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LAND USE COMMISSION

STATE OF HAWAI'I

HEARING AND ACTION	PAGE
SP14-404 JAS. W. GLOVER (Hawai'i)	) 6
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(Maui)	)
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_____	)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at the Maui Arts & Cultural Center, Haynes Meeting Room, One Cameron Way, Kahului, Maui, Hawai'i, commencing at 9:35 a.m. on November 20, 2014, 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:

EDMUND ACZON

BRANDON AHAKUELO

KENT HIRANAGA

AARON MAHI

CHAIR CHAD McDONALD

JONATHAN SCHEUER

ARNOLD WONG

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK: RILEY HAKODA

STAFF PLANNER: SCOTT DERRICKSON/BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: HOTAI ZERBA

Docket No. SP14-JAS. W. GLOVER

For the Petitioner: RANDY VITOUSEK, ESQ.

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

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

Docket No. SP92-380 Hawaiian Cement-Pu'unene Rock  
Quarry (Maui)

For the Petitioner: CARLIN FUKUDA, Atty. at Law

For the County: KRISTIN TARNSTROM,  
Deputy Corporation Counsel

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

## Also Present:

For Hawaiian Cement: DAVE GOMES

For R.T. Tanaka Engineering: ROBERT TANAKA

Docket No. DR14-51 TOM PIERCE, ESQ.  
Maui Lani Neighbors, Inc.

## PUBLIC TESTIMONY

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2		
3	Clare Apana	9, 40, 65
4	Will Camber	37
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1                   CHAIRMAN McDONALD: Good morning. I'd  
2 like to call the state of Hawai'i Land Use Commission  
3 to order. First item of business is the adoption of  
4 minutes from our October 12th and 13th meetings.  
5 Commissioners, any revisions to the meeting Minutes?  
6 Seeing none, do I have a motion to approve?

7                   COMMISSIONER AHAKUELO: Motion.

8                   COMMISSIONER WONG: Second.

9                   CHAIRMAN McDONALD: Motion to approve by  
10 Commissioner Ahakuelo, seconded by Commissioner Wong.  
11 All those in favor say "Aye". "Aye". Any opposed?  
12 The Minutes are adopted. Mr. Orodenger, would you  
13 please review the tentative meeting schedule.

14                  MR. ORODENER: Thank you, Mr. Chair.  
15 Tomorrow we are on O'ahu for continuation of Halekua  
16 Development Corporation Motion to Amend. On December  
17 10th and 11th we have a site visit to Kaua'i Community  
18 College -- tentative site visit to Kaua'i Community  
19 College Kapa'a Highlands. Actually I believe at this  
20 point that may be changed. We'll have a meeting,  
21 continued hearing on Halekua Development Corporation  
22 on O'ahu.

23                  That brings us through the end of the  
24 year, Mr. Chair.

25                  CHAIRMAN McDONALD: Thank you,

1 Mr. Orodenger.

2 MR. ORODENER: Oh, I'm sorry. On January  
3 21st to 22nd we have Honokoa Properties on Kona.

4 CHAIRMAN McDONALD: Has that January 21st-  
5 22nd meeting been confirmed?

6 MR. ORODENER: It's tentative at this  
7 point, Mr. Chair.

8 CHAIRMAN McDONALD: Thank you. This is a  
9 meeting on Docket No. SP14-404 JAS. W. GLOVER  
10 (Hawai'i) to consider a request for Special Permit for  
11 quarry and other support services and accessory uses  
12 on the 140-acre parcel in Honohononui, Waiakea, South  
13 Hilo, Island of Hawai'i, Tax Map Key Nos.:  
14 (3)2-1-13:004. Will the Applicants or its  
15 representatives please identify themselves for the  
16 record.

17 MR. VITOUSEK: Good morning, Members of  
18 the Commission. I'm Randy Vitousek. I'm counsel for  
19 James Glover. With me is Mike Perring who is with  
20 James Glover.

21 CHAIRMAN McDONALD: Good morning. County,  
22 could you please state your name.

23 MR. BRILHANTE: Good morning. Deputy  
24 Corporation Counsel William Brilhante on behalf of the  
25 County of Hawai'i Department of Planning. Good

1 morning, Chair, Commissioners.

2 CHAIRMAN McDONALD: Good morning.

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

7 CHAIRMAN McDONALD: Good morning. On  
8 August 1st, 2014 the Commission received Hawai'i  
9 County Windward Planning Commission's Decision and  
10 Findings and accompanying Exhibits 1-45 regarding  
11 establishing a new quarry.

12 On September 12, 2014 the Commission  
13 received Applicant's representative's notice that the  
14 Petitioner agreed to waive the 45-day requirement and  
15 request that the application reconsideration be held  
16 in approximately 90 days.

17 On November 7th, 2014 the Commission  
18 received Petitioner's Special Permit filing fee. And  
19 on November 10, 2014 the Commission sent a November 20  
20 and 21st, 2014 LUC agenda notice to the parties and  
21 to the Statewide Oahu, Hawai'i and Maui filing lists.

22 On November 14, 2014 the Commission  
23 received Petitioner's Memorandum in Support of  
24 Approval of Special Permits and Exhibits 1 through 4.

25 On November 18, 2014 the Commission

1 received correspondence from the Department of Defense  
2 regarding updated archaeological information relevant  
3 to the Petition Area.

4 Let me briefly describe our procedures for  
5 today. First, I will call those individuals desiring  
6 to provide public testimony to identify themselves.  
7 All such individuals will be called in turn to our  
8 witness box where they will be sworn in prior to their  
9 testimony.

10 After completion of public testimony  
11 portion of the proceedings, the Applicant will make  
12 his presentation. After completion of the Applicant's  
13 presentation we will receive any public comments from  
14 the Maui County Planning Department and then the State  
15 Office of Planning's comments. Excuse me.

16 After completion of the County's  
17 presentation we will receive any public comments from  
18 the State Office of Planning as well as the County of  
19 Hawai'i. Thank you.

20 MR. BRILHANTE: Thank you.

21 MR. YEE: Thank you.

22 CHAIRMAN McDONALD: The Chair would also  
23 note from time to time we'll call for short breaks.  
24 Are there any questions on our procedures for today?  
25 Any questions on our procedure today?



1 MR. YEE: No.

2 CHAIRMAN McDONALD: Thank you. Is there  
3 anyone signed up for public testimony, Mr. Orodenker?  
4 Seeing no public testimony, anybody in the audience  
5 wishing to provide public testimony on this matter?

6 MS. deNAI: I can testify for more than  
7 one project.

8 CHAIRMAN McDONALD: Yes. Right now we're  
9 taking public testimony for the Jas. Glover agenda  
10 item. Good morning.

11 PUBLIC WITNESS: Good morning.

12 CHAIRMAN McDONALD: Let me swear you in.

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

16 THE WITNESS: Yes.

17 CHAIRMAN McDONALD: Please state your name  
18 and address for the record.

19 THE WITNESS: Clare Apana. Wailuku, Maui.

20 CHAIRMAN McDONALD: Please proceed.

21 THE WITNESS: Good morning, Commissioners.  
22 I just have one simple question. Why is this being  
23 held on Maui when this is for the Big Island? It's  
24 very difficult to get plane fare to come to testify.  
25 So I believe that projects that are on islands such as

1 Maui or Lana'i, any of those islands, should be in the  
2 county and jurisdiction of the island that it belongs.  
3 Thank you. That's really what I wanted to say and ask  
4 that question.

5 CHAIRMAN McDONALD: Thank you for your  
6 testimony. Anybody in the audience wishing to provide  
7 public testimony on the JAS. Glover agenda item?  
8 Seeing none, Petitioner, are you prepared to proceed  
9 with your presentation?

10 MR. VITOUSEK: Yes. Thank you, members of  
11 the Commission. This is an application for a Special  
12 Permit for approximately 85 acres in Hilo.  
13 Traditionally companies like Glover that were doing  
14 quarrying permits would apply to the Hawai'i County  
15 Planning Commission for quarrying sites of less than  
16 15 acres because they can be handled by the county  
17 planning commissions without coming to the Land Use  
18 Commission.

19 So back in 2012 Glover applied for a  
20 10-acre permit. In the comment cycle the Land Use  
21 Commission commented that it would prefer if  
22 Applicants would apply for the whole parcel rather  
23 than just for areas under 15 acres. An agreement was  
24 reached between the County and the Land Use Commission  
25 and Glover that after the 10-acre Special Permit was

1 approved that Glover would apply for a Special Permit  
2 for the balance of the 140-acre parcel that Glover  
3 leases from Kamehameha Schools that, in other words,  
4 the balance that was not currently covered by a  
5 Special Permit.

6           So this Permit Application is for  
7 85 acres. It's for a continuation of quarrying use  
8 getting rock and other aggregates. Glover currently  
9 has four active Special Permits within the same 140-  
10 acre parcel. And what we're applying for is a Special  
11 Permit to quarry the portions of the 140-acre parcel  
12 that are not currently being quarried.

13           So the matter's gone through the Windward  
14 Planning Commission. The Special Permit Application  
15 was approved by the Windward Planning Commission.  
16 There were a couple of conditions that related to  
17 protection of I'o, Hawaiian Hawks, of Nene, of the  
18 Hawaiian Hoary Bat and a flora/fauna survey where the  
19 language of the Planning Commission's conditions  
20 required review and approval by the U.S. Fish and  
21 Wildlife Service.

22           After discussions with the County we  
23 agreed that the better approach would be for the  
24 review and approval and satisfaction of conditions to  
25 be by the Planning Department with input from the U.S.

1 Fish and Wildlife Service. So we were able to reach  
2 an agreement with the County about revising those  
3 conditions to make it clear that the County, as the  
4 regulatory agency responsible for special permits, had  
5 the Authority to review and approve compliance with  
6 conditions.

7 So with that the proposed revised  
8 conditions were included in the memorandum that we  
9 filed last week sometime. Then coming up to hearing,  
10 you know, on Tuesday evening, I went and reviewed your  
11 website and I saw this letter from the Department of  
12 Defense.

13 Mr. Orodener called me the first thing  
14 the next morning to make sure that we had seen it  
15 because we weren't copied on it. Basically what it  
16 seems to say is that a further archaeologic survey  
17 that was done by the Department of Defense in  
18 furtherance of their application to do a live firing  
19 range right nextdoor to the quarry site, disclosed  
20 archaeologic sites, the closest to which is a hundred  
21 meters from the property line between the quarry site  
22 and the Department of Defense property.

23 They say -- I wish in a way that they'd  
24 been a little more rigorous, the Department of Defense  
25 had, in how it presented the historic sites. Because

1 they said that three of them were newly discovered and  
2 that one was an existing site. Well, one of the newly  
3 discovered sites is actually the old Puna Trail.

4 That's what they refer to as site No. 30038. That's  
5 the SHPD number for the site. Well, that trail has  
6 been identified as a historic site for a long time.  
7 And it's actually specifically referred to on page 7  
8 of the Special Permit that the Planning Commission  
9 issued.

10 In other words, it said that the Planning  
11 Commission recognized that the old Puna Trail ran just  
12 outside of the quarry property in the Department of  
13 Defense property along the southern boundary of the  
14 property.

15 So that site was actually considered by  
16 the Planning Commission and specifically referenced in  
17 the Special Permit that wasn't mentioned by the  
18 Department of Defense.

19 The other site that was within or that was  
20 about a hundred meters, supposedly, from the property,  
21 is 21658 which is described in the new Archaeological  
22 Inventory as a site that involves 5 ahu that are  
23 probably associated with the trail. And that site was  
24 specifically referenced in the archaeologic study that  
25 was done by Glenn Escott that was reviewed by SHPD as

1 part of the Special Permit.

2 In other words, Mr. Escott pointed out in  
3 the Archaeologic Survey that a previous inventory  
4 level survey had been done on the KMR property and  
5 that it included 3 archaeologic sites including a  
6 group of 5 ahu, possibly markers to denote the trail  
7 set parallel to the Puna Trail, and a modified natural  
8 lava blister.

9 That's the same site that the Department  
10 of Defense is referring to now saying site 21658 is a  
11 complex of 5 stacked stone mounds built along the edge  
12 of a collapsed lava blister and that they're thought  
13 to be in association with the old Puna Trail.

14 So -- and I should also point out the 2  
15 other sites that are referred to by the Department of  
16 Defense, that is 3009 and 3008 are, if you look at the  
17 actual Archaeological Inventory Survey that was done by  
18 the Department of Defense, their archaeologist  
19 recommends "no further action" for those sites.

20 In other words, their archaeologist  
21 recommends that those sites do not need to be  
22 preserved, that the data content of those sites has  
23 already been recovered and that no further action is  
24 required.

