40 years  
22 starting with part of it in public with 'Ewa Limu  
23 Project and given a certificate of recognition by the  
24 city council in 2004 of March and several other  
25 certificates, several court cases both federal for the

1 Kona Blue vs. Kahea and Waterwatch 2010 I was brought  
2 in as the recognized standing cultural practitioner of  
3 Kohala.

4 In the 2006 Judge Hifu, Eden Hifu, First  
5 Circuit Court, DLNR has never not recognized my  
6 standing in cultural practices based on all my  
7 documents and my practice, for Kalohi Gulch twice in a  
8 contested case hearing with Dr. Miiki. I'm currently  
9 in Rhonda Nishimura's court against a *pro se* against  
10 the \$1.2 billion marina for Haseko 'Ewa, Inc.

11 My opening brief was turned in with  
12 standing and cause for First Circuit Court. And I'm  
13 also part of the addendum of the Ben Cayetano lawsuit  
14 brought in December 19, 2012 against the FEIS for the  
15 Rail. And it's being adjudicated in Federal Court.

16 So in numerous court cases, both federal  
17 and circuit courts on multiple islands, I have been  
18 recognized with standing and never questioned even in  
19 the Ho'opili case where D. Horton's attorneys on  
20 April 1st, 2011 before the Land Use Commission  
21 accepted me and my qualifications as a cultural  
22 practitioner, was ceded in that testimony as well.

23 Q Okay. I'd like to make a correction.

24 A Yes.

25 Q Or have you make the correction. Could you

1 please read to me what Keith Ahui's title is? 'Cause  
2 you said he was the chairperson of DLNR.

3 A Keith Ahui, chairperson of State Historic  
4 Preservations -- officer.

5 Q Just a correction. Would you say that the  
6 State Historic Preservation Division or SHPD, as we  
7 call it, regulates any cultural practitioner?

8 A By Hawaii Revised Statutes section 6E  
9 they're mandated under the law to follow those  
10 sections under Article 12 section 7 and Section 6E.

11 Q Are they cultural practitioners, the SHPD  
12 workers?

13 A You know, unless you give me specifics I  
14 cannot address that.

15 Q So would you say that Jenny Picket who's  
16 the archaeologist here on Maui that went to the site,  
17 is she a cultural practitioner?

18 A No, she's not.

19 Q Is Hinano Rodrigues who went to the site to  
20 look at the burial iwi with Jenny Picket, a cultural  
21 practitioner?

22 A I could not say for him because I know he's  
23 Hawaiian. I'm really, do not know you know --  
24 "cultural practitioner" is a broad statement. A  
25 fisherman is a cultural practitioner. I'm a

1 recognized kahuna lapa'au o ke kai which is in herbal  
2 medicines for the ocean and also a papa-kilo hoku. So  
3 there are multiple practices. He is Hawaiian. I  
4 could not say definitively if he does or does not have  
5 a practice.

6 Q Is it a requirement to work for SHPD to be  
7 a native cultural practitioner?

8 A No, it is not.

9 Q Okay. So just for my own clarification you  
10 said 6E --

11 A Yes.

12 Q -- of the SHPD. That regulates cultural  
13 practitioners or regulates SHPD?

14 A No. Those are the bodies of law HRS,  
15 Hawaii Revised Statutes, dealing with the iwi, dealing  
16 with their facilitating the Burial Councils on each  
17 island and being curator of the iwi.

18 And they're tasked by the state to be in  
19 charge and responsible of all iwi wherever it is,  
20 knowing where it is at any time, especially historical  
21 iwi.

22 It is their purview by the state to be the  
23 gatekeepers and key watchers for the protection of the  
24 Hawai'i State Hawaiian cultural resources as we know  
25 it.

1           Q       Okay. But does it tell them that they have  
2 to screen in that rule?

3           A       No it doesn't.

4           Q       So they could go by and just look in a hole  
5 and say, "There's no iwi"?

6           A       Yes, they could.

7           Q       Even though that may or may not be correct?

8           A       I can't speak to whether it's correct or  
9 not. I'm just saying that they're tasked to -- they  
10 have archaeologists that are specialists to go down  
11 and check out a Project site area. And there are no  
12 operating rules that mandate them to either screen or  
13 to dig around the site area.

