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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, Hawaii, commencing at 9:30 a.m. on March 21, 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 CHOCK, CHAIR
SHELDON BIGA
THOMAS CONTRADES
RONALD HELLER
LANCE M. INOUE
JAYE NAPUA MAKUA
ERNEST MATSUMURA
CHAD McDONALD

EXECUTIVE OFFICER: DAN ORODENKER
STAFF PLANNER/CHIEF CLERK: RILEY HAKODA

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
KURT WOLLENHAUPT, Planning

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 CHAIRMAN CHOCK: Good morning, everyone.
2 I'd like to call this meeting to order. First item of
3 business this morning is the adoption of the minutes.
4 Is there a motion to approve?

5 COMMISSIONER McDONALD: So moved.

6 COMMISSIONER MATSUMURA: Second.

7 CHAIRMAN CHOCK: Moved and seconded. Any
8 opposed? Changes? The minutes are adopted. I'd like
9 the executive officer to cover our tentative meeting
10 schedule, Dan.

11 MR. ORODENKER: Thank you, Mr. Chair. On
12 Thursday April 4th we will be on Maui at the Maui Arts
13 and Cultural Center for the acceptance of the EIS for
14 the Maui Research & Technology Park. On April 5th we
15 will be at Honolulu International Airport Conference 3
16 for the Kunia Loa Farmlands tentative site visit and
17 meeting.

18 April 18th continued hearings on Maui at
19 the Maui Arts & Cultural Center and Waiko Industrial
20 Investment, LLC decision-making.

21 April 19, once again Honolulu International
22 Airport: Ko Olina Development, LLC boat launch ramp
23 status report, and approval of revised administrative
24 rules.

25 May 2nd and 3rd Waiko Industrial

1 Investment, LLC continuation. And a Ka'ono'ulu Ranch
2 commencement of hearing.

3 CHAIRMAN CHOCK: Thank you, Dan. This is
4 oral argument this morning on A12-795 West Maui Land
5 Company, Kahoma Residential, LLC to consider the
6 reclassification of approximately 16.7 acres of land
7 from the Agricultural District to the Urban District
8 at Lahaina, Maui for a residential subdivision to
9 provide 68 single-family affordable housing units to
10 families earning less than 160 percent of the median
11 family income of families in Maui County, Hawai'i.

12 Would the parties please identify
13 themselves for the record.

14 MR. GEIGER: Good morning, Chair,
15 Commissioners. James Geiger appearing on behalf of
16 Petitioner. And the Petitioner representative Heidi
17 Bigelow is seated with me.

18 MR. GIROUX: Good morning, Chair. James
19 Giroux, Department of Corporation Counsel representing
20 the Planning Department. With me is Kurt Wollenhaupt.

21 MR. YEE: Good morning. Deputy Attorney
22 General Bryan Yee on behalf of the Office of Planning.
23 With me is Rodney Funakoshi from the Office of
24 Planning.

25 CHAIRMAN CHOCK: 'Morning.

1 MS. LINCOLN: Michele Lincoln, Intervenor.

2 MS. BOLOMET: Routh Bolomet, Intervenor.

3 CHAIRMAN CHOCK: Good morning, everyone.

4 Let me briefly update the record for this docket. The
5 post-hearing evidentiary portion was concluded on
6 March 7, 2013. Also on this date the public submitted
7 written testimony from Herman Naeole, Victoria
8 Cheromcka, Robin Knox, Clare Apana and David Goode.

9 On March 13 the Commission mailed the
10 LUC March 21 meeting notice to the parties and the
11 statewide and Maui mailing lists.

12 Let me briefly run over our procedure for
13 today. First, I will call for those desiring to
14 provide public testimony for this docket to identify
15 themselves. All such individuals will be called in
16 turn to our witness box where they will be sworn in
17 prior to their testimony.

18 After completion of the public testimony
19 portion of the proceedings Petitioner will present its
20 oral argument regarding its petition. Once Petitioner
21 has completed its presentation, the order of
22 presentation will be as follows: Maui County
23 Department of Planning, State Office of Planning,
24 Intervenor Michele Lincoln and Routh Bolomet.

25 Chair will allow each party no more than 15

1 minutes to present oral argument. Petitioner may
2 reserve a portion of his time for rebuttal.

3 At the conclusion of oral argument and
4 after questions from the Commissioners and answers
5 thereto, the Commission will conduct formal
6 deliberation on this matter. Any questions regarding
7 our procedure for today?

8 MR. GEIGER: No questions.

9 MR. GIROUX: No questions from the County.

10 MR. YEE: No questions.

11 MS. LINCOLN: No questions.

12 MS. BOLOMET: No questions.

13 CHAIRMAN CHOCK: Before I call on any
14 public witnesses, let me briefly remind you that all
15 public testimony from previous hearings has been
16 transcribed and is a part of the record. For those
17 who are testifying again, the Commission would
18 appreciate if you could confine your testimony limited
19 to new information only.

20 Because the Commission needs time to
21 conduct its deliberations this morning a 1-minute time
22 limit will be enforced on public testimony today.
23 We'd also like to note that the parties previously
24 submitted written proposed findings of fact,
25 conclusions of law decision and order in this matter.

1 And those are part of the record if the parties wish
2 to refer to them. Mr. Geiger, are you prepared to
3 proceed with oral argument?

4 MR. GEIGER: I am.

5 CHAIRMAN CHOCK: 15 minutes.

6 MR. GEIGER: Do you want to ask for public
7 testimony, Chair?

8 CHAIRMAN CHOCK: I'm sorry. Anybody signed
9 up for public testimony? That's why Dan was looking
10 at me. (laughter) I didn't see anyone.

11 MR. ORODENKER: Thank you, Mr. Chair.
12 There's no one currently signed up.

13 CHAIRMAN CHOCK: Is there anyone in the
14 audience wishing to provide public testimony at this
15 time, please come forward. (no public testimony) Go
16 ahead.

17 MR. GEIGER: Okay, Chair. Thank you very
18 much. Commissioners, Chair and staff, I look forward
19 to hopefully addressing you for the last time on this.
20 This is an historic date, not just because we're
21 almost at the end of this or that we're at the start
22 of March Madness. But 49 years ago today UCLA's men's
23 basketball team won their first national championship
24 under John Wooden.

25 And like the team at that time that was

1 short I'm going to try to keep my remarks short here
2 today. We're asking you to approve this petition to
3 change 16.7 acres of land from a land use
4 classification of Agriculture to Urban. We're asking
5 you to adopt the proposed findings of fact,
6 conclusions of law, decision and order that we
7 submitted as a part of -- as Exhibit A our
8 November 23rd, 2012 filing.

9 We would ask for one additional condition
10 to be imposed. And that condition that we'd ask for
11 is that the Commission impose a monitoring condition
12 on any mass grading or any excavation or installation
13 of underground utilities.

14 We respect culture. We, in fact, went so
15 far as when there were assertions that there were
16 cultural sites that might exist on the property during
17 these proceedings to investigate that. And we think
18 that given the testimony that this condition would be
19 appropriate, but we respectfully disagree and do not
20 accept that there are cultural sites that exist on the
21 property. But the condition would mitigate any
22 concerns that the Commissioners might have.

23 Now, why should you approve this petition?
24 Well, this will sound 'second verse same as the
25 first'. It is a site that is surrounded by urban

1 uses. On two sides are residential uses that have
2 been there, one of which has been there for over 50
3 years. The third side has industrial uses that has
4 been there longer than the residential uses.

5 The fourth side has the Kahoma Stream flood
6 control channel that was put in and completed in 1990.
7 And on the other side of the flood control channel is
8 a light industrial commercial use that was approved, a
9 boundary amendment, was approved by this Commission on
10 that project in the early 1990s.

11 This project is surrounded by urban uses
12 and it would be appropriate for the petition Area to
13 be converted to an urban use.

14 The Maui County Council has had the
15 opportunity to review this project on two separate
16 occasions a year apart. And on both occasions the
17 Maui County Council said, "We want affordable housing
18 in this area. And we believe it should go forward."
19 You've heard from nine separate people who testified
20 as part of the public concerning affordable housing.
21 Each of them told you: "We need affordable housing in
22 Lahaina. We need this project."

23 In fact one of the persons who testified at
24 this last hearing said this was the 'perfect place'
25 for this project. It's close to shopping. It's close

1 to stores. It's close to Lahaina Town. It's close to
2 schools. And there's infrastructure that abuts this
3 property. The roads are there. The utilities are
4 there. This is a perfect place.

5 We would ask your approval to give the
6 opportunity to 68 families to have their houses --
7 their homes in Lahaina. Now, why should you not
8 approve this? Well, we have had a few neighbors have
9 come in and told you that there are issues with open
10 space, it should remain open space. And there are
11 concerns about traffic.