25 So I think that if the Department of

1 Defense had been a little bit more rigorous in how it  
2 presented that, we would see that those sites were  
3 already considered by the Planning Commission, or at  
4 least the trail is specifically referenced in the  
5 Special Permit. And the other site, the 5 ahu, that  
6 was in the Archaeological Survey that was reviewed by  
7 SHPD when SHPD approved the Archaeological Inventory,  
8 asked for a monitoring plan, and approved the  
9 monitoring plan before this Special Permit was  
10 approved.

11           Mr. Orodenker mentioned that the  
12 Commission may take the position that the permit has  
13 to go back down to the Planning Commission if further  
14 evidence has to be taken. And, Glover completely  
15 understands the constitutional duty of the Land Use  
16 Commission to preserve historic sites and to preserve  
17 cultural sites of importance. We absolutely  
18 understand that.

19           We don't want to create a controversy  
20 where there really isn't any controversy. So we have  
21 agreed that if the Commission decides that it should  
22 go back down, that's okay with us. But I just wanted  
23 to give a little bit of background before we did that  
24 because we really don't feel that there's anything new  
25 in the DOD letter that needs to be addressed by this

1 Commission.

2           The question about the boundary, well,  
3 our permit is going to be for the boundaries of the  
4 Kamehameha Schools' property. We're not going to go  
5 outside the boundaries. They asked that the  
6 boundaries be delineated. We are not going to quarry  
7 in any area where it's unclear as to what the boundary  
8 may be.

9           So we really put this to the Commission,  
10 to the attorneys for the Office of Planning and the  
11 County. Our position is we feel that the Commission  
12 could go ahead and decide. But if it's uncomfortable  
13 in any way, we don't want to feel that we're  
14 pressuring the Commission to decide because where  
15 archaeological sites are involved we want to make sure  
16 you're comfortable before you vote. So either  
17 approach is acceptable to the Applicant. Thank you.

18           CHAIRMAN McDONALD: Thank you.  
19 Commissioners, any questions for the Petitioner?  
20 Commissioner Mahi.

21           COMMISSIONER MAHI: Thank you for the  
22 presentation and also the, I think the open-mindedness  
23 that you have in considering the possibility that  
24 everyone should feel pretty comfortable about that  
25 area of Puna, and more important, the special cultural



1 significance of the entire area.

2 And I really appreciate that as a  
3 Commissioner that this is sensitive to our cultural  
4 concerns. I always like in a presentation, kind of  
5 like a map or some visual if that could have happened.  
6 I think I'd like to see if we could be -- some of that  
7 could be rendered for our review or at least my review  
8 too.

9 Just about 2 weeks ago I was in attendance  
10 of the Hawaiian Civic Clubs Association Conference in  
11 Waikoloa, in Kona akau, North Kona. And one of the  
12 major concerns of the Puna Hawaiian Civic Clubs was  
13 issues that we're facing. And they did not name  
14 Glover. But they did talk about issues that faced a  
15 lot of our ancient trails and ancient cultural areas  
16 of archaeological importance and significance.

17 That there is an issue and there's going  
18 to be a rendering of our resolution that will be  
19 offered by the Association of Hawaiian Civic Clubs  
20 that there have been many violations on both sides of  
21 government.

22 And then, of course, showing no real, I  
23 guess, responsibility towards what is written by law  
24 in terms of honoring and being cognizant of many of  
25 these ancient trails.

1           So there's a resolution being pressed  
2 forward which was voted and approved by the entire  
3 convention. So in light of that I'm curious to bring  
4 up other concerns. And I think what you've presented  
5 so far is -- I'm quite pleased, actually, that that  
6 kind of thinking is being applied in this situation.

7           But I know there's information which may  
8 be coming forth. Have those that did the  
9 Archaeological Surveys, have they spoken to some of  
10 the residents of the area, especially those that  
11 are -- and I'll use the term that we use in Hawaiian,  
12 kupa 'aina -- these are people that have grown up in  
13 that area, are very aware of the cultural significance  
14 of these kinds of cultural significant places and the  
15 nature that's surrounded by them, especially when,  
16 when projects like these will occur. Have they been  
17 brought into the ring of making commentary at all?

18           MR. VITOUSEK: Yes, they have. Mr. Mahi,  
19 because there have been a series of special permits in  
20 this area --

21           COMMISSIONER MAHI: Right.

22           MR. VITOUSEK: -- and I do have exhibits,  
23 graphics that are attached both to the memo and in the  
24 record. But this is an area where there had been  
25 ongoing quarrying activities for some time. It is

1 next to -- it abuts on the Hilo landfill. It abuts on  
2 the Kilauea Military Reserve -- Keaukaha, excuse me.  
3 It's an area that was extensively bulldozed during  
4 World War II.

5               So at one point there was a question as to  
6 whether there was a remnant of another trail that went  
7 through the property. And so the Na Ala Hele  
8 Organization, SHPD, they all went to the site and  
9 evaluated that trail, determined that it was an Old  
10 Jeep Road. And they also noted that the Old Puna  
11 Trail, which has its own identified SHPD site, and has  
12 for some time, runs adjacent to the property on the  
13 Kilauea -- I'm sorry -- on the Keaukaha Military  
14 Reserve property.

15               There's been ongoing review -- there're a  
16 number of archaeological studies in the area because of  
17 the airport and because of the Keaukaha Military  
18 Reserve. And it's an area that has been quite heavily  
19 utilized for some time. So I hope that answers your  
20 question. I know that they did consult when they did  
21 the trail review.

22               COMMISSIONER MAHI: Right. Thank you.  
23 And I appreciate that. We had the same problem when I  
24 was on Burial Council. I represented Ko'olaupoko.  
25 This is with the Mokapu area which is now the Marine

1 Base.

2 MR. VITOUSEK: I'm familiar with that.

3 COMMISSIONER MAHI: And we had most of the  
4 issues out there. I'm not saying that this may be of  
5 the same nature. But I think seeing representation in  
6 terms of testimony and letters of support of the  
7 assurance that, you know, the kupa'aina are involved.  
8 They're saying, "Oh, yes. This is what we support  
9 them."

10 I think that kind of testimony is helpful.  
11 From my advisory I would like to see if our Commission  
12 would consider and take the offer that you presented  
13 to us, that we would take it back for further analysis  
14 and further consideration as was so well put by your  
15 testimony.

16 MR. VITOUSEK: We don't -- we really don't  
17 feel that there's any adverse impacts on cultural  
18 sites or endangered species. And we don't want to  
19 create any controversy by appearing to ask the  
20 Commission to vote before it's ready to vote.

21 COMMISSIONER MAHI: Thank you. Thank you  
22 very much. I would make that advisory from my  
23 standpoint.

24 CHAIRMAN McDONALD: Thank you,  
25 Commissioner Mahi. Any other questions from the

1 Commissioners? Commissioner Aczon.

2 COMMISSIONER ACZON: Mr. Chair, I just  
3 want to ask the County Planning Department if they  
4 agree or concur with the testimony.

5 MR. BRILHANTE: Thank you, Commissioner.  
6 I'm William Brilhante. Unfortunately, the letter from  
7 the Department of Defense wasn't brought to my  
8 attention until this morning from Mr. Vitousek, who  
9 brought it to my attention prior to the meeting.

10 I briefly reviewed the letter.  
11 Unfortunately, I haven't had the opportunity to  
12 discuss this matter with our planner who's been  
13 assigned to this particular application, Mr. Darren  
14 Arai back in Hilo.

15 I will say that as it relates to  
16 representations by the Applicant regarding the Puna  
17 Trail and matters with the 5 possible sites identified  
18 in the item No. 2. That matter -- the trail was  
19 significantly vetted during the Planning Commission.  
20 I think we alluded to that in our decision.

21 I will say this. This application process  
22 has been, you know, somewhat unique in that  
23 historically, like the Applicant referenced, for these  
24 types of quarry activities the Applicants always come  
25 in with the Application for a 14.999 acre piece. And

1 the whole basis for that is to make sure that the  
2 application stays within the County Planning  
3 Commission guidelines.

4 But this Applicant has been very  
5 forthcoming with the county. And, you know, this  
6 whole process has been a very collegial type process  
7 in which dialogue between the Applicant and the County  
8 has been ongoing throughout. Representations made by  
9 the Applicant has have been right spot on. We haven't  
10 had any reason to question, you know, what the  
11 representations are. When we follow up with  
12 representations made the factual findings have always  
13 come in that they are making factual representations.

14 That being said, I can't specifically  
15 comment as to, you know, what the County's position is  
16 is regarding the issues raised by the Department of  
17 Defense because I don't have that specific information  
18 in front of me as to whether or not those items were  
19 specifically considered. So at this time I'm going to  
20 have to defer to the discretion of the Commission in  
21 their decision-making authority.

22 COMMISSIONER ACZON: Thank you. Thank  
23 you, Chair.

24 CHAIRMAN McDONALD: Commissioner Scheuer.

25 COMMISSIONER SCHEUER: Good morning.

1 Chair, I have 3 general questions which might be for  
2 the County or for the Petitioner or they might both  
3 have thoughts on it. The first is, and correct me if  
4 I'm wrong, but according to my reading of the  
5 materials from the record from the Planning Commission  
6 this is adjacent to lands of the Department of  
7 Hawaiian Home Lands.

8 MR. VITOUSEK: That's correct.

9 COMMISSIONER SCHEUER: But I saw no  
10 comments or record of anything from DHHL within the  
11 materials. Now, they're voluminous and I perhaps  
12 missed them.

13 MR. VITOUSEK: I don't recall any  
14 comments.

15 MR. BRILHANTE: I will tell you this that  
16 historically the surrounding property owners are  
17 notified of the application as it comes through our  
18 office, the Planning Commission. And, therefore, I  
19 would opine that it would be safe to assume that the  
20 Department of Hawaiian Home Lands was notified of this  
21 application. And if they didn't provide comments with  
22 the application then, you know, that's pretty much  
23 where it lies.

24 COMMISSIONER SCHEUER: I just went by the  
25 record where there was the routing slip to different

1 County and State agencies, and I couldn't find any  
2 note that it was routed to the Department and they  
3 have some effect on their Trust lands there.

4 The second question and the third question  
5 I have to do with things in Exhibit 46 which is the  
6 letter from Mr. Byron Fujimoto to the Petitioner with  
7 the recommendation of approval of the Special Use  
8 Permit.

9 The first is, and I just was trying to put  
10 this together from my understanding of the record. On  
11 paragraph E on page 5 -- excuse me paragraph F on page  
12 5 it says, "The use will not substantially alter or  
13 change the essential character of the land and the  
14 present use." And the response is, "The proposed use  
15 will not substantially change the character of the  
16 land as the area is already used for quarrying  
17 activities."

18 My understanding from the record is some  
19 of the area's used for quarrying and some of the  
20 area's actually an expansion of quarrying activities.  
21 So I had a hard time understanding how quarrying land  
22 where there isn't quarrying now won't substantially  
23 alter the land. Could you clarify?

24 MR. VITOUSEK: The only way I can clarify  
25 is to say I think that the Application was clear that



1 there are areas that have been -- within the 140 acres  
2 that have been quarried, and areas that have not. So  
3 the areas that have not are the areas where the  
4 mitigation measures with respect to the flora/fauna  
5 studies and all that, would be done before there's --  
6 before there's quarrying conducted.

7 So I mean it's a change in use for  
8 particular portions of the ground. It's not a change  
9 in land use for the -- for area.

10 COMMISSIONER SCHEUER: For the entire  
11 parcel.

12 MR. VITOUSEK: Right.

13 COMMISSIONER SCHEUER: Sorry. Did the  
14 County, did you have anything to say since that was  
15 County's or the Planning Commission's letter?

16 MR. BRILHANTE: I think, as Mr. Vitousek  
17 stated that's the position that we've taken is that  
18 the general area has been -- quarrying activity has  
19 been conducted within that general area. Like I said  
20 historically it comes in for a much smaller more  
21 specified piece. That's how this whole -- this  
22 process started as to where we are today.

23 There is, you know -- the County was  
24 concerned with the flora and fauna, you know, the  
25 environmental impacts of the activity. I think we

1 required that a condition be placed on the record  
2 within the approval that a study be conducted, a  
3 baseline be conducted. And that if anything were to  
4 come up then we shall address it appropriately.

5 COMMISSIONER SCHEUER: Thank you. My last  
6 question has to do with page 7 of that same exhibit  
7 which discusses the Planning Commission's and the  
8 Land Use Commission's duties under *Ka Pa'akai*. So  
9 having reviewed the Archaeological Survey that you  
10 commissioned, there's actually a long and good  
11 discussion of the significance of Panaewa to, in  
12 particular, Hi'iaka's journey and her travels through  
13 the Panaewa Forest and her battles there.