14                   Usually what happens is a call comes in to  
15 SHPD that an iwi was found on the site. And they come  
16 down to check it out officially whether it's human,  
17 whether it's ancient. And later on the testing to see  
18 whether it's Hawaiian.

19           Q       So just because SHPD gives a report doesn't  
20 definitively say there isn't iwi in a place because  
21 they didn't do the sifting?

22           A       No, it doesn't.

23           Q       All right. Were you aware that I went onto  
24 my grandfather's property within the Petition site to  
25 stake it, stake my ownership?

1           A       I was aware of that.

2           Q       In October 2011?

3           A       I was aware of that.

4           Q       Okay. And when's the last time you did  
5 your cultural practice on this property?

6           A       Yesterday.

7           Q       And did Uncle Herman Niole who was a  
8 testifier --

9           A       Yes.

10          Q       -- did he ever talk to you about his  
11 cultural practice on this property?

12                   MR. GEIGER: Chair, this seems to be very,  
13 very far afield of the cross-examination. And also it  
14 is not in the written direct testimony. So I would  
15 object.

16                   CHAIRMAN CHOCK: Let's get this back on  
17 track, Ms. Bolomet, please. I just want to note for  
18 the parties we're running out of time. And we're  
19 going to lose quorum. And we're going to end  
20 premature 'cause we're wasting a lot of time.

21                   MS. BOLOMET: Okay.

22          Q       So what's your final assessment?

23          A       I believe that the cause of standing of  
24 eminent harm for this sacred site it's not enough just  
25 to cordon off the area because of the movements that

1 take place.

2 And what was brought into testimony today  
3 in oral testimony that backs up this, that it's cause  
4 of standing of imminent harm in the Petition Area  
5 site. So I would say definitely not homes.  
6 Agriculture is fine.

7 As far as the situation with the runoff and  
8 everything, it's cumulative. And it will do, cause a  
9 standing of: Imminent harm to my practice. That's  
10 all I have to say.

11 MS. BOLOMET: Okay. Do I have to say that  
12 I need to -- can I admit this into evidence along with  
13 this Exhibit 11 and 17 because I did mention the 11  
14 and 17?

15 CHAIRMAN CHOCK: I believe it's already  
16 part of the record, his testimony.

17 MS. BOLOMET: Thank you.

18 CHAIRMAN CHOCK: County, I think you had  
19 another couple of exhibits you wanted to have  
20 admitted, is that correct?

21 MR. GIROUX: Yes, Chair. I just request the  
22 Chair to accept our exhibits. I believe it's 13 --  
23 no, 14 and 15 into evidence. And I think that would  
24 satisfy our concerns about the record being complete  
25 as far as new laws that have been entered since the



1 ruling. Just for the record it's the General Plan and  
2 the Stormwater Runoff Rules for Maui County.

3 CHAIRMAN CHOCK: Okay. Thank you, County.  
4 Parties, any objections? Petitioner?

5 MR. GEIGER: Chair, I understand that those  
6 are the same exhibits that were attached to the Motion  
7 to Reconsider as I believe 42 and 43. If that's  
8 correct we would have no objection to using the  
9 County's exhibits. We would not have to submit  
10 additional exhibits. Is that correct?

11 MR. GIROUX: Yeah, I would argue ours are  
12 better. (audience laughter) Just kidding.

13 CHAIRMAN CHOCK: State?

14 MR. YEE: No objection.

15 CHAIRMAN CHOCK: Ms. Lincoln?

16 MS. LINCOLN: No objection.

17 CHAIRMAN CHOCK: Ms. Bolomet?

18 MS. BOLOMET: I have an objection.

19 CHAIRMAN CHOCK: Okay.

20 MS. BOLOMET: There's another report that  
21 came out in December that also counters or you can  
22 look at it as a supplement which is what Robin Knox  
23 was submitting to us today.