12 Let me talk about the open space. This
13 property was included in the West Maui Community Plan
14 back in 1996 as open space. But that was 17 years ago
15 and things have changed. Just as basketball players
16 have gotten taller and faster, things have changed so
17 far as community use.

18 The Maui County Council has taken a look at
19 this and in adopting the Maui Island Plan not only
20 have they said that it is within the Urban Growth
21 Boundary -- this is the projection. This is what Maui
22 County Council has said "we want to do." It's within
23 the Urban Growth Boundary. But this particular
24 project was also approved by the Maui Council.

25 It's in the evidence you have before it but

1 I would quote, "The Kahoma infilled plan growth area
2 is intended to meet the needs of Maui residents and is
3 surrounded by previously developed lands."

4 And the dwelling unit account, again, it's
5 in the record before you says, "approximately 68
6 units." It is this project.

7 The other thing that's changed over time is
8 that the State has adopted a sustainability policy.
9 The State is looking at things like infill projects
10 and says, "That's what we want to do. We don't want
11 projects that are not close to other infrastructure,
12 not close to other facilities. We want projects that
13 are close to the infrastructure, close to the roads
14 that already exist. That's where we want to have the
15 growth. It's sustainable. You can walk. You don't
16 have to get in your car and drive."

17 This project fits that. It is in an infill
18 area where everything is there.

19 So the thing, the policy has changed and
20 the current thinking is that this should be affordable
21 housing.

22 Now let's talk about traffic. This project
23 has had three traffic studies. Each of the traffic
24 studies the traffic engineers have said there's no
25 impacts that are out there that need to be addressed.

1 But they made recommendations, recommendations
2 concerning the roadways within the subdivision as to
3 what should be done. And the Petitioner took that
4 into mind and adopted those recommendations. So any
5 potential impacts with traffic have been addressed by
6 the Petitioner.

7 And Condition No. 3 in the Proposed
8 Decision and Order specifically requires the
9 Petitioner to incorporate any suggestions that the
10 Department of Transportation has concerning traffic.

11 So any impact there has been or will be
12 mitigated.

13 The other area that comes up and why people
14 say, or you may have concerns about this project, is
15 water quality to nearshore waters. There's been some
16 indication or testimony about that. Well, again, that
17 concern, if it exists, has been mitigated. The design
18 of the project has an earthen retention basin that is
19 designed to hold on site the stormwater runoff.

20 You heard from David Goode who's with the
21 County of Maui who told you that the County of Maui
22 specifically adopted statutes and rules to address
23 stormwater runoff water quality. Those rules were
24 adopted, proposed and adopted in conjunction with the
25 EPA, with NOAA and with the State of Hawai'i

1 Department of Health Clean Water Branch.

2 He told you, as did Rory Frampton and Heidi
3 Bigelow, that the earthen retention basin on the
4 project in the concept would comply with the county
5 rules. But even more so he told you that when the
6 project would be constructed the plans will be
7 reviewed to assure compliance with the county rules.
8 So this impact has been mitigated. But I'd like to
9 take one step back.

10 And let's think about what impact can there
11 really be from this project? The Kahoma Stream
12 watershed is 5.7 acres. That comes out to a total of
13 about 5.7 square miles. That comes out to a total of
14 about 3,712 acres. This project is 16.7 of that
15 3,712 acres. It's less than one half of one percent
16 of the entire watershed.

17 Now, in order for any stormwater runoff
18 from this property to get into the Kahoma Stream flood
19 control channel, the retention basin first has to fill
20 up. And then it will overflow into the channel. But
21 the amount that's going to go into the channel is
22 going to be so small in relationship to the entire
23 watershed, that the impact from this project, if any,
24 will be immeasurable.

25 On balance are there any issues of

1 statewide concern that have not been mitigated? No.
2 Is this a project that should go forward and is needed
3 in Maui? Yes. We respectfully ask that you approve
4 the petition, grant the change from Ag to Urban and
5 allow 68 families in Maui to have an opportunity to
6 have an affordable home. Chairman, I'd like to
7 reserve the rest of my time for rebuttal. Thank you.

8 CHAIRMAN CHOCK: Thank you, Mr. Geiger.
9 Mr. Giroux.

10 MR. GIROUX: Thank you, Chair. I think
11 Mr. Geiger took all my thunder so I'm not going to
12 repeat it. The County has always come before you with
13 the one focus that we need affordable housing. We're
14 in a crisis. We are dependent on large landowners and
15 with their large plans to move. We don't know when
16 they move. We don't know if they'll ever move. But
17 we have one owner who's saying that if he can get this
18 he will move as fast as he can to get those homes up,
19 to get families in them.

20 We will have families building their own
21 homes. This will be a model for the rest of the
22 island on how we can be sustainable in getting our
23 people moving; getting them to build their own
24 shelters. They need the land. They need the land
25 near the infrastructure. And this will give it to

1 them.

2 Maui County wants this. I was present
3 during the development of the Maui Island Plan. Took
4 us seven years to get that plan. And now we passed
5 it. We passed is just after you made your
6 decision-making. Maui County sees this project as
7 important. People were testifying at the Urban Growth
8 Boundaries, they were testifying saying, "Why are you
9 guys making this plan so detailed? It's supposed to
10 be general."

11 Well, the way our planning process is
12 structured as we have nine community plans, those are
13 all needing to be revised. They need to come up to
14 date with this plan. This is the plan that's driving
15 Maui County, not our community plans. Those are still
16 in full force and effect. But they need to come into
17 compliance with our general plan and that takes a
18 legislative action.

19 The State of Hawai'i has seen this. They
20 know the problems that this island has. They know
21 that we are suffering here trying to get our people
22 into decent houses. So they have passed 201-H. We've
23 seen numerous revisions of 201-H to see how do we get
24 affordable housing built? What is slowing us down?
25 It is our process. Our process slows it down, but

1 that doesn't mean it stops.

2 The 201-H project that this went through in
3 front of the council was a clear message from the
4 council. Yes, they debated. And yes they had a
5 difficult time, but they balanced those issues out.
6 They came to the conclusion that affordable housing in
7 this area was necessary.

8 And what we have is an exemption from the
9 community plan. We have a clear message from council
10 when they adopted the Urban Growth Boundaries *and*
11 their Maui Island Plan that this is going to be part
12 of Maui's future. It...is...important.

13 One of the things that jumped out at me
14 when I was reading the prior Order was that this
15 comment that this project has to be in conformance
16 with our planning document. That's not the law. The
17 law says that you have to take it into consideration.

18 If you look at the totality of the
19 circumstances of what Maui is trying to do, if you
20 take it into consideration, what we're trying to do is
21 get affordable housing built.

22 (Commissioner Biga now present)

23 So that is, that is Maui County's position.
24 We are focused on that. We want to get our people in
25 there. And you heard testimony from the community who

1 grew up in affordable housing. When you provide
2 affordable housing you get Maui people on Maui and you
3 get them working and you get them to be part of the
4 community that has a history, that has strength, that
5 has a foundation. These people become leaders. They
6 become the mainstay of this island. They are not
7 coming and going. They are not transients. They will
8 give everything to stay here. And they do.
9 Ninety percent of their income goes to housing.

10 They want to raise their families here.
11 And their families might end up living in their own
12 home. The reason I'm so emotional about it is 'cause
13 I grew up in affordable housing. The only reason I'm
14 here today is because I could stay.

15 Maui needs this. My friends need this. My
16 friends' families need this. We beg you. We want to
17 go to the store and see the people we went to high
18 school with. We want to go to the beach and see the
19 people who we went to their weddings. We want to see
20 the people we grew up with stay here. The only way we
21 can do it is to give them affordable housing.

22 So we ask you in all humbleness to relook
23 at the decision and to see how appropriate
24 urbanization of this area is. We ask you to look at
25 your Rules 15-15-77 where it says "decision-making

1 criteria." And in section F it says that we have to
2 provide -- when looking at your decision-making we
3 have to provide housing opportunities for all income
4 groups particularly, particularly the low, low-
5 moderate and gap groups. And that's what this project
6 does.

7 I think Mr. Geiger touched on all the other
8 technical parts of this. I'm just going to quickly
9 say that also after your decision was made we passed
10 the Water Quality -- Stormwater Quality Rules. And it
11 shows Maui County's commitment to the environment.

12 We are not gonna be sustainable as a
13 community if our natural resources deteriorate. Maui
14 County is committed to making sure that the nearshore
15 waters are not impacted or minimally impacted by
16 development. It's not good for our economy to have
17 natural resources depleted.