14 And then there's -- so there's this  
15 discussion of it's a very, very significant site for  
16 the Native Hawaiian people of legendary significance.  
17 And then there's a conclusion that there's no impact  
18 under the PASH guidelines from the transformation of  
19 this further portions of this land into a quarrying  
20 activity.

21 So I sort of -- this is really following  
22 on Commissioner Mahi's who's our designated cultural  
23 seat on the Commission. (outside conversations taking  
24 place) I sense the sort of disconnect there between:  
25 Wow, this area is super important. We know that

1 outside of this area you've already mentioned DOD is  
2 planning to do live fire training. There's extensive  
3 developments around Panaewa. So you're seeing the  
4 fragmentation of this landscape, how this is not,  
5 perhaps, having something that exists of significance  
6 and might need to be mitigated. Not saying that the  
7 portion should not occur. But there is an impact that  
8 needs to speak to.

9 MR. VITOUSEK: Yes. The Panaewa Forest  
10 that's associated with Hi'iaka is a large area. And  
11 it's difficult to say whether any particular area is  
12 more associated with the historical and history. The  
13 difficulty is that this area has been in quarrying use  
14 for probably 50 years, at least 50 years. And it is,  
15 you know, as I say, adjacent to the county landfill  
16 site. It's next to the drag-strip. It's next to the  
17 shooting range. It's next to the airport.

18 So I'm not trying to demean the value of  
19 it. I'm just saying this is an area that's been  
20 substantially modified, and has been allocated in  
21 terms of land use patterns over the last 50 or more  
22 years to that type of activity.

23 So I guess what we're saying is if there  
24 is a reasonable place to continue that activity it  
25 would be in proximity to other similar uses

1 particularly in a landscape that's been significantly  
2 changed during the war by the development of the  
3 Keaukaha Military Reserve, which actually we had  
4 included some aerial photos in the application that  
5 showed historically the extent of the bulldozing and  
6 modification because of the Keaukaha Military Reserve.

7           So I guess the idea was understanding the  
8 regional importance of the landscape to cultural and  
9 traditional practices. But then focusing in on the  
10 ongoing continuation of land uses that have been  
11 allocated to that area historically, and thinking that  
12 this would be a way to continue land uses in an area  
13 where those uses had been in place for a long time and  
14 without disturbing new areas.

15           COMMISSIONER SCHEUER: If I may just a  
16 final comment, Chair.

17           CHAIRMAN McDONALD: Sure.

18           COMMISSIONER SCHEUER: My goal is that we  
19 don't make decisions that get reversed because  
20 somebody says, "Hey, you didn't consider the right  
21 thing." I don't think that's in the State's interest.  
22 I don't think that's in the Petitioner's interest. So  
23 I would really echo Commissioner Mahi's comment that  
24 maybe it was in the voluminous record and I missed it.  
25 But greater kama'aina testimony that says, "Yes, we're

1 aware of this, these things can go on. This is not  
2 impacting our practices," would give me, especially  
3 given what's on the record, greater assurance that  
4 we're not somehow failing in our duties under Ka  
5 Pa'akai and under the Constitution.

6 MR. VITOUSEK: Yes. I understand,  
7 Commissioner. That's why I offered to agree to go  
8 back if that's the direction you want to do. We do  
9 not want to create controversy where we don't feel  
10 there is controversy. We point out that we've been  
11 through hearings, the Planning Commission, there's no  
12 testimony in opposition. There's no intervention.  
13 And we're here in the same situation.

14 But, again, you know, in my experience in  
15 land use matters in Hawai'i, it is best to take steps  
16 on the front end to avoid controversy rather than try  
17 to defend it on the back end.

18 COMMISSIONER SCHEUER: Thank you.

19 MR. VITOUSEK: Thank you.

20 CHAIRMAN McDONALD: Anything else for the  
21 Petitioner, Commissioners? County, any public  
22 witnesses you want to put up?

23 MR. BRILHANTE: No. Again, William  
24 Brilhante. No public witnesses at this time. Again,  
25 just to reiterate the historic question -- (pause)

1 just to reiterate the County's position the Applicant  
2 has been extremely forthcoming, has been extremely  
3 cooperative. Information has been timely, you know,  
4 filed with the County, presented to the County.  
5 There's been good dialogue back and forth.

6           It's unfortunate that this letter from the  
7 Department of Defense wasn't timely provided to us.  
8 Because I'm confident that those issues could have  
9 been properly addressed in a timely fashion.  
10 Unfortunately it's at the 11th hour. But that being  
11 said the County doesn't object to the Commission  
12 making a determination to send it back if that's the  
13 desire of the Commission.

14           I would like to just address some of the  
15 concerns regarding maybe a cultural significant site  
16 that may have been missed or concerns that may have --  
17 that may raise down the road as it relates to  
18 significant culturally, historical sites that may have  
19 been missed in the surveys that, you know, the proper  
20 surveys and the required surveys that have been  
21 conducted up until this time.

22           And one of the proposed conditions for  
23 approval, if you look at Condition No. 12, "Should any  
24 remains of historic site such as rock walls, terraces,  
25 et cetera, be identified, then, all work shall -- all

1 work in the area shall immediately cease and the DLNR,  
2 SHPD shall be immediately notified until such time  
3 that mitigation, proper mitigation measures take place  
4 that work shall be stopped until such point in time.

5 So, you know, when we do our work, when  
6 the County accepts the archaeological studies and all  
7 the reports, we know that there's no possible way it  
8 can be completely inclusive of any type of  
9 archaeological or historical issues that arise.

10 That's why we have, we're proposing this  
11 Condition No. 12 so that there's a specific burden on  
12 the Applicant to say: "Okay. If during your  
13 processes something were to develop, an issue were to  
14 develop, you have a burden to take specific remedial  
15 actions." And that's all we can really do. I think,  
16 again, that's the County's position. And we hope the  
17 Commission understands where the County's coming from  
18 as to that.

19 We have no objections with the proposed  
20 conditions as they were presented to the Commission:  
21 Conditions No. 1 through 17. Thank you.

22 CHAIRMAN McDONALD: Thank you, County.  
23 OP?

24 MR. YEE: The Office of Planning was not  
25 aware of the Department of Defense letter until this

1 morning, so we cannot comment upon that. We will have  
2 to defer to the LUC on the issue. With respect to the  
3 record, other than that the Office of Planning had no  
4 objections.

5               We just want to acknowledge, if we may,  
6 the fact that we understand the LUC's timetables on  
7 these Special Permits is very short. That when these  
8 permits are completed decisions need to be made  
9 quickly. And that the Land Use Commission has a  
10 backlog of cases, many of which are time sensitive,  
11 many of which are important to each of the islands'  
12 Members for each of those matters.

13               Consequently we know that the LUC is  
14 working through a backlog of these cases. And given  
15 the record as it originally existed, it's simply an  
16 expansion of an existing quarrying site, it seemed  
17 like a very reasonable logistical compromise to hold  
18 this matter on O'ahu even though the Petition Area is  
19 on the Big Island.

20               So we just wanted to acknowledge that as  
21 something the Office of Planning found to be  
22 reasonable. Thank you.

23               CHAIRMAN McDONALD: Thank you, Mr. Yee. I  
24 just have a statement. I do echo Commissioner Mahi's  
25 concern with regards to protection of cultural



1 resources within the state of Hawai'i. I'm also quite  
2 disappointed in the fashion and lack of timeliness in  
3 which the Department of Defense has submitted their  
4 letter. It's unfortunate to the Petitioner as well as  
5 unfortunate to the process as a whole. But I do  
6 appreciate your understanding.

7           Unfortunately, this body is unable to take  
8 on additional evidence in rendering a decision that is  
9 based solely on the Planning Commission's record.

10           So that's my statement. Commissioners,  
11 anything else for the Petitioner or parties? What's  
12 your pleasure on this matter?

13           COMMISSIONER WONG: Chair, I'd like to  
14 remand this issue back to the Planning Commission.

15           COMMISSIONER ACZON: Second.

16           CHAIRMAN McDONALD: Motion made by  
17 Commissioner Wong, seconded by Commissioner Aczon.  
18 Any discussion? Mr. Orodenger, can you please poll  
19 the Commission.

20           MR. ORODENER: Thank you, Mr. Chair. The  
21 motion is to remand this matter back to the County for  
22 further proceedings. Commissioner Wong?

23           COMMISSIONER WONG: Aye.

24           MR. ORODENER: Commissioner Aczon?

25           COMMISSIONER ACZON: Aye.

1 MR. ORODENKER: Commissioner Mahi?

2 COMMISSIONER MAHI: Aye.

3 MR. ORODENKER: Commissioner Scheuer?

4 COMMISSIONER SCHEUER: Aye.

5 MR. ORODENKER: Commissioner Hiranaga?

6 COMMISSIONER HIRANAGA: Aye.

7 MR. ORODENKER: Commissioner Ahakuelo?

8 COMMISSIONER AHAKUELO: Aye.

9 MR. ORODENKER: Commissioner Song is  
10 absent. Chair McDonald?

11 CHAIRMAN McDONALD: Aye.

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

14 CHAIRMAN McDONALD: Thank you, parties.  
15 We'll take a 5 minute recess so the parties and new  
16 agenda item can get situated.

17 MR. VITOUSEK: Thank you very much.

18 (10:12 a.m. recess)

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1 SP92-380 Hawaiian Cement Pu'unene Rock Quarry

2 CHAIRMAN McDONALD: (10:16) Okay. We're  
3 back on the record. This is a meeting on docket No.  
4 SP92-380 Hawaiian Cement Pu'unene Rock Quarry (Maui)  
5 to Consider a Request for Proposed Amendments to  
6 Special Permit for Hawaiian Cement Pu'unene Rock  
7 Quarry, Pulehunui, Kahului, Island of Maui, Hawai'i  
8 Tax Map Nos. (2) 3-8-004 parcel 1.

9 To expand the quarry area by approximately  
10 42 acres at TMK (2) 3-8-004 parcel 1 portion thereof  
11 to include the 9.697-acre portion of the quarry within  
12 the permitted area referred to as Area "C".

13 To delete Condition No. 16 of SP92-380 as  
14 the Applicant has submitted said updated map to the  
15 Department of Planning, and to approve a 15-year time  
16 extension to SP92-380.

17 Will the Applicant or its representatives  
18 please identify themselves for the record.

19 MS. FUKUDA: Good morning, Chair and  
20 Members of the Land Use Commission. My name is  
21 Karlynn Fukuda of Munekiyo and Hiraga, Inc. Joining  
22 me today are Dave Gomes from Hawaiian Cement as well  
23 as Robert Tanaka from R.T. Tanaka Engineering. Thank  
24 you.

25 CHAIRMAN McDONALD: Good morning,

1 Ms. Fukuda.

2 MS. TARNSTROM: Hi. I'm Kristin Tarnstrom  
3 for the Corporation Counsel, the Department of  
4 Planning and the Maui County Planning Commission.  
5 With me is Paul Fasi, the planner who worked on this  
6 Project.

7 CHAIRMAN McDONALD: Good morning.

8 MR. YEE: Good morning. Deputy Attorney  
9 General Bryan Yee on behalf of the Office of Planning.  
10 With me is Rodney Funakoshi from the Office of  
11 Planning.

12 CHAIRMAN McDONALD: Good morning. On  
13 October 10th, 2014 the Commission received the  
14 complete record of Maui Planning Commission's  
15 proceedings recommending approval of Applicant's  
16 application regarding the amendments to the Special  
17 Permit.

18 On November 10, 2014 the Commission sent  
19 the November 20 and 21, 2014 LUC agenda notice to the  
20 parties and to the statewide O'ahu, Hawai'i and Maui  
21 mailing lists. Let me briefly describe our procedure  
22 on this docket.

23 First, I'll call those individuals  
24 desiring to provide public testimony to identify  
25 themselves. All such individuals will be called in

1 turn to our witness box where they will be sworn in  
2 prior to their testimony. After completion of the  
3 public testimony, other proceedings, the Applicant  
4 will make its presentation.

5 After completion of the Applicant's  
6 presentation we will receive any public comments from  
7 the Maui County Planning Department. After completion  
8 of County's presentation we will receive any public  
9 comments from the State Office of Planning. After  
10 receiving public comments from the State Office of  
11 Planning the Commission will conduct its  
12 deliberations.

13 The Chair would also note from time to  
14 time I'll be calling for short breaks. Are there any  
15 questions on our procedures for today?