24 And I would like to enter that into the  
25 record so you can see the full picture of how

1 currently there's the whole area for Kahoma Stream and  
2 Mala is over the recommended pollutants or allowable  
3 pollutants already.

4 So putting this Project into place would be  
5 in addition to what's already harming the coastal  
6 waters, which is a mandate of this Commission to  
7 protect, as well as the cultural practices of Kumu  
8 Lee.

9 CHAIRMAN CHOCK: Your objection regarding  
10 County's admission of Exhibits 14 and 15 is noted.  
11 Chair's going to admit County Exhibits 14 and 15 to  
12 the record. Do you want --

13 MS. BOLOMET: We sent it. We gave it to  
14 you in public testimony. Or Robin Knox submitted it  
15 in public testimony.

16 CHAIRMAN CHOCK: Is this an official state  
17 document that she submitted?

18 MS. BOLOMET: Yes, it is.

19 CHAIRMAN CHOCK: Parties, any objection to  
20 admitting that?

21 MR. GEIGER: I haven't seen it so I don't  
22 know what it is.

23 MS. BOLOMET: I'll pass one down. Just so  
24 you know I haven't seen 13 and 14. When I left O'ahu  
25 it still hadn't arrived to me. So I don't know what

1 the exhibits are unless they're exactly like what  
2 Mr. Geiger submitted. Then at that point I wouldn't  
3 have an objection to it being the same thing.

4 CHAIRMAN CHOCK: Petitioner, you okay?

5 MR. GEIGER: Chair, just received it. And  
6 it does not appear to be a complete document. I  
7 haven't had an opportunity to review it to see if it's  
8 actually a completed document or portions of the  
9 document that actually exists. So, yeah, until I have  
10 a chance to review it I would object.

11 MS. BOLOMET: It's a portion.

12 CHAIRMAN CHOCK: So noted. County?

13 MR. GIROUX: Same objection.

14 CHAIRMAN CHOCK: State?

15 MR. YEE: No objection.

16 MS. LINCOLN: No objection.

17 CHAIRMAN CHOCK: Chair's going to admit it  
18 and note for the record it does appear to be an  
19 incomplete document.

20 MS. BOLOMET: Yes.

21 CHAIRMAN CHOCK: Okay. We are out of time  
22 today. So we're going to have to reconvene again on  
23 this matter March 21. And we'll take closing  
24 arguments on the Motion to Reconsider at that time.  
25 Any questions?

1           MR. GEIGER: I assume it's not closing  
2 arguments on the Motion to Reconsider, but it's  
3 closing arguments on this Petition since you  
4 reconsidered. You've agreed with that.

5           CHAIRMAN CHOCK: I'm sorry. I stand  
6 corrected. Any other questions?

7           MR. GEIGER: And I assume it's going to be  
8 the same time limits that we had before, correct?

9           CHAIRMAN CHOCK: Same 15 minutes.

10          MR. GEIGER: 15 minutes. Thank you.

11          CHAIRMAN CHOCK: County, questions? State?

12          MR. YEE: No.

13          CHAIRMAN CHOCK: Intervenors?

14          MS. BOLOMET: Can I just get a  
15 clarification? What are we closing on? What is our  
16 closing arguments on?

17          CHAIRMAN CHOCK: On your case in chief.

18          MS. BOLOMET: Oh, okay. What I was doing  
19 today. Okay.

20          CHAIRMAN CHOCK: Commissioners, any  
21 questions? Commissioner Heller.

22          COMMISSIONER HELLER: I know we're tight on  
23 time but just a quick follow up for Mr. Lee.  
24 Regarding the --

25          CHAIRMAN CHOCK: I'm sorry. I apologize

1 for not making Mr. Lee available for questions from  
2 the Commissioners.

3 COMMISSIONER HELLER: Regarding the stone  
4 that you identified as the libation stone.

5 THE WITNESS: Yes.

6 COMMISSIONER HELLER: You said where it is  
7 now is sitting on a pile of rocks that you agreed was  
8 as push pile?

9 THE WITNESS: I said that parts of it is  
10 push pile but underneath is part of a he'iau. Yeah.

11 COMMISSIONER HELLER: But that would imply  
12 if it's on a push pile that it's been moved from where  
13 it originally was.