18 And our councilmembers have looked at that
19 and have passed rules that would allow the director of
20 Public Works to give extra scrutiny to any project
21 that would have any impact on the nearshore waters.
22 This was done in concert with the EPA. This was done
23 in concert with Department of Health.

24 We are team building. We are looking at
25 this holistically. We want this to happen. We need

1 both to happen. We need housing and we need the
2 environment to stay strong. And I just want to point
3 to a section of the rules that really gives this
4 emphasis.

5 It says: "If the Department determines that
6 additional controls and/or lower thresholds for
7 developments are required to meet the specific water
8 quality needs in watersheds that drain to sensitive
9 receiving waters as defined by the Hawai'i State
10 Department of Health Water Quality Limited Segments,
11 of class 1 inland waters, of class 8A marine waters,
12 additional requirements may be imposed.

13 "These may include design requirements that
14 result in larger facilities as well as additional
15 types of structural or nonstructural controls. The
16 design solution will be contingent upon the pollutants
17 that are found to be impacting such water bodies and
18 the regulatory status of the water body."

19 We're not going to forget about the
20 nearshore waters. During the development there will
21 be constant monitoring of this.

22 So we ask that you look at these rules as
23 part of the mitigation that will be implemented in
24 order to make this project a viable one.

25 There was also concern about our wastewater

1 capacity. I think it's very clear. We had the
2 director of wastewater give you the mathematics on
3 that. If that project is built today we will have
4 ample capacity. That means we want it built today.
5 We're not gonna wait for 500 units and then say it's
6 okay. We want this project done now. We want it
7 online and we have the capacity for it now. That's
8 the imperative because there's families out there.

9 There's over 3,000 families who are going
10 to be on the waiting list for these homes. They don't
11 have the luxury of waiting. When the clock is ticking
12 their decision is: Do we leave, or do we stay, or do
13 we live in substandard housing until we get housing?
14 And that's unacceptable for the county of Maui.

15 So we ask you to reconsider. We ask you to
16 look at this project as a viable project. We ask you
17 to look at all manners of mitigation that will go into
18 this to make it a viable project. That's all I have
19 to say. Thank you.

20 CHAIRMAN CHOCK: Thank you, Mr. Giroux.
21 State.

22 xx

23 xx

24 xx

25 xx

1 MR. YEE: Thank you. And thank the
2 Commission for being willing to review this matter
3 again. The Office of Planning does not normally
4 support motions for reconsideration. In Hawai'i
5 Memorial involving the expansion of a cemetery; in
6 'O'oma involving a residential and commercial project
7 and Tropic Land involving a light industrial project.
8 In each of these cases the Office of Planning
9 supported the reclassification. The Land Use
10 Commission denied the request. And upon
11 reconsideration, upon a motion for reconsideration the
12 Office of Planning opposed the motion for
13 reconsideration.

14 Our general view is that we fight the good
15 fight. And when the LUC makes a decision we abide by
16 that decision. In this case, however, the Office of
17 Planning strongly supports this Motion for
18 Reconsideration.

19 We do so because, first, there's new
20 information that was brought up that could not have
21 been brought up at the time of the hearing.

22 Second, in reviewing the Order itself and
23 the form of the Order we believe the findings are
24 insufficient to justify or to explain your decision.
25 And, finally, with respect -- the facts of this case

1 are so clear to us that this is not an example of
2 where as we see it we see the problem, we see the
3 weakness, we understand why a contrary conclusion
4 would be reached.

5 For the Office of Planning -- in the Office
6 of Planning's judgment this is a very clear case on
7 the record. This is a 17-acre project, very small.
8 If it was two acres less they would not even have
9 needed to come to the Land Use Commission.

10 It is surrounded by urban uses. There are
11 residential, commercial and light industrial uses
12 surrounding this particular parcel. And it's an
13 affordable housing project. It is a 100 percent 201-H
14 designated affordable housing project providing a very
15 significant need in the Maui community.

16 And based upon the record, which is all we
17 can base our decision on, based on the record it meets
18 all of the statutory criteria for reclassification.

19 With respect to the Order we generally try
20 not to criticize too much some of these process
21 issues. But it became clear to us for a variety of
22 reasons that the Order itself needed to be explained
23 further both from a legal perspective. And we've
24 cited to you the cases that say your Order needs to be
25 able to fairly explain to the circuit court or to a

1 reviewing court what the basis of your decision is.

2 But probably more fundamentally there's a
3 fairness question. Inevitably someone is going to be
4 disappointed today. What's important is that your
5 Decision and Order explains why you came to your
6 conclusion. And it makes clear to all of the parties
7 and to the public what was the reason for your
8 decision. Did you hear and understand everyone? Then
9 does then everyone understand why you made your
10 decision. Why did that person or that side lose?

11 Some of the conclusions you reached in here
12 merely found that there was an unresolved issue. And
13 for the Office of Planning that's not a sufficient
14 conclusion. In Ho'opili, for example, the acreage was
15 almost a hundred times as great. It involved actual
16 agricultural production, not simply a hypothetical
17 agricultural production, that was in current use.

18 In that case, as in this one, there was an
19 allegation that there was a karst system underneath
20 the property where development would impact limu
21 gathering on the shoreline.

22 And in that case the Land Use Commission
23 made specific findings saying, "We understand so and
24 so testified about this. We find this." So you made
25 conclusions about what were or were not facts, what

1 was and was not true. You don't simply find that the
2 issues was unresolved. Because in every case where
3 there's going to be parties that disagree the issues
4 are almost by definition "unresolved".

5 That's the purpose of having this hearing.
6 That's the purpose for having the Land Use Commission
7 to resolve these questions. Then to set out clearly
8 in your Order: Here's the evidence. Here's what we
9 found. Here's how we resolved that question.

10 Specifically we want to draw your attention
11 to several of your conclusions and findings of fact.
12 With respect to Conclusion of Law 7 involving the open
13 space recreational facility you found that somehow
14 this was an open space recreational facility, and that
15 justified keeping the land in agriculture.

16 Several points. First, it's not a
17 facility. It's an open area of land. It's just not a
18 facility.

19 Second, we don't think keeping an open area
20 of -- open area recreational facility as a
21 justification for keeping land in agricultural use.
22 Yes, it's a permitted use for agricultural land but
23 there are many permitted uses for agricultural lands
24 including solar or wind turbines.

25 And keeping land in Agriculture because it

1 could be used for solar or wind turbines is not a
2 sufficient basis for keeping something in Agriculture.
3 For that you would want to look at whether it can grow
4 crops, whether you can raise animals. That's the
5 basis for keeping something in Agriculture.

6 And then finally with respect to the
7 recreation on this facility primarily involved people
8 walking across or through the property. And if you
9 look at the proposed plan in many instances, or if you
10 look at it, walking will be enhanced over the area
11 because there will be sidewalks.

12 And because access to the bike and
13 pedestrian path next to the Kahoma Stream channel is
14 enhanced through the park. So that there's increased
15 access to walking.

16 The Intervenor did argue about agriculture.
17 I just want to make clear that the facts in the record
18 in this case seem fairly clear to us. There is no
19 commercially feasible alternative of agriculture for
20 this property. There's no -- most importantly there's
21 no easy access to irrigation water. Any remnant pipes
22 that exist that are not connected to any water source.

23 As you know water source is essential for a
24 successful commercial agricultural operation.
25 Furthermore, it's very oddly configured. And it's

1 within an urban setting. This prevents mechanization
2 as well as spraying. And while there's an argument
3 for organic farming, that argument for us was very
4 speculative given the lack of any agricultural
5 production today and the probability that the land
6 costs would just be too high.

7 Really for an Ag property in an urban
8 setting the more likely outcome would be a gentleman
9 farm. That, I think, serves no one's interest.

10 Your finding of fact 170 on the Lahaina
11 Wastewater Reclamation facility, for us I think dealt
12 with testimony involving an EPA review of the Lahaina
13 Wastewater Reclamation Facility. But an EPA review is
14 not an EPA violation.

15 And as Robin Knox had indicated, the amount
16 of wastewater used for this property is so small
17 compared to the total capacity of the Lahaina
18 Wastewater Reclamation facility, that to deny this
19 project because of concerns about the wastewater
20 facility is like the tail wagging the dog.

21 Nothing that this project does or doesn't
22 do is going to affect any solutions or any outcome of
23 the Lahaina wastewater issues.

24 And furthermore, the Petitioner is
25 responsible for finding wastewater alternatives if the

1 capacity was exceeded at the reclamation facility. So
2 similarly if somehow the Lahaina Wastewater facility
3 became unavailable under the existing designation, the
4 Petitioner agreed to be responsible for that, for that
5 issue.