16 MS. TARNSTROM: No.

17 MR. YEE: No.

18 CHAIRMAN McDONALD: Thank you. Is there  
19 anybody signed up, Mr. Orodenger, to provide public  
20 testimony?

21 MR. ORODENKER: Mr. Chair, we have Will  
22 Camber and Keoni Gomes. Will Camber first, please.

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

1 THE WITNESS: I do.

2 CHAIRMAN McDONALD: Please state your name  
3 and address.

4 PUBLIC WITNESS: My name is Will Camber.  
5 I'm with Walker Industries. And I'm in support of  
6 Hawaiian Cement's request for State Land Use  
7 Commission Special Use Permit to continue operation of  
8 the Pu'unene Quarry. For over 25 years Hawaiian  
9 Cement quarry and batch plant operation has been  
10 located at Pu'unene, Central Maui. This central  
11 location has been essential in providing concrete and  
12 aggregate for many public and private projects.

13 This location has been instrumental in  
14 controlling delivery costs as well as providing timely  
15 concrete for many projects and a necessity for future  
16 projects on Maui. Some of the projects that we have  
17 used concrete from the Pu'unene location include the  
18 Lahaina Bypass Road, the sound walls, also the  
19 drainage structures for the Kahului Airport Access  
20 Road Phase 1, and many residential sound wall projects  
21 throughout the island.

22 Hawaiian Cement has provided quality  
23 concrete that meet all specifications which is  
24 essential in all of our projects. As someone that has  
25 been in the industry for 20 years I'm familiar with

1 this location. I ask that the State Land Use  
2 Commission approve Hawaiian Cement's request for  
3 Special Use Permit for continuing operation of the  
4 Pu'unene quarry. Thank you.

5 CHAIRMAN McDONALD: Thank you. Parties,  
6 any questions? Commissioners, any questions? Thank  
7 you.

8 THE WITNESS: You're welcome.

9 MR. ORODENKER: Keoni Gomes.

10 KEONI GOMES

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

13 THE WITNESS: Yes.

14 CHAIRMAN McDONALD: Please state your name  
15 and address.

16 THE WITNESS: My name is Keoni Gomes. I  
17 reside at 79 Hukupuhipaka Street in Kahului. I am an  
18 employee of TJ Gomes Trucking Company. My family's  
19 been operating that company since 1976. We have been  
20 purchasing various products from Hawaiian Cement  
21 Pu'unene for the last 25 years.

22 Our company has delivered to many major  
23 projects all over the County of Maui, and specifically  
24 in Maui. Items that have gone out of the Pu'unene  
25 quarry in our trucks have gone to projects such as the

1 access road Phase 1 in Kahului, Papa Avenue  
2 rehabilitation, Wakea Avenue rehabilitation, Hina  
3 Avenue rehabilitation, Wells Street reconstruction.  
4 We've delivered to hundreds of others within the  
5 neighborhoods as far as delivering to private  
6 homeowners and private commercial subdivisions and  
7 buildings.

8 We are in support of Hawaiian Cement  
9 having their permit approved. They've become an  
10 essential supplier to us. And we look forward to  
11 doing business with them for many years to come.  
12 Thank you.

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

16 THE WITNESS: Thank you.

17 CHAIRMAN McDONALD: Anybody else in the  
18 public wishing to provide public testimony on this  
19 agenda item? Please step forward.

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

23 THE WITNESS: Yes.

24 CHAIRMAN McDONALD: Thank you. Please  
25 state your name and address and proceed.



1 PUBLIC WITNESS: I'm Clare Apana. I live  
2 in Wailuku, Maui.

3 CHAIRMAN McDONALD: Please proceed.

4 PUBLIC WITNESS: Commissioners, I have a  
5 simple request to ask of you. I have for the last 8  
6 years been trying to get the results of the Special  
7 Use Permit obtained by HC&S -- oh, sorry, Hawaiian  
8 Cement -- and have been unsuccessful in getting that.  
9 It was in a Special Use Permit related to this very  
10 thing. The sand was taken for their quarry and  
11 various activities.

12 I would just like to ask you to make a  
13 condition that they turn in the completed sand mining,  
14 the cultural monitoring report for all of their  
15 Special Use Permits. I just ask you that because I  
16 have been unsuccessful in getting this from State  
17 Historic Preservation Department and the County  
18 Council, the Planning Commission of Maui.

19 But you are the ones who put the Special  
20 Use Permit condition upon them, that they would have  
21 cultural monitoring and then they would have a report.  
22 I believe these areas are quite far down the line and  
23 there's no report.

24 Activity started in 1990. And these  
25 Special Use Permits seem to continue on. And I'd like

1 to ask you to please ask them, make a condition that  
2 they will turn in all of the cultural monitoring  
3 reports for all of their Special Use Permits related  
4 to the products that they're making including the sand  
5 mining. Thank you very much.

6 CHAIRMAN McDONALD: Parties, any  
7 questions? Commissioners? Commissioner Mahi.

8 COMMISSIONER MAHI: So you've been asking  
9 which department? You've been asking the Hawaiian  
10 Cement to submit to your inquiry?

11 PUBLIC WITNESS: It was the State Historic  
12 Preservation Division has written them letters. The  
13 Maui County Council, it has come up in the Maui County  
14 Council. They said that they would turn it in in  
15 2010. As a matter of fact, it came up as a condition  
16 for an extended permit, Special Use Permit, by this  
17 body. And you put that condition that they should  
18 turn in their reports. And it has not been done, and  
19 also the Planning Commission.

20 So I just ask you to make this a condition  
21 before they proceed further with their activities  
22 that, they finish the conditions that were put upon  
23 them in Special Use Permits.

24 COMMISSIONER MAHI: Thank you.  
25 Commission Chair, do we have anyone that can bring

1 some light into this action that's being proposed by  
2 this public witness?

3 CHAIRMAN McDONALD: I think, Commissioner  
4 Mahi, I think we can ask that question of the  
5 Petitioner or State Office of Planning regarding the  
6 documentation that was submitted to SHPD and those  
7 types of studies that were made a part of the original  
8 Special Use Permit conditions. So you can ask that  
9 question of the Petitioner if they have a response.

10 COMMISSIONER MAHI: Yes. I'd like to ask  
11 the Petitioner if that has indeed happened -- or ask  
12 the question. Can you pose the question?

13 CHAIRMAN McDONALD: No, no, yeah. So I  
14 think after the presentation. Thank you,  
15 Commissioner. Anything else for Ms. Apana? Thank  
16 you, Ms. Apana.

17 THE WITNESS: Thank you.

18 CHAIRMAN McDONALD: Good morning.

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

22 THE WITNESS: Yes.

23 CHAIRMAN McDONALD: Thank you. Please  
24 state your name, your address and proceed.

25 THE WITNESS: I'm Johanna Kamanu. I'm

1 from Waihe'e. The reason I'm here today is because I  
2 don't think that there's one thing that has been  
3 considered in the process of this application. The  
4 Commission may or may not be aware of the ahu moku  
5 system and how it was legislated so that it stands as  
6 a body that is to be consulted whenever the resources  
7 are to be impacted in an area. I represent the  
8 Wailuku moku. As such HC&S's request falls under that  
9 particular area.

10 All I'm asking is that I'm not trying to  
11 stop them in what they're doing. But if we are to  
12 continue to manage the resources or what we understand  
13 is under our management, we need to start with this  
14 body and all the other agencies that have requests or  
15 make decisions on this process to include us in that  
16 decision-making process. That's all I came to say.

17 CHAIRMAN McDONALD: Thank you. Parties,  
18 any questions? Commissioners? Thank you for your  
19 testimony. Ms. Fukuda, are you prepared to proceed  
20 with your presentation?

21 MS. FUKUDA: Yes.

22 CHAIRMAN McDONALD: Please proceed.

23 MS. FUKUDA: Thank you, Chair. Good  
24 morning again to the Chair and Members of the Land Use  
25 Commission. My name is Karlynn Fukuda of Munekiyo &

1 Hiraga, Inc. As noted previously Hawaiian Cement is  
2 requesting for actions by the State Land Use  
3 Commission regarding their state Special Use Permit  
4 for the Pu'unene rock quarry. One is to expand the  
5 existing quarry area by approximately 42 acres. The  
6 second is to include an approximately 9.697-acre  
7 portion of the quarry to the permitted area. The  
8 third is to a request to delete Condition No. 16 which  
9 is for the submittal of a corrected map which was  
10 completed and submitted to the Planning Department.

11 And the last is consideration for a  
12 request of a 15-year time extension for the State  
13 Special Use Permit. I would like to note that the  
14 Applicant will continue to be in compliance with all  
15 of their existing conditions of the existing State  
16 Special Use Permit.

17 As you have heard the Pu'unene Quarry is  
18 an existing operation. And we do not anticipate any  
19 additional impacts to traffic, drainage or other  
20 utilities. The current existing permitted area for  
21 the Hawaiian Cement Pu'unene Quarry is approximately  
22 172 acres.

23 Hawaiian Cement first received permits in  
24 1992, although the quarry was in operation prior to by  
25 another owner, and received approvals for 2 amendments

1 to extend the boundaries of the quarry from this body.

2 The proposed expansion area is owned by  
3 A&B Hawai'i. And Hawaiian Cement has a long-term  
4 lease with them for approximately 350 acres of land.  
5 It is noted that based on the agreement with A&B  
6 Hawaiian Cement can only have 30 acres in active  
7 quarry at any time.

8 In May of this year the Maui Planning  
9 Commission approved a county Special Use Permit to  
10 permit quarry expansion and extension of the County  
11 Special Use Permit to 2032. The Maui Planning  
12 Commission also recommended approval of the amendments  
13 to the State Special Use Permit that were mentioned  
14 earlier.

15 The rock from the Hawaiian Cement Pu'unene  
16 quarry has been used in a variety of projects as you  
17 heard the testifiers provide today, including State  
18 Department of Transportation projects here on Maui,  
19 resurfacing of the state Mokulele Highway, and then  
20 new commercial projects such as the Target Store and  
21 TJ Max.

22 Hawaiian Cement is in need of additional  
23 rock material to support ongoing construction  
24 activities here on Maui. I would like to just address  
25 the comment that had been received earlier from the

1 public testifier if I may, Chair.

2 CHAIRMAN McDONALD: Sure.

3 MS. FUKUDA: And just note that the  
4 application that is before you today, or the permit  
5 that is before the body today, is relative to rock  
6 quarrying only. I did confirm with Mr. Gomes that  
7 they do not have a current Special Use Permit for sand  
8 mining. And I'm not sure, because our office did not  
9 work on any sand mining permits for Hawaiian Cement,  
10 if that may be for another entity here on Maui and not  
11 Hawaiian Cement. I'm not sure, but I do provide that  
12 information to the Commissioners. And that concludes  
13 our presentation. Thank you very much.

14 CHAIRMAN McDONALD: Commissioners, any  
15 questions for the Applicant? Commissioner Mahi.

16 COMMISSIONER MAHI: Yes. Relative to the  
17 witness that came forward to want to know if the  
18 Applicant is aware of the ahu moku conditions, and  
19 whether that's been addressed somehow in terms of  
20 bringing that particular question forward.

21 MS. FUKUDA: Thank you for the question,  
22 Commissioner. If I may, sorry. We are aware of the  
23 Ahu Moku Council. But we did not formally bring this  
24 Project before that Ahu Moku Council. And certainly I  
25 think that that's something that we can do in terms of

1 making contact with Ms. Kamanu and arranging a  
2 discussion with the Council in the future.

3 COMMISSIONER MAHI: Thank you.

4 MS. FUKUDA: Thank you.

5 CHAIRMAN McDONALD: Anything else,  
6 Commissioners? Does the County have any statements to  
7 make?

8 MS. TARNSTROM: I just want to reiterate  
9 that the Maui Planning Department thoroughly reviewed  
10 the application as is evident from the Planning  
11 Department Report. And the Maui Planning Commission  
12 reviewed the Petition, held a public hearing, and  
13 voted unanimously to recommend to this Commission that  
14 it accept and adopt the Petitioner's request. We  
15 hold by that recommendation. That's all.

16 CHAIRMAN McDONALD: Thank you. Mr. Yee?

17 MR. YEE: The Office of Planning has no  
18 objection to the Special Permit.

19 CHAIRMAN McDONALD: Thank you.  
20 Commissioners, any further questions?

21 COMMISSIONER SCHEUER: Yes.

22 CHAIRMAN McDONALD: Commissioner Scheuer.

23 COMMISSIONER SCHEUER: Question for the  
24 County referring to Exhibit 2. Just in the discussion  
25 of water it wasn't clear to me there's 2 things.