14 THE WITNESS: I believe that's what it was.  
15 When we talked to Rory Frampton that we made that  
16 point that it came from another place.

17 COMMISSIONER HELLER: Okay. And given the  
18 history of sugar cultivation and construction of the  
19 flood control channel it's possible that it's been  
20 moved more than once in the past?

21 THE WITNESS: I could not speak to it, but  
22 it is possible based on the activities. I wasn't  
23 there histrionically so I cannot really definitively  
24 say yes or no.

25 COMMISSIONER HELLER: Okay. Do you know if

1 the original location where it may have been used in  
2 any cultural ceremonies or practices?

3 THE WITNESS: Yes. According to when I was  
4 with Rory Frampton the question to where that railroad  
5 was. And the idea was that the identification that I  
6 put where it was was higher above. And Mr. Rory  
7 Frampton said most likely because of pole 6 that there  
8 was another railroad station and this was --

9 COMMISSIONER HELLER: I'm sorry. I recall  
10 that discussion now.

11 THE WITNESS: Yeah. That it was actually  
12 higher. So that's where that thought process came  
13 from and was generated.

14 COMMISSIONER HELLER: Okay. And the  
15 question that I was getting to is from your  
16 perspective would there be any violation of any of  
17 cultural principals --

18 THE WITNESS: Yes.

19 COMMISSIONER HELLER: -- or rules in moving  
20 it again?

21 THE WITNESS: Yes. Because the letter that  
22 was put in by the administer of SHPD clearly kind of  
23 disputes when I was with Rory that the site was way up  
24 and the site was originally there. So it would  
25 because it was always there.

1           When we got together, Mr. Frampton always  
2 maintained the railroad bridge was higher and that  
3 what we were looking at was actually not in the place  
4 on the Project site area but higher.

5           But what we've come to know there's no  
6 other railroad site above. And based on this letter  
7 that was put in, no. That this was actually even  
8 though I said that before, and I admit it before, in  
9 light of this letter from SHPD of October 1994 no, it  
10 was never higher. It was always on this site.

11           So it would be a violation to move it. So  
12 based on this evidence that was brought there is no  
13 proven railroad that ever existed historically above.  
14 So this report, the Connolly Report of 1974, is  
15 actually on the site that it is. So it didn't come  
16 from above.

17           COMMISSIONER HELLER: Are you saying that  
18 the stone was originally somewhere on the Petition  
19 Area? Or are you saying that it was originally in the  
20 same exact location it is now?

21           THE WITNESS: It's in the Petition Area in  
22 the exact location. The question came in when  
23 Mr. Frampton said there was a second railroad that was  
24 higher above. So this 1974 Connolly report was  
25 actually addressing the railroad identification of

1 this complex on a higher level. If that was the  
2 operating principal of truth then it would be.

3 But based on this it is not. The fact that  
4 there is no higher railroad it doesn't push it up,  
5 therefore it didn't come from another place. It  
6 always has been on this place.

7 COMMISSIONER HELLER: Bottom line. Your  
8 opinion is that moving it again today *would* be a  
9 violation.

10 THE WITNESS: It would be a violation. And  
11 the consequences would follow like Maui Lani and Maui  
12 Waina Intermediate. It would be cause of standing of  
13 eminent harm for any future residents in that area.

14 COMMISSIONER HELLER: Thank you.

15 CHAIRMAN CHOCK: Thank you, Commissioner  
16 Heller. Commissioners, any other questions for the  
17 expert? Nobody. Thank you very much.

18 THE WITNESS: Thank you, Chair Chock.

19 CHAIRMAN CHOCK: Mr. Lee, appreciate it. I  
20 just want to note for the parties that we are done  
21 with the evidentiary portion. No more exhibits, no  
22 more motions. We are coming back on the 21st to have  
23 final argument and to vote again. Any questions? If  
24 not we're adjourned. Thank you.

25 (The proceedings were adjourned at 11:45 a.m.)



## CERTIFICATE

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

That I was acting as court reporter in the foregoing LUC matter on the 7th day of March 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

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