6 With respect to finding of fact 190 and the
7 lack of audited financial records, we explained in our
8 pleadings it's not a requirement under your rules. It
9 was never required before. We've had cases in which
10 unaudited financial statements have been accepted by
11 the LUC, no notice has been provided to any of the
12 parties. To sort of create this issue now, to create
13 it as a requirement particularly would be of great
14 concern to us.

15 If that was the interest of the LUC to
16 require audited financial statements in all cases, our
17 suggestion is to raise this in your determination of
18 completeness rather than at the end of the hearing
19 where it's such a change in prior practice.

20 With respect to findings of fact 171 and
21 172 involving archaeology, SHPD and the consultant
22 agrees that there are no archaeological sites. The
23 Petitioner has agreed to provide archaeological
24 monitoring in case something is found during
25 construction.

1 The testimony indicated that there was an
2 allegation of a karst cave system. The testimony was,
3 though, that there was no opening to any caves that
4 were identified in the petition Area. And we also
5 indicated that in other cases where there were clearly
6 identified and agreed upon archaeological sites, the
7 remedy in that case was mitigation.

8 The remedy in that case was a preservation
9 plan. The remedy in that case was some type of
10 mitigation as approved, let's say, by the State
11 Historic Preservation Division.

12 So while we don't believe there are any
13 archaeological sites, if you believe to the contrary,
14 that is an insufficient conclusion for denial as you
15 have not yet looked at the issue of mitigation for
16 this issue.

17 With respect to findings of fact 186 and
18 187 involving the consistency with county plans as
19 discussed, the new information that it *is* consistent
20 with the Maui Island General Plan.

21 And we disagree that the Community Plan
22 should be a factor since the 201-H designation
23 specifically means that a Community Plan does not need
24 to be amended. That's simply a legal means by which
25 that allows this project to go forward. And as

1 discussed so eloquently, the Maui County is in support
2 of this.

3 So with respect to the criteria for
4 consistency with Maui County Plans where the idea is
5 really to make sure that the county concerns are
6 addressed, given the consistency with the Maui Island
7 Plan, the designation by the county council of 201-H
8 project and the strong support by the planning
9 department in this case, we think that criteria has
10 been more than met.

11 Finally, findings of fact 165 and 169
12 involved the stormwater discharges. And 165 which
13 says that the rule had not yet been passed is, as the
14 new evidence showed, no longer correct. The rule was
15 passed.

16 And as discussed by the Public Works
17 director in the last hearing in public testimony, he
18 talked about the oversized detention basin where that
19 complies with the low impact development rules passed
20 by the county, as well as the location of the pipe
21 where, as you may recall, the Public Works director
22 said: For flooding of course you're looking at
23 quantity of water. For pollution you're looking at
24 the quality of water.

25 And when you're looking at the issues of

1 quality, what's more important than the flooding
2 question. In a really, really big rain, what you're
3 more concerned about is the frequency in which water
4 rolls off the property. And when you oversize your
5 detention basin during the more frequent storms, maybe
6 not as large, but more frequent rains, the water is
7 kept on site. It's kept in the detention basin.

8 The pollutants settle to the bottom and is
9 absorbed back into the soil rather than running off
10 into the Kahoma Stream channel.

11 As is clear, current runoff goes into the
12 Kahoma Stream channel or the streams and stormwater
13 system. So there is currently pollution that occurs
14 from undeveloped property.

15 So the approval of this project actually in
16 many respects decreases pollution because the more
17 frequent storms are going to be kept onsite rather
18 than flowing offsite as they may be now.

19 In summary, the Office of Planning is in
20 strong support of this Motion for Reconsideration. We
21 certainly understand that people have different views.
22 And we respect those views. But in our determination
23 in looking at all the other cases that this Commission
24 has reviewed, it seems clear to us that a
25 reconsideration is appropriate. And we hope you will

1 grant this request for reclassification.

2 CHAIRMAN CHOCK: Thank you, Mr. Yee.
3 Ms. Lincoln.

4 MS. LINCOLN: I just want to make note
5 before I begin that on March 7th I asked a question
6 with a date February 22, 2012 but I misspoke. I mean
7 2013. So I apologize for any confusion on that.

8 I want to thank you all for your patience
9 for me during this entire process. It was very
10 gracious of you to let me be a part of these
11 proceedings.

12 I love our state motto: "The life of the
13 land is perpetuated in righteousness." The Hawaiian
14 state motto is declared in Article X Section 5 of the
15 Constitution of the state of Hawai'i. And it's in the
16 Hawai'i Revised Statutes Volume 1, Chapter 5, Section
17 5-9.

18 I love the Hawaiian word for *righteous*
19 which is *pono*: Do what is right. This is a precept
20 that the decision-making criteria for the Land Use
21 Commission is based on. You do have to make a
22 righteous decision. And if the Kahoma meets the
23 decision-making criteria for land use
24 reclassification. And this petition does not and
25 justifies your denial.

1 The archaeological and cultural
2 significance of this land was established by the
3 record. In my faith Jesus is the rock of my
4 salvation. And it is a very important symbol to me.

5 And I learned during this last year that a
6 rock like the libation stone, and the he'iau is
7 significant in Hawaiian culture. Cultural practices
8 include spiritual events which are not always going to
9 be manifested in physical evidence. But it doesn't
10 make it any less real or significant.

11 We don't have to believe in Hawaiian
12 culture. You don't have to believe in cultural
13 practices, but you need to respect them. And as a
14 commission you need to protect them under the
15 Constitution of the State of Hawai'i and under the
16 Commissioners' laws that you have to adhere to.

17 The culture and the history of the petition
18 Area is significant, and it is justification for your
19 denial. The land use criteria also includes Hawai'i
20 Revised Statute 226-55. And I'm going to read the
21 strategy.

22 The strategy quote, "The strategy has been
23 prepared in accordance with the guidelines for State
24 Functional Plans under Hawai'i Revised Statute
25 226-55." The importance of the strategy.

1 "The Hawai'i State Constitution, the
2 Hawai'i State Plan, the New Day Plan, Hawai'i
3 Comprehensive Economic Development Strategy and other
4 state policy documents support increasing Hawai'i's
5 food self-sufficiency.

6 "Hawai'i is located approximately
7 2,506 miles from the Continental United States.
8 Between 85 and 95 percent of Hawai'i's food is
9 imported, which makes it particularly vulnerable to
10 natural disasters and global events that might disrupt
11 shipping and the food supply.

12 "The economic impact of food import
13 replacement is significant. Food expenditures of
14 local consumers in 2004 and 2005 amounted to
15 \$3.7 billion. Assuming that 85 percent of the food we
16 consume is imported, this translates to \$3.1 billion
17 leaving our state. Replacing just 10 percent of the
18 food we currently import would amount to approximately
19 \$313 million.

20 "Assuming a 30 percent farm share,
21 \$94 million would be realized at the farm gate which
22 would generate and economy-wide impact in an
23 additional \$188 million in sales, \$47 million in
24 earnings, \$6 million in state tax revenues and more
25 than 2,300 jobs.

1 "Increasing food self-sufficiency will keep
2 money circulating in Hawai'i's economy rather than
3 supporting agribusiness in other states or countries.
4 It will help to diversify Hawai'i's economy," unquote.

5 The protection of our agriculture land
6 needs to start now. The farmers who testified couple
7 weeks ago showed just 2,000 square feet can support a
8 family and provide food for our island. The Petition
9 Area has not been in intensive agriculture use because
10 of the choice of the Petitioner. There are hundreds
11 of acres of land, agriculture land in Hawai'i, that
12 are vacant and fallow by choice of the landowners.

13 The Land Use Commission by following the
14 law can set a precedent that hold landowners
15 accountable for their land rather than use the neglect
16 of the ag land as a means to manipulate criteria for
17 reclassification.

18 The lack of evidence of the financial
19 capability of the Petitioner is another justification
20 for denial. Precedences are not rules. And the
21 Office of Planning's position that it will affect
22 pending or future cases is not a Land Use Commission
23 criteria.

24 The global financial situation calls for
25 enforcement of your existing rules. You are

1 establishing a new precedent by upholding the existing
2 laws regarding the Petitioner's financial capability.

3 Verification of financial ability was not
4 shown. Evidence was lacking, and it is the
5 Petitioner's burden of proof. The lack of evidence is
6 justification for denial.

7 The County supported this project. So --
8 from the very beginning -- so it's no surprise that it
9 made it to the Maui Island Plan. But the footnotes
10 are of great importance. If you look at Exhibit 42(b)
11 table 8-27 Kahoma Planned Growth Area. If you look
12 under the dwelling unit counts it says, "68". But you
13 also need to look at the footnote. You need to read
14 the small print.