1 First, there's a discussion of the water sources in  
2 the area. But is there going to be an increase in use  
3 of water from the expansion of the Project? I would  
4 assume not, but....

5 MS. TARNSTROM: I've actually asked my  
6 Maui Planning Department Planner Paul Fasi to testify  
7 to that. He has more specific knowledge.

8 MR. FASI: Good morning, Commissioners.

9 CHAIRMAN McDONALD: Good morning,  
10 Mr. Fasi. I'll swear you in quick.

11 PAUL FASI  
12 being first duly sworn to tell the truth, was examined  
13 and testified as follows:

14 THE WITNESS: Yes, sir.

15 CHAIRMAN McDONALD: Thank you, Mr. Fasi.

16 MR. FASI: I'm sorry. Could you repeat  
17 the question?

18 COMMISSIONER SCHEUER: Are you using more  
19 water as the result of this permitting expansion?

20 MR. FASI: I'm going to defer to the  
21 Applicant.

22 MS. FUKUDA: Karlynn Fukuda, Munekiyo &  
23 Hiraga. To answer Commissioner Scheuer's question,  
24 no. We did not anticipate an increase because  
25 basically they have existing operations in the area.

1                   COMMISSIONER SCHEUER: That would be my  
2 understanding. I would just want to note for the  
3 record there's a phrase in Exhibit 2 that says that  
4 "there's no regulatory sustainable yield on Waihe'e  
5 aquifer." That's just actually -- there is a  
6 regulatory sustainable yield that just hasn't been  
7 met yet. It's 8 million gallons a day.

8                   CHAIRMAN McDONALD: Thank you,  
9 Commissioner Scheuer. Commissioner Aczon?

10                  COMMISSIONER ACZON: Yes. This is for  
11 Department of Planning, the County. Just want to  
12 clarify whether the Department of Planning  
13 acknowledges the December 10, 2007 revised map of the  
14 boundaries of the 105.95 acre quarry with Condition  
15 60.

16                  MR. FASI: Paul Fasi, Department of  
17 Planning. We acknowledge receipt of that map.

18                  COMMISSIONER ACZON: Thank you.

19                  CHAIRMAN McDONALD: Commissioners, any  
20 further questions? What's your pleasure on this  
21 matter?

22                  COMMISSIONER HIRANAGA: Mr. Chair, I'd  
23 like to make a Motion to Approve the Request for  
24 Proposed Amendments to Special Permit for Hawaiian  
25 Cement with conditions imposed by the County, and

1 subject to clarification by this Commission. And to  
2 add -- to amend Condition No. 1 so the Special Use  
3 Permit shall expire on July 21st, 2032. And to delete  
4 Condition No. 16 and replace it with a new Condition  
5 No. 16 that prior to commencement of quarry operations  
6 on quarry site C, the Applicant shall submit an  
7 Archaeological Inventory Survey for quarry site C to  
8 the State Historic Preservation Division for their  
9 review.

10 And to comply with their subsequent  
11 comments in adding Condition No. 17, a new quarry  
12 operations on the quarry site C shall be confined to  
13 the area identified as quarry site C. I believe  
14 that's it. Thank you.

15 COMMISSIONER SCHEUER: Second.

16 CHAIRMAN McDONALD: We have a motion by  
17 Commissioner Hiranaga, second by Commissioner Scheuer.  
18 Commissioners, any discussion? Mr. Orodener, will  
19 you please poll the Commission.

20 MR. ORODENER: Thank you, Mr. Chair. The  
21 motion is to approve and amend Condition No. 1 as  
22 required, delete Condition No. 16 and add a new  
23 Condition 16 as stated by Commissioner Hiranaga and a  
24 new Condition 17 as stated by Commissioner Hiranaga.

25 Commissioner Hiranaga?

1 COMMISSIONER HIRANAGA: Aye.

2 MR. ORODENKER: Commissioner Scheuer?

3 COMMISSIONER SCHEUER: Aye.

4 MR. ORODENKER: Commissioner Song is  
5 absent. Commissioner Ahakuelo?

6 COMMISSIONER AHAKUELO: Aye.

7 MR. ORODENKER: Commissioner Aczon?

8 COMMISSIONER ACZON: Aye.

9 MR. ORODENKER: Commissioner Wong?

10 COMMISSIONER WONG: Aye.

11 MR. ORODENKER: Commissioner Mahi?

12 COMMISSIONER MAHI: Aye.

13 MR. ORODENKER: Mr. Chair, the motion  
14 passes unanimously -- oh, excuse me, Chair McDonald?  
15 (laughter)

16 CHAIRMAN McDONALD: Aye.

17 MR. ORODENKER: The motion *now* passes  
18 unanimously.

19 CHAIRMAN McDONALD: Thank you,  
20 Mr. Orodenker. And thank you to the parties. Thank  
21 you to the staff as well for their preparation. We'll  
22 take another recess, short recess and get situated for  
23 our next agenda item. Thank you.

24 MS. FUKUDA: Thank you very much.

25 (recess 10:40-10:50)

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CHAIRMAN McDONALD: (gavel) This is a hearing and action meeting to consider DR14-51, a Petition for Declaratory Order that the Sports Complex uses proposed by the state of Hawai'i Department of Land and Natural Resources violate the express Conditions 5, 8, 16, 21 and 24 of the LUC Docket No. A10-789/A&B Properties, Inc.

Please note that this is *not* an evidentiary hearing or a contested case hearing. Will the Petitioner please identify themselves for the record.

MR. PIERCE: Good morning, Chair. My name is Tom Pierce. I'm here on behalf of Maui Lani Neighbors, Inc. And with me, my party representative today is vice president of Maui Lani Neighbors, Inc. Dr. Harley Oshiro Manner. He's standing up to my left. Thank you.

CHAIRMAN McDONALD: Good morning, Mr. Pierce. Let me update the record. On October 6, 2014 the Commission received Maui Lani Neighbors Petition for Declaratory Order, Exhibits A through E, and a \$1,000 application fee.

On October 22, 2014 the Commission received OP's response to Maui Lani Neighbors, Inc.'s

1 Petition for Declaratory Order and Exhibit 1.

2 On October 23rd, 2014 the Commission  
3 received Maui County Planning Department's Position  
4 Statement and Maui County Planning Director's Petition  
5 to Intervene.

6 On October 24, 2014 the Commission  
7 received DLNR, and DLNR and William Aila Jr.'s Motion  
8 to Intervene. On November 6, 2014 the Commission  
9 received Petitioner's Supplement to Petition for  
10 Declaratory Order filed on October 6, 2014, Exhibits F  
11 through N.

12 The Chair would like to note that Exhibit  
13 F is a Second Circuit Court's Order entered on  
14 October 29, 2014 in the court action filed by Maui  
15 Lani Neighbors.

16 Additional documents received on  
17 November 6th were Petitioner's Reply to Preliminary  
18 Position Statement of the Department of Planning,  
19 County of Maui, filed on October 23rd, 2014, Reply to  
20 Office of Planning's response to Maui Lani Neighbors,  
21 Inc. Petition for Declaratory Order filed on  
22 October 22, 2014, Exhibit A.

23 Statement of No Position on State of  
24 Hawai'i's Motion to Intervene and opposition to County  
25 of Maui's Motion to Intervene, Exhibits A through B.

1           On November 10, 2014 the Commission mailed  
2 the November 20th and 21st, 2014 agenda notice to the  
3 parties and the Maui, O'ahu, Hawai'i and Statewide  
4 mailing list.

5           On November 12th, 2014 the Commission  
6 received A&B's Properties, Inc. Memorandum regarding  
7 Petitioner Maui Lani Neighbors, Inc. Petition for  
8 Declaratory Order filed on October 6, 2014; Request  
9 for Contested Case Hearing and Notice of Intent to  
10 Intervene.

11           On November 13, 2014 the Commission  
12 received County of Maui; County of Maui Planning  
13 Commission; County of Maui Planning Department and  
14 William Spence, Planning Director's Response to Maui  
15 Lani Neighbors Opposition to County's Petition to  
16 Intervene.

17           On November 17, 2014 the Commission  
18 received Petitioner's Reply to A&B Properties, Inc.  
19 Memorandum regarding Petitioner's Declaratory Order  
20 filed on October 8, 2014; Request for Contested Case  
21 Hearing and Notice of Intent to Intervene, and COS  
22 filed on November 12, 2014.

23           Our procedure for DR14-51 will be as  
24 follows: First, we'll call those individuals desiring  
25 to provide public testimony to identify themselves.

1 All such individuals will be called in turn to our  
2 witness box where they will be sworn in prior to their  
3 testimony.

4 The County of Maui, DLNR, interested party  
5 A&B, and the State Office of Planning will be given an  
6 opportunity to provide public testimony at the close  
7 of Petitioner's presentation.

8 After completion of public testimony the  
9 Petitioner will be given the opportunity to make a  
10 brief statement in support of its Petition. After  
11 completion of the Petitioner's argument we'll receive  
12 any public witness comments that the County, DLNR,  
13 Office of Planning and interested party A&B may want  
14 to offer. Thereafter the Commission will conduct its  
15 deliberations.

16 The Chair will also note that from time to  
17 time I'll be calling for short breaks. Are there any  
18 questions on the procedures for today?

19 MR. PIERCE: No questions.

20 COMMISSIONER SCHEUER: Sorry.

21 CHAIRMAN McDONALD: Commissioner Scheuer?

22 COMMISSIONER SCHEUER: I just wanted to  
23 put a disclosure on the record. Is this the proper  
24 time?

25 CHAIRMAN McDONALD: Sure.



1           COMMISSIONER SCHEUER: From 2004 to 2010 I  
2 worked for the Office of Hawaiian Affairs. They owned  
3 and managed Waimea Valley through an LLC. I was one  
4 of the managers at the LLC to work with the  
5 conservation easement on the property. We worked with  
6 Mr. Pierce.

7           CHAIRMAN McDONALD: Parties, any  
8 objections to Commissioner Scheuer's participation in  
9 this hearing?

10          MR. YEE: No objection.

11          CHAIRMAN McDONALD: Mr. Pierce?

12          MR. PIERCE: No objection.

13          MS. TARNSTROM: I'm not a party yet, but  
14 no objection.

15          CHAIRMAN McDONALD: Mr. Orodenger, anybody  
16 signed up?

17          MR. ORODENKER: We have 13 people signed  
18 up to testify, Mr. Chair.

19          CHAIRMAN McDONALD: Because we're on a  
20 short timeline today I'm going to request a 2-minute  
21 time limit for any public testimony. Please call the  
22 first public testifier.

23          MR. ORODENKER: The first testifier is  
24 Neal Sorenson followed by Erin Potter.

25                   NEAL SORENSON

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

3 PUBLIC WITNESS: I do.

4 CHAIRMAN McDONALD: Thank you. Please  
5 state your name and address.

6 THE WITNESS: My name is Neal Sorensen.  
7 My address is 212 Anamuli Street, Kahului.

8 CHAIRMAN McDONALD: Please proceed.

9 THE WITNESS: Okay. I humbly request that  
10 this Commission find that the Department of Land and  
11 Natural Resources violated conditions of the Land Use  
12 Commission's Decision and Order, particularly  
13 Condition 21. The Hawai'i Admin. Rules and LUC  
14 decision-making criteria states that "the Petitioner  
15 shall develop the land to which the boundary amendment  
16 applies in substantial compliance with the  
17 representations made to the Petitioner A&B,  
18 represented their entire Project as a planned  
19 community that would go through an extensive planning  
20 and zoning process at the county level.

21 As part of that process A&B represented it  
22 would obtain an amendment to the Wailuku-Kahului  
23 Community Plan which currently designates the Petition  
24 Area for Agriculture. The Community Plan Amendment  
25 was intended to happen while the County of Maui was

1 going through a comprehensive update to the  
2 Wailuku/Kahului Community Plan. That process is just  
3 now getting underway and would likely take a number of  
4 years. During that time the community would have been  
5 given many opportunities to participate in the  
6 planning process, and have a potential say on what was  
7 to take place on the Petition Area, including a  
8 65-acre part of the Petition Area that is at issue  
9 here.

10           However, after the LUC issued its Decision  
11 and Order, A&B sold DLNR the 65-acre portion of the  
12 Petition Area. Thereafter DLNR was able to move so  
13 quickly that it had already begun development of this  
14 Project in September of this year. And it plans to be  
15 complete by about this time next year. DLNR was able  
16 to do this because the Maui Planning Commission  
17 granted DLNR a county Special Use Permit.