15 And I'm going to read that. Quote, "Unit
16 counts may be further defined through the entitlement
17 process in response to infrastructure," unquote.

18 The schools are overcapacity. All the
19 things I'm going to mention were on the record and
20 part of the evidence. Our schools are overcapacity.
21 The water meters are not guaranteed. It's a
22 first-come first-served availability. And the lack of
23 capacity of the Lahaina Wastewater Reclamation
24 facility is a basis for denial.

25 If there is so much capacity for sewage at

1 the Lahaina wastewater reclamation facility, and this
2 small project does not affect it at all, then why put
3 conditions in from the county and the state? This
4 would be a non-issue as affordable housing projects
5 are exempt from such things.

6 So I say the conditions speak louder than
7 their words. And that they support the lack of
8 adequate infrastructure, and the fact that it could
9 affect future or pending cases as a result of good
10 governments that infrastructure needs to proceed
11 development.

12 Under the same footnote 41, "Unit counts
13 may be further defined through the entitlement
14 process in response to environmental restraints."

15 The Petitioner's Exhibit 43, the stormwater
16 treatment plan admits that new developments are the
17 source of pollution with stormwater runoff. The
18 petition Area is in the Coastal Zone Management Area.
19 Mala is already at risk without any further
20 infrastructure. And the new rules for stormwater
21 treatment reduce the pollution that the development
22 causes.

23 That does not eliminate or guarantee any
24 kind of protection. The protection of Mala would be
25 considered an environmental constraint which justifies

1 your denial.

2 On the Maui Island Plan Kahoma table 8-27
3 under Parks and Open Space, I would like you to refer
4 to footnote 42 and I'm going to read that. "The
5 distinct boundaries of the parks and open space,
6 specific location of the recreational uses and the
7 precise amenities will be further defined during the
8 West Maui Community Plan update and the project review
9 and approval process."

10 The County's resolution did not amend the
11 West Maui Community Plan. They exempted the Land Use
12 Commission from amending it if the Land Use Commission
13 approves this petition.

14 The Petitioner and the Planning described
15 the area as vacant and fallow and not used as a
16 recreational area. But that is not supported by the
17 evidence or the minutes of the West Maui Community
18 Plan planning committee of 1995. And I'm going to
19 read some of the highlights which was part of my
20 exhibit.

21 Quote, "MR. MEDEIROS: The intent here, and
22 this is something we're just getting into, is that
23 this would be more of a greenway as opposed to an
24 improved park.

25 "MR. CHENOWITH: But our intent was for it

1 to become a public open space area for either present
2 or future use.

3 "MR. DRAPER: Like you said, Sol, looks
4 pretty bad the way it is. Just being left at open
5 space I feel that maybe somebody will look at some
6 other use for it in the next plan and decide to put
7 buildings upon it as where that's not really our
8 intention.

9 "MR. MISKAE: "Park" doesn't necessarily
10 mean it'd be a park. It can be an open space as well
11 for recreational purposes."

12 The intent of the law is clear and the
13 petition Area has been designated as open space. And
14 until the Community Plan update is updated, the
15 Community Plan is updated, it should remain so.

16 The Maui Island Plan clearly does not
17 replace or supercede the West Maui Community Plan and
18 thus justifies denial.

19 In conclusion, this petition is a very
20 small housing project in view of all the designated
21 housing that's coming to Lahaina. And it's a small
22 amount of agriculture land. But it has a large impact
23 on setting a precedent that the land use criteria are
24 to be reckoned with. And most of the county and state
25 conditions mean that the decision-making criteria are

1 not in compliance and they should be treated like red
2 flags, not green lights.

3 Hawai'i's sustainability must become a
4 reality and not just a political catch phrase. And by
5 this the people will be protected and they will
6 prosper.

7 You didn't deny an affordable housing
8 project. You have denied a petition that does not
9 meet the decision-making criteria for land use
10 reclassification. I'm going to say that again.
11 'Cause you didn't deny an affordable housing project.
12 You denied a petition that does not meet the criteria
13 for land use reclassification.

14 The new evidence does not justify the
15 reversal of the denial, and in fact supports the
16 Decision and Order which should remain denied. Thank
17 you.

18 CHAIRMAN CHOCK: Thank you very much,
19 Ms. Lincoln. I think for the benefit of our court
20 reporter we're going to take a short recess and then
21 come back with Ms. Bolomet and rebuttal by Petitioner
22 and then questions by Commissioners before we get into
23 deliberations. So a 10-minute recess for Holly and
24 we'll be right back.

25 (Recess was held 10:40)

1 CHAIRMAN CHOCK: (gavel) Ms. Bolomet, 15
2 minutes.

3 MS. BOLOMET: First of all, I'd like to
4 start out by thanking all of you for taking your time.
5 I know that you're volunteers that gave up your time.
6 I know that when you do that you have to have a sense
7 of commitment for wanting to do what's right for all
8 of Hawai'i. There's a purpose that's much bigger than
9 you when you're doing that sort of thing.

10 And it's an important role to try to
11 balance the best of Hawai'i's resources with the need
12 to house people and provide jobs.

13 What I learned through this process is that
14 there's always more than one solution to every
15 problem. The trick is to really identify what is the
16 problem. The petition addresses the need for
17 affordable homes, but the problem is not that we lack
18 affordable homes. The problem is that we lack jobs
19 that pay people enough to afford homes.

20 There are many people who testified that
21 they wanted this project to go through. But from the
22 testimonies I know they don't understand all that's
23 involved with the land issues, the allodial titles.

24 An example of that is when Auntie Pat
25 Nishimura, who's a kupuna in the community, who

1 pleaded with you to approve this project, that it
2 would help all the kupuna. But the one thing that she
3 didn't mention is that she does work with Collie
4 Gumapac (phonetic) for imperfect titles.

5 Now, I registered these lands with the
6 Bureau of Conveyance. These lands are clouded. There
7 will be no sales on these lands. However, let's get
8 past that and let's look at the real problems with
9 these lands -- or with this petition.

10 The Land Use Commission in the past
11 approved a couple of petitions to reclassify ag lands
12 for two projects. The two projects were Pu'ulehua and
13 Pu'ukoli'i. Pu'ukoli'i in 2009 promised to build 940
14 affordable homes. Pu'ulehua in 2011 got the community
15 plan amended. And the LUC reclassified the Ag lands
16 in 2006 for 900 affordable units.

17 But even though this happened no permits
18 have been gotten. So the promise of having affordable
19 homes because there's reclassification does not
20 guaranty that you'll actually have affordable homes.
21 There are no assurances.

22 The real assurance is that if the petition
23 Area was to be classified from Ag to Urban, farmers
24 would have one less optimum farming space that could
25 have easy accessibility to commerce, utilities and

1 infrastructure that keeps the cost of food down since
2 the setup costs that are required to farm are minimal.
3 There are pipes that already exist. They may not be
4 hooked up to water at this moment.

5 But the Petitioner shows in their petition
6 that surrounding the area all the infrastructure
7 exists. It's a plug and play. That is a cheap setup
8 for a farmer. Having water is not impossible.

9 If we drilled down under the kiawe trees,
10 all the kiawe trees on that property that's thriving
11 and green even when everything is dead is showing us
12 where the water is. So we could plug in through water
13 meters or we could drill down and tap into the
14 underground springs that are there.

15 By the farmer not having the additional
16 cost of setting up an infrastructure this translates
17 into cheaper food not just for -- not just cheaper
18 food for the immediate community, but also for the
19 restaurants and the tourists that would come to that
20 area making it -- so if the costs are lower, then more
21 people can afford to partake of those businesses and
22 those businesses can thrive.

23 Food production also assures food security.
24 For this community where there's one road in and one
25 road out this becomes really important in the time of

1 a disaster. The last 20 years of history shows us
2 that keeping it Ag in the hands of a developer whose
3 business is building homes does not put valuable Ag
4 lands into Ag production. Just like reclassifying Ag
5 lands to Urban doesn't guaranty that there will
6 actually be affordable homes built in a timely manner.

7 Non-farmers don't know how to maximize
8 land. So they will call it gentleman farms. But a
9 farmer who knows how to use land to its maximum
10 resource can make the one acre actually work like two
11 or three acres.

12 (Electronic device interruption)

13 CHAIRMAN CHOCK: Sorry, Ms. Bolomet. I'll
14 give you an additional 30 seconds.

15 (Laughter)

16 MS. BOLOMET: So farmers that see
17 16.67 acres, what we see is that we're feeding at
18 least a thousand families a week during the growing
19 season. We see that there's a hundred to a hundred
20 seventy-five sustainable jobs that could be generated
21 from that land.

22 We see that we give thousands of people a
23 sense of purpose and pride in their community where
24 they can come out, not only get food right in their
25 own backyards, but they can participate and learn

1 about growing food, learn about taking care of the
2 'aina, learn about the history of that area, learn
3 about the sustainability practices that my ancestors
4 used to use over there that made Lahaina so attractive
5 to all the foreigners that came and settled there.

6 Yes, there's thousands of acres, Ag acres
7 available. But why are these acres not being offered
8 for long-term leases to farmers who are expected to
9 install the infrastructure for their operations at
10 their own cost?

11 Why are Ag acres being offered for hundreds
12 of thousands of dollars per acre when these developers
13 either got them thrown into a deal or paid an average
14 of \$10,000 an acre? Why are they being sold for so
15 much?

16 The lands in this area were not leased to
17 Pioneer Mill. The lands next to this area in
18 Waihikuli was part of a lease from the Hawaiian
19 kingdom government. These lands were encroached upon
20 and taken.

21 The reason Lahaina does not have affordable
22 homes or food is because the cost of lands are
23 artificially driven up while the same laborers who do
24 the back-breaking work to improve lands are not always
25 paid a fair wage for their efforts.

1 So to me as a landowner of Ag, Ag lands,
2 the solution to Lahaina's affordable home challenge is
3 to create sustainable jobs that will provide living
4 quarters to the workers of these sustainable jobs.

5 This last year has been one of the most
6 challenged years of my life as I undertook the role of
7 representing not only the living, my living family
8 members, but my ancestors who were dead and called for
9 me to do this. If it weren't for their guidance I
10 wouldn't have learned the beautiful history of the
11 property in this petition Area.

12 But more than that I wouldn't have known
13 the intimate details of my ohana's life, their
14 contributions to Hawaiian history, their role in
15 making Lahaina and Hawai'i Nei so prosperous for all
16 the people who live within these islands.

17 The art and science of sustainability that
18 we have today are only rediscovering and applying to
19 our daily lives like right beneath the 8 to 12 feet of
20 fill on that property. There's so much to learn from
21 the rich history of Lahaina's past to assure our
22 prosperous future.

23 In February you agreed to the Petitioner's
24 Motion to Reconsider. It was based on several things.
25 Primarily that I failed to enter into the record Kahu

1 Michael Lee's testimony in his August 1st, 2012
2 written testimony and exhibits.

3 At our last meeting on February 22 we
4 satisfied the Petitioner's concerns and properly
5 submitted Kahu Michael Lee 's oral and written
6 testimony onto the record.

7 Mr. Geiger was also allowed more time to
8 cross-examine Kahu Michael Lee for the second time.
9 During his cross-examination Kahu Michael Lee
10 testified that he does have the presence in the area
11 from his grandparents who grew up and lived in Panaewa
12 property right above the area or over 160 years. And
13 in fact one of the streets in Michele Lincoln's
14 neighborhood is named after his 4th great-uncle.

15 He also testified to the fire walkers and
16 the night marchers that are still active on this
17 property. Michele Lincoln shared her experience with
18 the night marchers on the property. And Uncle Herman
19 Naeole hand wrote a public testimony that tells of his
20 experience with the night matchers that I'd like to
21 read now.

22 *"Aloha. My name is Herman Kamani Naeole.*
23 *I live at Kilauea Mauka, right next to Kahoma Stream.*
24 *I live on the hillside corner lot. We moved there in*
25 *1972 with my dad and my mom. My dad had a small farm*

1 next to the river raising chickens, ducks, guinea
2 hens. And at times we worked late down at the farm.
3 One night we were working late and around midnight it
4 all happened. All I heard was my daddy tell me to
5 turn off the lantern, which I did. Then my daddy
6 said, "Be quiet, don't say anything." After a while
7 he would ask me, "Do you hear anything?" And I would
8 say, "No.". Then he said, "Listen, listen. Listen
9 good."

10 "Seconds later he would say, "Do you hear
11 it now?" And I would say, "Yes. Sounds like water
12 coming down the stream, lots of water. It sounds like
13 boulders coming down the stream." Then my dad said,
14 "No. That's not boulders. Those are footsteps." And
15 it got louder and louder as they got close. Then real
16 loud as they started to passing us.

17 "As the footsteps started to fade I looked
18 up and saw silhouettes of people walking down the
19 stream towards the ocean. Then I said to my dad,
20 "Dad, this is over a hundred people walking down."
21 And my dad said in Hawaiian, "kuli kuli" which means
22 to be quiet.

23 Later as we were walking home I asked him,
24 "Why did we turn off the lantern? And why did they
25 pass through here?"

1 And he said, 'These people are called night
2 walkers. They walk in the dark. That's why I told
3 you "turn off the lantern.'" Then my daddy said that,
4 "There's got to be burial sites in the area," and also
5 "there must have been a village here. So they came
6 back to their village to come home to visit."

7 "To the best of my knowledge the night
8 walkers do exist. And I believe that this area should
9 be left alone so that they can come and go without
10 disturbance."

11 Kahu Michael Lee also testified that
12 there's no way that development could one hundred
13 percent protect his cultural practice at Mala with
14 their minimal requirements retention basins. Even if
15 they took on more, made it bigger, it's -- David Goode
16 testified that it would not protect 100 percent. I
17 asked him that straight out.

18 So he confirmed this and he's the person
19 that has to actually institute the criteria to protect
20 the waters of the Kahoma Stream and Mala Wharf.

21 So the minimal requirements is what the
22 State and County and Petitioner wants you to believe
23 is all that needs to be met. However, the report that
24 we submitted, which is the 2012 State of Hawai'i Water
25 Quality Monitoring and Assessment Report that came out

1 December 2012, definitely shows that there's problems
2 already in Mala Wharf marine waters and in the stream
3 waters of Kahoma. That's before there is a project in
4 there.

5 So David Goode has to mitigate those
6 problems before one more project can come in. And if
7 he can't -- they don't even have a plan to mitigate
8 what's already a cited problem.

9 So if he can't -- if that's not taken care
10 of, how can you add another layer of potential
11 problems? Again, he said there's no guaranty that a
12 hundred percent he can protect the limu and the
13 cultural practices down at Mala.

14 Public testifier Robin Knox, who also was
15 my water expert in our last meeting, talked about this
16 2012 new report. And basically she was saying that it
17 does not meet the TMDL standards. That's what's in
18 the charts for the water areas.

19 She also explained to me because I was a
20 little confused when David Goode was talkin about they
21 had a 9 million gallon capacity for waste.

22 What she said was they might have the
23 capacity to take that in, but they only have the
24 capacity to process 4.5 million gallons of waste. So
25 I said to her, "Well, what happens with the rest?"

1 And she says, "Well, that gets put into the injection
2 wells which goes to the karst system untreated and
3 (electronic device ringing) Then it goes into the --
4 that was my warning sign -- (laughter) so then the
5 bacteria, the untreated bacteria is going directly
6 into the ocean. And if you look at the Department of
7 Health there's reports that show the staph levels in
8 surfers and the people that are out in these waters
9 are really high. And that's a reflection of the
10 untreated waste that's already going into the waters
11 before we have a new project.

12 So the new countywide plan as testified by
13 Mr. Mayer and Lucienne DeNaie, who sat on the
14 committees that made these plans, they said that over
15 and over again they were assured by the Countywide
16 Plan, that the Countywide Plan did not supercede the
17 Community Plan. And that way (time being shown to
18 parties by Chair) -- okay, got it, I can read your
19 mind -- and that way -- so they didn't want you to
20 think that it negated the Community Plan that's
21 already in place that says this should remain in open
22 space.

23 It's just another guide post. But the
24 details are still in the Community Plan and that's
25 where the Community Plan is in place to tell you how

1 to deal with the certain areas.

2 Also Kahu Lee put in Mr. Keith Ahui, the
3 chairman of SHPD, the letter to Mr. Gill that assured
4 the Robert Connolly study was within the entire
5 petition Area, not above it. It is above it, but it's
6 also within the entire petition Area below it and
7 beside it.

8 So there will be cultural and
9 archaeological sites that are affected if anything
10 gets happened here. Right now we have to remove the
11 fill to uncover what's actually here.

12 CHAIRMAN CHOCK: Please summarize.

13 MS. BOLOMET: What I'm asking all of you to
14 do is to look at not what the promises are of what can
15 happen if it changes to affordable homes. There are
16 no assurances that affordable homes will be built
17 here.

18 But I as a lineal descendant of those lands
19 that have access to these lands, I don't pay for those
20 lands. So by me passing them to farmers I don't need
21 a bunch of lands, but I need to do what my kuleana is,
22 which is to take care of the people where those lands
23 surround.