18           This Special Use Permit process permitted  
19 DLNR to avoid review by the Maui County Council  
20 including amendments to the community plan. This  
21 violates Condition 21 of your D&O because A&B  
22 represented to the LUC that all of the Petition Area  
23 would go through the Community Plan amendment process  
24 and the change in zoning process. The same obligation  
25 that was upon A&B is now upon DLNR. Our community's

1 been harmed by DLNR's failure to abide --

2 MR. ORODENKER: Two minutes.

3 PUBLIC WITNESS: -- to abide by condition  
4 21 which requires all parts of the Petition Area to go  
5 through the community plan. DLNR's violation of  
6 Condition 21 means that the impacts to our community,  
7 especially Maui Lani and Waikapu, were not properly  
8 considered.

9 Please find that the DLNR violated  
10 Condition 21 of the LUC D&O by failing to obtain an  
11 amendment to the Wailuku Community -- Kahului  
12 Community Plan. Thank you very much.

13 CHAIRMAN McDONALD: Any questions? Thank  
14 you for your testimony.

15 MR. ORODENKER: Erin Potter followed by  
16 Lucienne de Naie.

17 CHAIRMAN McDONALD: Good morning,  
18 Ms. Potter.

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

22 THE WITNESS: Yes.

23 CHAIRMAN McDONALD: Please state your name  
24 and address.

25 PUBLIC WITNESS: My name is Erin Potter.

1 And I live in the Maui Lani Legends at 32 Papahi Loop,  
2 Kahului. I humbly request that this Commission  
3 declare that DLNR's current construction of a sports  
4 complex violates the LUC's Decision and Order granted  
5 with respect to the Wai'ale Project. I understand  
6 that the LUC decision-making criteria takes into  
7 consideration the potential impact of the proposed  
8 reclassification on the commitment of state funds and  
9 resources.

10 In the original A&B Waiale EIS there's no  
11 mention of any state funds and resources as it  
12 pertains to the 65-acre park area located next to Maui  
13 Lani. I would, however, like to bring to your notice  
14 that substantial state funds and resources are, in  
15 fact, being committed to this Project via the Sports  
16 Development Initiative.

17 The Sports Initiative is funding this  
18 65-acre park area to be a destination site for  
19 intensive, active, organized recreation.

20 The Sports Initiative is funding the  
21 Project with all of the projected \$25 million it would  
22 take to complete the development of this active  
23 regional park. Moreover, the state expenditures were  
24 made for the Lt. Governor Shan Tsutsui Sports  
25 Development Initiative.

1           The purpose of this initiative is to  
2 encourage sports tourism by drawing people from other  
3 countries to use this and other parks for training and  
4 events.

5           This type of sports tourism proposal was  
6 never proposed or approved by the LUC. And it  
7 certainly should have been subjected to additional  
8 planning review and zoning review. I don't think this  
9 commitment of state resources was fairly represented  
10 to this Commission and, therefore, the original terms  
11 and Project plans were not adequately considered in  
12 approving the Project.

13           Please find in favor of declaratory relief  
14 and halt the construction project that the DLNR has  
15 already begun. Thank you.

16           CHAIRMAN McDONALD: Parties,  
17 Commissioners, any questions? Thank you for your  
18 testimony. Lucienne deNai followed by Clare Apana.

19           MS. deNAI: Do I need to be sworn in?

20           CHAIRMAN McDONALD: Yes.

21                       LUCIENNE deNAI  
22 being first duly sworn to tell the truth, was examined  
23 and testified as follows:

24           THE WITNESS: I do.

25           CHAIRMAN McDONALD: Please state your name

1 and address.

2 THE WITNESS: My name is Lucienne deNei.  
3 I live at Hoelo, Maui. I have tracked this Project  
4 for a number of years. I went to the original  
5 charrettes in 2105. Wonderful maps were presented.  
6 They're not the maps that we're seeing today. The  
7 sports complex was never discussed.

8 In fact we were told 25 percent of the  
9 Project was going to have open space of various kinds.  
10 It looks like most of that would be taken up by the  
11 sports complex and then one dune for a historical  
12 preserve. So I don't know where the other parks and  
13 amenities are going to be, that this place envisioned.

14 It really needs another layer of review,  
15 both this park concept and the whole Master Planned  
16 community.

17 I served on the General Plan Advisory  
18 Committee. We had a map. It didn't look anything  
19 like the map for the sports complex. We had several  
20 years to discuss this. We had a vice president of A&B  
21 Properties on our committee. It was just never  
22 brought up. I attended the LUC hearings. This was  
23 never brought up.

24 And I'm in agreement with the people who  
25 talk about substantial compliance. We were told at

1 the LUC hearings: Yeah, we haven't decided on a lot  
2 of things, but we'll do that when we do the Community  
3 Plan Amendment. It will be discussed when we do the  
4 change in zoning. I personally am concerned because  
5 there's an endangered species found on this Project.  
6 This is the manduka, the Black Burn Sphinx Moth. It  
7 was found in the northern area which is the area that  
8 is proposed for the park.

9           It's very sad to me that our own DLNR  
10 doesn't wanna follow our own historic preservation,  
11 our own rules having to do with preservation of  
12 important flora and fauna. And this area has sand  
13 dunes. It's not a flat area. It's a nice habitat for  
14 the moth. It's not just, you know, some open field in  
15 Kahului. They have protection from the wind. We  
16 really should be thinking about the broader picture of  
17 things here.

18           I'm very disappointed that Fish and Wild  
19 Life isn't really stepping in to defend this important  
20 habitat. There's only one other habitat in Central  
21 Maui for this extremely endangered creature. So I ask  
22 you, please find this in violation. Please send it  
23 back for the proper review it needs. Thank you.

24           CHAIRMAN McDONALD: Any questions?  
25 Petitioners? Thank you for your testimony.



1 MR. ORODENKER: Clare Apana followed by  
2 Mary Spencer.

3 CHAIRMAN McDONALD: Ms. Apana, I'll swear  
4 you in again.

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

8 THE WITNESS: I do.

9 CHAIRMAN McDONALD: Thank you. Please  
10 state your name and address.

11 THE WITNESS: Clare Apana, Wailuku, 260  
12 Halenani.

13 CHAIRMAN McDONALD: Can you please speak  
14 into the mic as well. Please proceed.

15 THE WITNESS: I come today as a cultural  
16 practitioner. I have testified from the year 2008 in  
17 this area. And I've always advocated for the cultural  
18 properties, the iwi kupuna who are in the sand and  
19 have been found in the sand in grading, grubbing and  
20 just the wind blowing the sand.

21 This Project.... Chair, excuse me. May I  
22 have a moment to gather myself? Can you stop the time  
23 for a moment? (Pause) I so apologize today. A  
24 thousand year old he'iau in Kahoma was bulldozed. The  
25 Land Use Commission did not protect it. This case is

1 in the IAC. There is nothing that protects the land  
2 from grading and grubbing.

3 And I want the LUC to know that we  
4 continue our processes to try to protect our land,  
5 protect the cultural sites. And the *courts* hold up  
6 the cases, as you know, and *bulldoze* these places with  
7 grading and grubbing permits just as they do here.

8 Here's a picture of the equipment. Do you  
9 think that that might change the surface? Do you  
10 think that that might move a little bit of earth?  
11 That's supposed to have a cultural monitor and  
12 there...is...none.

13 I have walked this place myself recently  
14 with other practitioners. And all that we could come  
15 up with: You will have problems here, as you have  
16 seen in other testimonies from archaeologists in your  
17 processes. There will be trouble here because this is  
18 a burial area.

19 And I have said this for years and years  
20 and years. And you are -- if you do not do anything  
21 about this, as you did in the Kahoma case where you  
22 overturned the decision made to allow the developer to  
23 go forward --

24 MR. ORODENKER: 2 minutes.

25 THE WITNESS: You turned over his case.

1 You have the power to do this for this neighborhood.  
2 This is an important cultural area and it is not being  
3 given even the credence and the agreement by the  
4 cultural monitoring agreement with SHPD. How can SHPD  
5 be watching the DLNR? And then you are, again,  
6 another state department.

7               There was another time in 1893 when this  
8 happened. And the provisional government said, "This  
9 is business." They, at that time, took out the  
10 private lands. They never made any provision for  
11 private lands to be used under the control of the  
12 Government of the United States or the Hawai'i State  
13 Government and --

14               CHAIRMAN McDONALD: Ms. Apana, please wrap  
15 it up.

16               THE WITNESS: These are private lands. I  
17 just want you to really look at your jurisdiction.  
18 Thank you very much.

19               CHAIRMAN McDONALD: Any questions for  
20 Ms. Apana? Commissioner Mahi.

21               COMMISSIONER MAHI: Yes, I do. Is there  
22 still the Maui Burial Council? Have they been aware  
23 of this and taken any action in the process?

24               THE WITNESS: No. This has not gone to  
25 the Maui Burial Council as I know.

1 COMMISSIONER MAHI: Do you know why?

2 THE WITNESS: I do not know why because I  
3 believe there were some burials that were lost that  
4 have been found previously and are no longer  
5 supposedly on the site. This is an important area  
6 that is *well-known* for burials. And it has not gone  
7 as I know it to the Cultural Resource Commission or to  
8 the Maui Island Burial Council.

9 COMMISSIONER MAHI: Okay. Thank you.

10 CHAIRMAN McDONALD: Thank you,  
11 Commissioner Mahi. Thank you for your testimony.

12 THE WITNESS: Thank you very much.

13 MR. ORODENKER: Mary Spencer followed by  
14 Laura Amerio.

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

18 THE WITNESS: I do.

19 CHAIRMAN McDONALD: Please state your  
20 name, your address.

21 PUBLIC WITNESS: My name is Mary Spencer.  
22 I live at 12 Anamuli Street in Kahului. And I'm here  
23 to present the testimony of Aimee Kimura-Koch who  
24 lives in the Traditions area of Maui Lani. Her  
25 address is 123 Meheu Circle, Kahului.

1 CHAIRMAN McDONALD: Thank you. Please  
2 proceed.

3 THE WITNESS: Thank you. Aimee's home  
4 abuts the area that were for the sports complex that  
5 we've just been talking about. In her words, "I would  
6 like to provide testimony today regarding the  
7 Department of Land and Natural Resources' violations  
8 of Condition 21 of this Commission's Decision and  
9 Order, especially as it relates to the Maui Island  
10 Plan.

11 "During the District Boundary Amendment  
12 process A&B Waiale Project Developers made statements  
13 and representations to this Commission that it would  
14 be responsible for following the Maui Island Plan as  
15 it would later be approved, or to seek amendments as  
16 necessary.

17 "Further land entitlements such as the  
18 retention basin, which were not finalized at the time  
19 of the DBA process, were to be evaluated by the County  
20 Council through the public and established amendment  
21 changes to the Maui Island Plan.

22 "This has not been done. The retention  
23 basin requirements are not even finalized for Wai'ale  
24 Town. In the MIP it is stated that Waiale is the  
25 largest proposed town on the island. And that

1 Wai'ale's development will be coordinated with  
2 neighboring developments including Maui Lani, the  
3 neighborhood in which I reside.

4 "The MIP text specifically states that a  
5 *community* park is planned to provide a clear  
6 separation between the new Wai'ale Town and Maui Lani.  
7 Also stated is that a regional park will be provided  
8 elsewhere to the south of Wai'ale to allow for the  
9 placement of active recreation.

10 "Further, one of the MIP maps clearly  
11 identifies the 65-acre parcel near Aimee's home as a  
12 community park, and a 200-acre parcel south of the  
13 Petition Area as a regional park. Yet DLNR is now  
14 constructing a regional park consisting of 12 active  
15 recreation fields in the community park area.

16 MR. ORODENKER: Two minutes.

17 PUBLIC WITNESS: "This construction is  
18 inconsistent with the Maui Island Plan. Construction  
19 should not proceed without DLNR first obtaining an  
20 amendment to the Maui Island Plan as A&B represented  
21 would occur.

22 "I respectfully request you uphold  
23 Condition 21 and force the DLNR to meet requirements  
24 of updating the Maui Island Plan as they are bound to  
25 do before any further development continues. Thank

1 you."

2 CHAIRMAN McDONALD: Thank you. Any  
3 questions from the parties? Commissioners, any  
4 questions?

5 MR. ORODENKER: Laura Amerio followed by  
6 Dave Jorgenson.

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

10 THE WITNESS: I do.

11 CHAIRMAN McDONALD: Thank you. Please  
12 state your name and address.

13 THE WITNESS: My name's Laura Amerio. I  
14 live at 194 Anamuli Street. My husband and I own our  
15 home at the Legends at Maui Lani Residential  
16 Community. I'm testifying to the Land Use Commission  
17 today because the LUC was created to ensure that  
18 Hawai'i lands are put to those uses to which they are  
19 best suited, and because we believe the Department of  
20 Land and Natural Resources has violated LUC's  
21 Decision and Order for the property abutting ours.

22 We're extremely concerned about the  
23 12-foot steel poles holding a black dust barrier that  
24 DLNR cemented into place only 6 inches from our  
25 property lines last week. This was done without any

1 written notification to us. We will have to live with  
2 this dust barrier shadowing out our backyards and our  
3 first story for months.

4           We now have been told -- actually my  
5 apology. DLNR could have easily placed these much  
6 further away from us. We now have been told by the  
7 construction team that the 6-foot high chain link  
8 fence will be permanently installed less than 1 foot  
9 away from our living space. This is an unreasonable  
10 closeness to residential property.

11           If the only way the DLNR can fit its  
12 Project into its properties to crowd us out it shows  
13 the Project is poorly planned. We are in favor of the  
14 design and construction of a recreational area that  
15 benefits our keiki and the families of our  
16 neighborhood. What we are not in favor of is DLNR's  
17 attempt to fit a massive sports complex into a  
18 property that was never intended for such use.

19           The intensive sports complex plan is not  
20 consistent with the representation that Alexander &  
21 Baldwin made to the LUC that this area would be a  
22 buffer between Wai'ale and Maui Lani. Alexander &  
23 Baldwin's representations are now the responsibility  
24 of DLNR, the new owner of the parcel.

25           In initiating construction of the sports



1 complex DLNR has violated Condition 21 of the LUC's  
2 Decision and Order by failing to be faithful to  
3 Alexander & Baldwin's agreement with the LUC.

4 If the proper procedure had been followed,  
5 decisions about design and uses for the 65-acre tract  
6 would have been developed as a result of extensive and  
7 informative community participation.

8 MR. ORODENKER: Two minutes.

9 PUBLIC WITNESS: Clearly this has not been  
10 the case. I respectfully request that the LUC to find  
11 DLNR has violated the conditions of the LUC D&O and  
12 that construction should cease. Thank you.

13 CHAIRMAN McDONALD: Any questions for the  
14 public testifier? Thank you for your testimony.

15 MR. ORODENKER: Dave Jorgensen followed  
16 by -- I'm not sure whether it's Harley or Hanley  
17 Manner?

18 DAVE JORGENSEN  
19 being first duly sworn to tell the truth, was examined  
20 and testified as follows:

21 THE WITNESS: Yes.

22 CHAIRMAN McDONALD: Please state your name  
23 and address.

24 PUBLIC WITNESS: My name is Dave  
25 Jorgensen. My address 24 North Church Street,

1 Wailuku. I'm an attorney here on Maui. But I'm  
2 appearing here today on my own behalf not as an  
3 attorney, but also on behalf of various adult youth  
4 soccer leagues and organizations that I've been  
5 involved with.

6 I've been involved with Youth Soccer and  
7 Adult Mens, Womens and Coed Soccer on Maui since '92,  
8 running leagues, playing, refereeing, administrating,  
9 officiating. And the reality is there's not enough  
10 fields. There's just simply not enough fields for all  
11 the activities and certainly not just soccer.  
12 Softball, baseball. There's a lack of fields.

13 Procedurally whether the process was  
14 properly pursued, from what I've seen I believe it has  
15 been, but that's for you to decide. But I do strongly  
16 request that you take into consideration the need for  
17 athletic fields, not just open space, but for actual  
18 fields, and in particular for my passion is soccer.

19 This Project has been in the works for  
20 many years. I was involved in meetings and hearings  
21 at least I would say 10 years ago. There's been  
22 public hearings, there's been public meetings, there's  
23 been opportunities for comments. I've been at many of  
24 those meetings.

25 So, again, the burden at least at this

1 stage does fall on you, Commissioners. But I do ask  
2 that you take into consideration the need for athletic  
3 fields and for the interest of those who would use  
4 those fields. Thank you.

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

8 THE WITNESS: Thank you.

9 MR. ORODENKER: Mr. Manner followed by  
10 Jared Schmitz.

11 HARLEY I. MANNER  
12 being first duly sworn to tell the truth, was examined  
13 and testified as follows:

14 THE WITNESS: I swear.

15 CHAIRMAN McDONALD: Please state your name  
16 and address.

17 PUBLIC WITNESS: Before I start,  
18 Mr. Commissioner, I'd like to make reference to the  
19 handout which I prepared for you folks, a series of 6  
20 photographs, all right, that accompanies the  
21 testimonies of some of our participants this morning.  
22 I wish you would refer to that.

23 My name is Harley I. Manner, Ph.D. And I  
24 have lived in the Na Hoku neighborhood of Maui Lani at  
25 12 Ananui Street, Kahului, Hawai'i since January 2012.

1 I am the vice president of Maui Lani  
2 Neighbors, Incorporated. But I'm speaking as a  
3 resident of the Island of Maui and a taxpayer of the  
4 state of Hawai'i. My home is located approximately  
5 860 feet from the site of the 65-acre sports complex,  
6 also known as "the property". My concerns center on  
7 DLNR's failure to comply with the Land Use  
8 Commission's Decision and Order of June 21, 2012  
9 specifically Condition 8.

10 Retention basins are a major component of  
11 the property in the Waiale Development Project. As  
12 these retention basins will be located within 5 miles  
13 of Kahului Airport --

14 CHAIRMAN McDONALD: Mr. Manner, excuse me.  
15 Can you slow down just a bit for our court reporter.

16 PUBLIC WITNESS: Mr. Chairman, I have a  
17 written testimony.

18 CHAIRMAN McDONALD: Yeah, we have your  
19 testimony. You don't have to read it. So if you want  
20 to summarize that will be fine.

21 THE WITNESS: Well, I need to go through  
22 it because it's a very important issue. We have, for  
23 example, if you allow me the time to read it, I'll  
24 slow down.

25 CHAIRMAN McDONALD: If you're just going

1 to read it, like I said, we have it in front of us.  
2 We can refer do it.

3 THE WITNESS: Okay. Well, the point is,  
4 Mr. Chairman, all right, the area of the property will  
5 have retention basins on it. Now, these retention  
6 basins are going to be located within 5 miles of  
7 Kahului Airport. And as such they are subject to FAA  
8 advisory circular 150/5,200-33B, the title which is  
9 Hazardous Wildlife Attractants On Or Near Airports.

10 And because the Hawai'i Department of  
11 Transportation identified this FAA issue with the LUC,  
12 the LUC placed Condition 8 on this, on the property.  
13 This condition requires the landowner to enter into a  
14 Memorandum of Agreement with HDOT, quote, "To document  
15 hazardous wildlife attractant mitigation prior to  
16 final subdivision approval of the initial phase of  
17 onsite development."

18 However, the County of Maui has already  
19 granted final subdivision approval, thus permitting  
20 the sale by A&B, the prior property owner to DLNR, the  
21 current property owner. I believe the MOA required by  
22 Condition 8 was never, in fact, prepared. And this  
23 is, I think, a very serious violation of Condition 8.  
24 And the reason why this is important that we consider  
25 these Memorandum of Agreements between the state as

1 well as the DLNR, as well as the Department of  
2 Transportation because we have an airport. If you  
3 recall in 2009 --

4 CHAIRMAN McDONALD: Mr. Manner, I need you  
5 to wrap up.

6 THE WITNESS: Right. In 2009 -- all  
7 right, the U.S. Airways flight 1549 crashed because of  
8 a bird strike. There is the question, and this has  
9 never been really fully analyzed as to what is going  
10 to happen when you have 10-to-12 foot retention basins  
11 filled with water after a 50-year flood cycle.

12 There is no study that shows that the  
13 water will percolate out within the 48 hours as  
14 required by the FAA circular -- FAA as required by the  
15 FAA requirements. So therefore I ask, and this will  
16 be my last few statements. I ask that the state of  
17 Hawai'i LUC declare as soon as possible that DLNR is  
18 in violation of compliance with Condition 8 of its  
19 Docket No. A10-789 of June 21, 2012. I thank you for  
20 this opportunity to speak with you.

21 CHAIRPERSON McDONALD: Thank you,  
22 Mr. Manner. Parties, any questions? Commissioners?  
23 Thank you for your testimony.

24 MR. ORODENKER: Jared Schmitz followed by  
25 Sarita Velada.

1 JARED SCHMITZ

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

4 THE WITNESS: I do.

5 CHAIRMAN McDONALD: Please state your  
6 name, your address and proceed.

7 PUBLIC WITNESS: My name is Jared Schmitz.  
8 I live at 207 Molehulehu Street in Kahului.

9 CHAIRMAN McDONALD: Thank you. Please  
10 proceed.

11 PUBLIC WITNESS: My name is Jared Schmitz.  
12 I'm reading the testimony of Mark Honing who's a  
13 homeowner in the Maui Lani residential community.  
14 Mr. Honing, who lives at 138 Kapaele Place in Kahului,  
15 is unable to be present today. Mr. Honing is a member  
16 of the Maui Lani Neighbors non-profit organization.  
17 And I'm also a resident of Maui Lani -- a member of  
18 the Maui Lani Neighbors.

19 Mr. Honing's testimony today regards  
20 violations of Condition 21 of the Commission's  
21 Decision and Order filed June 21st, 2012 especially as  
22 it relates to the change in zoning requirements.

23 Condition 21 provides that the Wai'ale  
24 lands shall be developed in substantial compliance  
25 with the representations made by Alexander & Baldwin

1 during the District Boundary Amendment process.

2 Any substantial deviation proposal made by  
3 A&B would be in violation the Commission's Decision  
4 and Order. A&B represented through the Wai'ale final  
5 Environmental Impact Study (sic) that impacts related  
6 to the Project including the retention basin would be  
7 further evaluated during subsequent land entitlement  
8 requests.

9 These land entitlements as confirmed by  
10 A&B include an application to the Maui Lani Council  
11 for a change in zoning for the land from the  
12 Agriculture District to the Project District among  
13 other requirements.

14 Oral testimony provided by A&B's  
15 representatives during the District Boundary Amendment  
16 hearings acknowledge very clearly that they understood  
17 that change in zoning would be required for the  
18 Project. This was confirmed by testifier Thomas  
19 Witten, called by A&B as an expert in community  
20 planning and environmental planning.

21 It was also confirmed by A&B Vice  
22 President Grant Chun during his testimony. In  
23 addition, the change in zoning requirement was  
24 acknowledged by the Maui County planning director  
25 during his testimony. The verbatim questions and



1 answers related to these testifiers can be provided to  
2 this Commission if needed. They are not included in  
3 the testimony today due to time limitations.

4 A change in zoning from Agriculture  
5 District to Project District requires approval by the  
6 Maui County Council and entails a 3-phase review  
7 process during which the Project is subject to a  
8 significant review and public hearings before multiple  
9 agencies. This process did not happen.

10 The Decision and Order is recorded on the  
11 title of the subject property is binding on the A&B as  
12 well as A&B successors including DLNR. Despite the  
13 fact that DLNR was subject to the change in zoning  
14 requirement once the land was acquired by DLNR, new  
15 and expedited review process for the property was  
16 initiated.

17 It was if the land was now somehow  
18 unrelated to the Master Plan community even though  
19 it's clearly and unequivocally tied to the Waiea  
20 Project.

21 CHAIRMAN McDONALD: Mr. Schmitz, I need  
22 you to wrap up.

23 THE WITNESS: I will. Final statement,  
24 thank you. Along with numerous other violations the  
25 Commission's Decision and Order, DLNR never pursued

1 their required change in zoning process to the Maui  
2 County Council and was mandated and confirmed by A&B's  
3 testifiers as well as the county of Maui. This is not  
4 a dispute. Therefore it is clear DLNR has failed to  
5 fulfill Condition 21 of the Decision and Order.

6 For this reason, I, Mr. Honing, and I  
7 Jared Schmitz am asking the Commission to rule in  
8 favor of the Maui Lani Neighbor's Petition and find  
9 that DLNR is in violation of the decision. Thank you  
10 for your time.

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

14 PUBLIC WITNESS: Thank you.

15 MR. ORODENKER: Sarita Velada followed by  
16 M. Pualani Kamaunu.

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

20 THE WITNESS: Yes.

21 CHAIRMAN McDONALD: Please state your  
22 name, your address and proceed.

23 PUBLIC WITNESS: My name's Sarita Velada.  
24 I'm speaking as a resident of Na Hoku Maui Lani  
25 residential --

1 THE REPORTER: Will you slow down, please.

2 PUBLIC WITNESS: My name is Sarita Velada.

3 I'm speaking as a resident of Na Hoku Maui Lani  
4 Residential Community and a state and county taxpayer.  
5 I'm a member of Maui Lani Neighbors' non-profit  
6 organization. My address is 207 Molehulehu Street,  
7 Kahului, approximately 250 feet from the Central Maui  
8 sports complex site.