24 And those are what those lands were given
25 to me to make sure happened is that we take care of

1 our resources and we take care of the people which are
2 also resources to the betterment of the whole.

3 So I'm asking you to uphold the Decision
4 and Order that you made in December, which you
5 approved in December. And please know that I will be
6 working with whomever I need to work with to make sure
7 this does get into a production that will feed the
8 community, protect food security, meet the State
9 Plans, meet the Community Plans because that is really
10 what is needed. And through that we will be able to
11 provide jobs and homes for people in Lahaina. Thank
12 you.

13 CHAIRMAN CHOCK: Thank you, Ms. Bolomet.
14 Mr. Geiger, I think you took about 7 minutes so you've
15 got about 8 minutes should you choose to take all 8
16 minutes.

17 MR. GEIGER: Thank you, Chair. I hopefully
18 will not take 8 minutes. I just want to make a couple
19 of comments. It's important to recognize the
20 difference between argument and fact. And one of the
21 things you have to do is to filter that out.

22 In your deliberation and in your findings
23 here today you have to make factual findings based
24 upon what's in the record, not what's coming out of
25 the mouth of me or any of the other questioners, but

1 what's actually in the record before you. And there's
2 about 1100 pages -- actually 1160 pages of testimony,
3 probably about 700 pages of documents. And that's a
4 lot of record.

5 I think what you're going to find is what
6 SOP told you, Mr. Lee told you, they're very clear
7 that the criteria for a boundary amendment with regard
8 to this project has been met. We agree. We think
9 it's been met. And we recognize that things have
10 changed. We recognize that in the past this may have
11 been an open space.

12 In the past there may have been affordable
13 housing projects approved in the area. But those
14 things didn't happen and things have changed.

15 You've heard very passionately that the
16 County of Maui wants this project to go forward. We
17 want this project to go forward. We think that your
18 decision is clear. We respectfully ask that you
19 approve our petition and change the classification
20 from Agriculture to Urban. Thank you.

21 CHAIRMAN CHOCK: Thank you, Mr. Geiger.
22 That concludes closing argument from the parties.
23 Commissioners, any questions for any of the parties
24 now would be your time to ask.

25 COMMISSIONER MAKUA: I just had a

1 clarification. Was it Jenny Pickett and Hinano
2 Rodrigues who came from SHPD to do the site visit?

3 MR. GEIGER: In September when we did the
4 supplemental investigation it was Ms. Pickett and
5 Mr. Rodrigues, yes.

6 CHAIRMAN CHOCK: Commissioner Heller.

7 COMMISSIONER HELLER: Yes. Question with
8 regard to the stormwater runoff, the new standards.
9 Given the fact that the parties wrote out their
10 proposed findings and conclusions and proposed
11 conditions prior to the official adoption of the new
12 stormwater runoff standards, are the conditions as
13 drafted and proposed adequate to take into account the
14 new version of the stormwater runoff standards?

15 MR. GEIGER: I believe they are. I'm
16 trying to find the condition if you'll give me just a
17 moment. Condition No. 8 says that, "The Petitioner
18 shall design and construct stormwater drainage system
19 improvements in compliance with the applicable
20 federal, state and county laws and rules and maintain
21 those improvements." So, yes, it would be in
22 compliance with the new rules.

23 COMMISSIONER HELLER: Thank you.

24 CHAIRMAN CHOCK: Any other questions,
25 Commissioners? Commissioner Inouye.

1 COMMISSIONER INOUE: There's been
2 testimony and new testimony a couple weeks ago about
3 the Lahaina Wastewater Reclamation facility, and that
4 if was built today there'd be adequate capacity. Now
5 what would happen and is there something in your
6 proposed findings of fact to take care if it got
7 delayed?

8 MR. GEIGER: The answer is yes. One of the
9 conditions that the County placed on this project
10 under 201-H is that if and when it was constructed
11 there wasn't sufficient capacity, we would have to pay
12 our pro rata share of what it would cost to construct
13 the capacity to handle this project. So it is
14 covered.

15 And those conditions are adopted as a part
16 of the findings of fact in Condition No. 10 which
17 requires compliance with the county resolution.

18 COMMISSIONER INOUE: Thank you.

19 CHAIRMAN CHOCK: Thank you, Commissioner
20 Inouye. Any other questions, Commissioners? Okay.
21 The Commission will now conduct formal deliberations
22 concerning whether to grant the petition whether in
23 whole or in part or to deny the petition. If the
24 Commission chooses to grant the petition it needs to
25 determine what conditions of approval to impose.

1 I would note for the parties and the public
2 that during the Commission's deliberations the Chair
3 will not entertain additional input from the parties
4 or the public unless those individuals or entities are
5 specifically requested to do so by the Chair.

6 If called upon I would ask that any
7 comments be limited to the question at hand.

8 Commissioners, let me confirm that each of you have
9 reviewed the record and read the transcripts for any
10 meeting that you may have missed and are prepared to
11 deliberate on the subject docket. After I call your
12 name would you please signify with either an "aye" or
13 "nay" that you are prepared to deliberate on this
14 matter.

15 Commissioner Biga?

16 COMMISSIONER BIGA: Yes.

17 CHAIRMAN CHOCK: Commissioner Contrades?

18 COMMISSIONER CONTRADES: Aye.

19 CHAIRMAN CHOCK: Commissioner Makua?

20 COMMISSIONER MAKUA: Aye.

21 CHAIRMAN CHOCK: Commissioner Matsumura?

22 COMMISSIONER MATSUMURA: Aye.

23 CHAIRMAN CHOCK: Commissioner McDonald?

24 COMMISSIONER McDONALD: Aye.

25 CHAIRMAN CHOCK: Commissioner Teves

1 absent. Commissioner Inouye?

2 COMMISSIONER INOUE: Aye.

3 CHAIRMAN CHOCK: Commissioner Heller?

4 COMMISSIONER HELLER: Aye.

5 CHAIRMAN CHOCK: Chair is also prepared to
6 deliberate on this matter. The goal today is to
7 determine by way of motion the Commission's decision
8 on whether to grant in whole or in part Petitioner's
9 request to reclassify the subject property or to deny
10 the petition.

11 If a decision is reached today and based
12 the Commission's guidance staff will be directed to
13 draft appropriate Findings of Fact, Conclusions of Law
14 and Decision and Order reflecting the Commission's
15 decision. Commissioners, what is your pleasure on
16 this matter today?

17 COMMISSIONER McDONALD: (Raising hand)

18 CHAIRMAN CHOCK: Commissioner McDonald.

19 COMMISSIONER McDONALD: Thank you, Chair
20 Chock. Regarding petition A12-795 West Maui Land
21 Company, Inc. Kahoma Residential, LLC, as you know in
22 the past, this past go around I was in full support
23 of this project. I do believe that the evidence
24 presented in this case does meet our decision-making
25 criteria of HRS 205-17 as well as HAR 15-15-77.

1 I believe this is an infill project. And I
2 am in full support of this 201-H county-approved
3 project as well. Therefore, Mr. Chair, I'd like to
4 move this Commission to consider the
5 reclassification -- to approve the reclassification of
6 approximately 16.7 acres of land from the Agriculture
7 District to the Urban District at Lahaina, Maui for a
8 residential subdivision to provide 68 single-family
9 affordable housing units to families earning less than
10 160 percent of the median family income of families on
11 Maui County Hawai'i, TMK No. 2-4-5-10, parcel 5.
12 Thank you.

13 CHAIRMAN CHOCK: Motion to approve by
14 Commissioner McDonald. Any second? Seconded by --
15 I'm sorry. Commissioner Heller.

16 COMMISSIONER HELLER: Yes, thank you. I
17 second the motion and I'd like to suggest a
18 clarification. First, the Petitioner today suggested
19 an additional condition having to do with
20 archaeological monitoring during any mass grading or
21 installation of utilities. I think that should be
22 included as a condition.

23 Generally I would support the proposed
24 conditions as suggested with the revisions from the
25 Office of Planning. If you would accept that as a

1 friendly amendment.

2 COMMISSIONER McDONALD: Yes. Actually,
3 Commissioner Heller, that's a good point. I have that
4 condition actually noted but I appreciate the
5 clarification. I would like to include that condition
6 as far as the requirement for archaeological
7 monitoring during any ground disturbance activities.
8 Thank you, Commissioner Heller. Accepted.

9 COMMISSIONER HELLER: Okay. And just a
10 comment that I'd like to make at this point with
11 respect to the two Intervenors. I recognize and
12 appreciate the fact that you've done a tremendous
13 amount of work. And I'd certainly know that you did
14 it out of a sincere desire to do what you believe is
15 best for the community. And I want to thank you for
16 the efforts that you put in.

17 When we make these decisions we can't
18 always make everybody happy. There's inevitably going
19 to be somebody who's going to be disappointed by the
20 decision of the Commission. But I definitely
21 appreciate what you've done and want to thank you for
22 it.

23 CHAIRMAN CHOCK: Thank you, Commissioner
24 Heller. Any other comments, Commissioners?
25 Commissioner Inouye.

1 COMMISSIONER INOUE: Thank you, Chair. I
2 wanted to second what Commissioner Heller said of the
3 Intervenor. I would like to offer another friendly
4 amendment which I think I did earlier. It's to the
5 standard condition that we have saying that the
6 Petitioner shall develop the petition Area in
7 substantial compliance with the representations made
8 to the Commission. I want to add, comma, "as
9 reflected in these Findings of Fact, Conclusions of
10 Law and Decision and Order. And I offer that friendly
11 amendment.

12 COMMISSIONER McDONALD: Thank you,
13 Commissioner Inouye. It's accepted.

14 CHAIRMAN CHOCK: So noted.

15 COMMISSIONER INOUE: Let me make one more
16 comment. I believe the condition that was talked
17 about as far as -- and I'm looking at the particular
18 Findings of Fact and Decision and Order that was
19 written by, I believe, the Petitioner after taking
20 into account the comments by OP. And I'm looking at
21 Condition No. 7. Is that, Commissioner Heller, is
22 that what the condition you would like to see on that?
23 I don't know if you've seen it.

24 COMMISSIONER HELLER: I don't have it in
25 front of me right now. But in general the OP comments

1 were what I was suggesting we base our draft on.
2 Condition 7 as set forth in here is pretty much our
3 standard condition that in the event archaeological
4 resources or human remains are found that work would
5 stop and monitoring would come in and so forth.

6 But I'm suggesting that *in addition* to that
7 we adopt the suggestion of the Petitioner that for any
8 mass grading or underground utility work, anything
9 where there's going to be substantial digging, that
10 there would be monitoring while that happens.

11 COMMISSIONER INOUE: Okay. Thanks.
12 That's all I had. Thanks.

13 CHAIRMAN CHOCK: Thank you, Commissioner
14 Inouye. Commissioner 'Lindsey'.

15 COMMISSIONER MAKUA: I just had some
16 comments. I understand that my kuleana, well, a bulk
17 of my kuleana here is of the cultural focus. And I
18 just wanted to acknowledge that I'm hearing -- I
19 appreciate you folks coming here as Intervenors and
20 the time that it took to be here.

21 In May it's going to be two years that I've
22 been here. And in the two years I've heard some
23 really eye-opening testimony and information. I just
24 wanted to say that, you know, a lot of times here I
25 hear the County's plea for affordable housing and

1 talking about the slow process. I just feel that a
2 lot of that slow process can be remedied by the
3 County.

4 We've heard in the past Jo-Ann Ridao
5 testifying that the County has no cultural expert and
6 has nobody on staff who can -- and even confirm that
7 they don't even read the cultural impact statements.
8 They just check off that they're there. And I just
9 feel that the County needs to be accountable. And it
10 could save a lot of time and a lot of trouble and a
11 lot of the slow process if those things are done.

12 For me I was born raised here on Maui also.
13 And I understand the need for affordable housing. I
14 understand the need for our construction workers to
15 work. I also understand that as a community I think
16 it's important that we support each other.

17 You know, like a little example I said
18 Walgreen's. I've seen the union guys over there with
19 the sign. I've never stepped foot in the Walgreen's
20 because I know that our guys didn't work on that. I
21 support the construction workers.

22 But I just feel like there's gonna come a
23 time that there's gonna have to be a reciprocated
24 support. We cannot just always support every
25 development because guys gotta work.

1 But in looking at the cultural impact of
2 this area I was a little -- I hear the genuine -- I
3 feel like our Petitioner did genuinely attempt to
4 find the cultural, if there were any, adverse cultural
5 impacts that would affect, that would be, you know,
6 implicated by this area.

7 I read in your cross-examination of Mr. Lee
8 you asked him, Ms. Bolomet, about if Jenny Picket and
9 Hinano Rodrigues were practitioners, if he would
10 consider them practitioners. Hinano Rodrigues is a
11 practitioner from Ukumehame, somebody who has a great
12 reputation as well as Jenny Pickett. I trust that
13 they did their job when they went out there.

14 As a practitioner myself there's protocols
15 that are followed. I'm a hula practitioner. And in
16 hula, hula encompasses a variety of other practices.
17 In hula we study oli, oli which encompasses history
18 and protocol, ceremony and all those things.

19 I wouldn't be so bold to say I'm a hula
20 practitioner and I can go to any island and know the
21 traditions of hula on any island because those
22 traditions change and are different.

23 So I found Mr. Lee's testimony and presence
24 a little bit mahaoi. I understand his, he links,
25 lines up his family mo'okuauhao to this area. My

1 family mo'okuauhau goes to all the different islands.
2 But I still wouldn't go to every island and assume
3 that I'm an expert on every island and know what to do
4 on every island.

5 So in that I believe that culturally our
6 Petitioner has full-filled their kuleana and I will be
7 supporting this docket today.

8 CHAIRMAN CHOCK: Thank you very much.
9 Commissioner Biga.

10 COMMISSIONER BIGA: Aloha, everyone. This
11 is a case that is, I guess, torn. It's a split within
12 me. As I made a statement before I was born and
13 raised in Lahaina. So I understand what's happening
14 there. I appreciate everyone that has been before us
15 to plead their case, especially Ms. Bolomet and
16 Ms. Lincoln. That's hard work. I understand the
17 things that you guys had to go through, but I gotta
18 remember the facts of law.

19 And this is what the Commission needs to
20 look at to make our decisions. So with that I want to
21 say I will also support this development. Thank you.
22 Thank you.

23 CHAIRMAN CHOCK: Thank you, Commissioner
24 Biga. Any other comments, Commissioners? The
25 executive officer please poll the Commission.

1 MR. ORODENKER: Thank you, Mr. Chair. The
2 motion was made by Commissioner McDonald to approve
3 reclassification of approximately 6.7 acres of land --
4 16.7 acres, I'm sorry, 16.7 acres of land from the Ag
5 to Urban to construct 68 affordable family homes.
6 Motion was seconded by Commissioner Heller and with a
7 friendly amendment to include conditions proposed by
8 the Petitioner regarding agricultural monitoring
9 during construction -- archaeological -- I'm sorry.

10 I can't read my own handwriting -- which
11 was then amended by Commissioner Inouye to clarify
12 that the property is to be constructed in substantial
13 compliance. Commissioner McDonald?

14 COMMISSIONER McDONALD: Yes.

15 MR. ORODENKER: Commissioner Heller?

16 COMMISSIONER HELLER: Yes.

17 MR. ORODENKER: Commissioner Inouye?

18 COMMISSIONER INOUE: Yes.

19 MR. ORODENKER: Commissioner Contrades?

20 COMMISSIONER CONTRADES: Yes.

21 MR. ORODENKER: Commissioner Makua?

22 COMMISSIONER MAKUA: Aye.

23 MR. ORODENKER: Commissioner Matsumura?

24 COMMISSIONER MATSUMURA: Aye.

25 MR. ORODENKER: Commissioner Biga?

1 COMMISSIONER BIGA: Aye.

2 MR. ORODENKER: Chair Chock?

3 CHAIRMAN CHOCK: Yes.

4 MR. ORODENKER: Mr. Chair, the motion
5 carries unanimously.

6 CHAIRMAN CHOCK: Thank you very much,
7 parties. I'd also like to thank at the end of each
8 petition the hard work of our staff, Holly, Walter,
9 Riley, Dan. Thank you all for your hard work. I
10 don't think we have other staff here today, Scott,
11 who's also been a party to a lot of these proceedings.
12 But anyway, at any rate, thank you all very much for
13 your time and effort and have a great day. We're
14 adjourned.

15 MR. GEIGER: Chair, if I could just have a
16 question. I'm sorry. When will the findings and
17 conclusions be set for approval?

18 CHAIRMAN CHOCK: Staff will be in touch
19 within the next couple of days to let you know.

20 MR. GEIGER: Thank you. Thank you,
21 Commission.

22

23 (The proceedings were adjourned at 11:20 a.m.)

24 --oo00oo--

25

C E R T I F I C A T E

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

That I was acting as court reporter in the foregoing LUC matter on the 21st 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 matters.

DATED: This _____ day of _____ 2013

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