9 An endangerer species, Blackburn's sphinx  
10 moth, is found on the 65-acre property where DLNR  
11 wants to construct this large and extensive sports  
12 complex. Condition 16 of the Land Use Commission's  
13 Decision and Order requires the landowner of the  
14 property to address the potential impacts on the  
15 endangered Blackburn's sphinx moth and other  
16 endangered species in the Petition Area, including  
17 consultations with DLNR, the state of Hawai'i  
18 Department of Forestry and Wildlife, and the U.S. Fish  
19 and Wildlife Service to develop mitigation measures to  
20 avoid adverse impacts to endangered species.

21 If determined necessary this will require  
22 approval of Habitat Conservation Plans and incidental  
23 take license and permit. This condition was added  
24 because A&B biologists found the moth on numerous  
25 parts of the Petition Area including within the

1 65 acres sold to DLNR.

2           Moreover, DLNR has already admitted that  
3 the moth's host plant has continued to grow on the  
4 65-acre property since A&B's Biological Survey. It is  
5 my belief that DLNR has failed to establish the  
6 appropriate mitigation measures to protect the  
7 Blackburn's Sphinx Moth even though the LUC *clearly*  
8 requires sufficient measures to be taken.

9           In addition, DLNR has considered the  
10 65-acre property in isolation from the remainder of  
11 the Petition Area. This type of segmentation isn't  
12 appropriate when considering appropriate mitigation  
13 measures for an endangered species. Therefore I  
14 believe that DLNR is in violation of Condition 16.

15           I ask that the state of Hawai'i LUC  
16 declares -- declare DLNR in violation of compliance  
17 with the conditions of its Docket No. A10-789 of  
18 June 21st, 2012. Thank you for hearing my testimony  
19 and thank you for scheduling this matter.

20           CHAIRMAN McDONALD: Parties, any  
21 questions? Commissioners? Thank you for your  
22 testimony.

23           MR. ORODENKER: Ms. Basbas followed by  
24 Kaniloa Kamaunu.

25                           PUALANI KAMAUNU BASBAS

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

3 THE WITNESS: Yes.

4 CHAIRMAN McDONALD: Thank you. Please  
5 state your name and proceed -- and address. Excuse  
6 me.

7 PUBLIC WITNESS: Mahalo to the  
8 Commissioners here for having, allowing the public to  
9 speak this morning. My name is Pualani Kaumaunu  
10 Basbas. I'm with the Ahu Moku. I'm the Chair of our  
11 burial committee as well as the president and  
12 historian for Auahi E Ma community association and  
13 cultural center. I'm also professionally a  
14 genealogist specializing in Hawaiian genealogy.

15 I'm making this as an official complaint  
16 to the Land Use Commission. This is in regards to the  
17 Central Maui Regional Sports Complex phase 1. I had  
18 sent a letter to Goodfellow to Mr. John Spasari  
19 (phonetic). And this is in regards to the complaint  
20 that we had. We're sending the letter to him just in  
21 courtesy to let him know that we'll be filing  
22 complaints with you folks as well what we have with  
23 OHA and also the Department of Land and Natural  
24 Resources. So I'll just read my letter to him that I  
25 had written to you.

1 "I'm writing in regards to the Central  
2 Maui Regional Sports Complex Phase 1 Project in Maui  
3 Lani. As it was recorded to Ahu Moku -- --

4 CHAIRMAN McDONALD: Can you please slow a  
5 bit for our court reporter.

6 PUBLIC WITNESS: Yes. "It was reported to  
7 Ahu Moku O Wailuku Burial Committee by one of our  
8 committee members that there was no archaeologist  
9 monitoring done on the site during your clearing and  
10 grubbing stage. We were also told that you have a  
11 person, anthropologist, monitoring once you commence  
12 on the grading stage.

13 "Anthropologist or archaeologist, at least  
14 you'll have someone monitoring. However, it seems  
15 Goodfellow may have failed to have a monitor at the  
16 onset of this Project during clearing and grubbing.  
17 We consulted with an expert who has worked in the  
18 field of road and ground construction for over 35  
19 years and very familiar with how the industry works  
20 and operates here in Maui.

21 "We asked him to review your  
22 grading/grubbing permit and explain to us what is  
23 grading and grubbing. We also asked: When does one  
24 implement archaeologist monitoring process in  
25 reference to Goodfellows' permit application? We were

1 told, and I quote, "It's not uncommon to find iwi  
2 bones during the phases of road and ground  
3 construction here on Maui. Look at the Goodfellows'  
4 permit application. They were very well aware that  
5 there are known burials, cemeteries, or other historic  
6 sites on the property. So why start the monitoring  
7 process at the grading phase? It needs to happen on  
8 the onset of the Project, not in the middle" --

9 CHAIRMAN McDONALD: 2 minutes.

10 THE WITNESS: -- "or at the end. He asked  
11 was there anyone monitoring during the clearing and  
12 grubbing phase. Our response as reported to us there  
13 was no one monitoring from day 1. He then explained  
14 to us that there should be a monitor at all times from  
15 start to finish, clearing to grubbing and through the  
16 grading phase.

17 "When it comes to clearing you're cutting  
18 down trees, brush, clearing all rubbish debris,  
19 whatever there is and that you have to dig no matter  
20 what.

21 "And you're moving dirt standing, earth.  
22 With grubbing you're definitely digging to remove the  
23 plant grown below the grade. Now understand you're  
24 going below the grade which means digging deeper,  
25 because you need to remove tree stumps or roots so

1 you're digging, moving dirt, sand and earth.

2 "After that there will be more digging to  
3 put in storm drains, laying of pipes, et cetera, for  
4 sewer and water and whatever else needs to be done  
5 prior to grading. So the likelihood of finding iwi in  
6 this area especially is greater."

7 CHAIRMAN McDONALD: Excuse me, Ma'am. May  
8 I ask you to wrap up.

9 THE WITNESS: Okay. I'm almost done.  
10 "Goodfellows, they're sending their own permit  
11 application. It goes on to say, when it comes to  
12 grading you'll be leveling, smoothing, making changes  
13 to the ground level then digging and moving dirt in  
14 the earth. So the likelihood of coming across iwi at  
15 this stage of the Project, again, most likely.  
16 Henceforth we are informing you that we'll be making  
17 our complaints."

18 I'd also just like to add, marked here on  
19 their permit that "no" to are there special flood  
20 hazard areas for drainage on the property? And it's  
21 historically known that that area, this part of the  
22 'aina was underwater.

23 The West Maui side mountains of Maui was  
24 there, actually the original. This was here before  
25 this isthmus was here, before Hana area was here, East



1 Maui. So to say that there's a possibility of flood,  
2 it is possible for that area. And also there are  
3 problems there for drainage. Mahalo for this  
4 opportunity.

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

8 MR. ORODENKER: Kaniloa Kamauna followed  
9 by Holden Kela Gannon.

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

13 THE WITNESS: Yes.

14 CHAIRMAN McDONALD: Thank you. Please  
15 state your name and address and proceed.

16 THE WITNESS: My name is Kaniloa Kamauna.  
17 I come from Waihe'e Valley. A little bit about  
18 myself. I'm recognized in the county and state as  
19 having superior rights for water resources. This has  
20 been explained in public meetings that we've had with  
21 the state. I'm also known as kuleana in this area.

22 So with respect to what's going on here my  
23 concern is with the iwi. Being that I'm with the Ahu  
24 Moku O Wailuku which is also the Ahu Moku Maui, LLC.  
25 I've objection to what's happening here. We were not

1 informed. No one came to us to explain that this is  
2 happening.

3           There was, the explanation of them not  
4 having inadvertent finds. To make clearly,  
5 "inadvertent" means that they have no idea it's  
6 there. So the thing is to say that and make that  
7 distinction right now is already false, because they  
8 know and you know that everybody digging there they  
9 found graves. I can't see any development that hasn't  
10 called for inadvertent finds.

11           The archaeologist or the archaeologist  
12 worker who put in some also submitted that in 2010  
13 that she wouldn't be surprised if they'll continue to  
14 find bodies. So why is it that these things are not  
15 being brought forward? According to the 56th Congress  
16 they did not claim -- were not able to claim the  
17 Native Hawaiians. They couldn't claim them as  
18 citizens.

19           Hence, in the 56 Congress in 1900 could  
20 not claim the natives back then because they protested  
21 to them. Then they have to show how they're making  
22 claims to the natives that are buried in these areas.  
23 They have a law which was vested to them. They have  
24 the right to remain there, but yet continuously they  
25 are being moved, dug up, crushed, and they're being

1 sent out like rubbish.

2 MR. ORODENKER: 2 minutes.

3 THE WITNESS: So the thing is the state  
4 has to come forward, and has to show that they have  
5 the authority to make the move. If they couldn't  
6 claim us in the 1900 Congress, then we're still a  
7 separate people, than those people that are buried  
8 belong to us. And they, as well as those that put  
9 their names on the petition forbidding them to take,  
10 seize of them.

11 If this is true then you mandated, and you  
12 by law, have to follow the law. So if you have the  
13 law you gotta follow. Find out whether or not you  
14 have the right to make this decision over these people  
15 as a state entity which is foreign to these people.

16 Because if you foreign you breaking the  
17 law. The law stands even though it's an old law.  
18 Unless you can dismiss the law, the law stands as is.  
19 So you have to show, and you have to in good  
20 conscience know that whether or not you violating the  
21 law itself. Thank you.

22 CHAIRMAN McDONALD: Parties, any  
23 questions? Commissioners? Thank you for your  
24 testimony, Mr. Kamaunu.

25 MR. ORODENKER: Holden Kela Gannon

1 followed by Tascha Wright.

2 HOLDEN KELA GANNON

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

5 THE WITNESS: I do.

6 CHAIRMAN McDONALD: Please state your name  
7 and address and proceed. My name is Holden Kepo'okela  
8 Gannon. I live at 168 Anamuli Street within the Maui  
9 Lani Development. The mission statement directly off  
10 the website for the Department of Land and Natural  
11 Resources reads as follows: "To enhance, protect,  
12 conserve and manage Hawai'i's resources." We'll come  
13 back to that.

14 DLNR's currently proceeding with  
15 construction that will result in over 8 acres of  
16 hardened surface area resulting from roads and  
17 parking. They will also pump 400,000 gallons of water  
18 per day from the Kahului Aquifer to irrigate the  
19 grass.

20 DLNR is doing this even though state water  
21 experts have concluded this aquifer is already being  
22 pumped at unsustainable levels. DLNR's project clearly  
23 violates Condition 21 of the LUC Decision and Order  
24 which requires the property owner to develop in  
25 compliance with representations made to the LUC.

1           The initial representations made to the  
2 LUC are completely different than what it is now  
3 proposed within this mega sports complex.

4           DLNR's project also violates Condition 5  
5 of the LUC Decision and Order. Condition 5 requires  
6 the property owner to execute a Memorandum of  
7 Agreement with the Hawai'i Department of  
8 Transportation prior to final subdivision approval.  
9 This has never been done, yet DLNR got final  
10 subdivision approval. How does this happen? I'll  
11 tell you how that happens.

12           The DLNR knows it cannot comply with  
13 Condition 5 of the LUC's Decision and Order for a  
14 couple of years. None of the proper entitlements and  
15 road infrastructure will be in until then. So what  
16 does the DLNR do in the meantime? It is routing all  
17 of its traffic, potentially 1400 or more trips per day  
18 through *our* neighborhood.

19           DLNR is going to use a route that was  
20 never intended for this kind of traffic, nor was this  
21 route ever *proposed* for this traffic during the LUC's  
22 preliminary proceedings. In fact the intersection  
23 that I and other Maui Lani homeowners have to navigate  
24 on a daily basis is unable to handle even the current  
25 traffic load.

1           So going back to the DLNR's mission  
2 statement again: To enhance, protect, conserve and  
3 manage Hawaii's resources. What have we come to when  
4 the agencies put in place to protect the law are the  
5 very ones breaking those laws? The DLNR should be  
6 held to a higher standard and at the very minimum  
7 follow the law.

8           Please make sure our neighborhood does not  
9 continue to suffer from DLNR's ill-planned mega sports  
10 complex. You must find the Department of Land and  
11 Natural Resources guilty of Condition 21 and Condition  
12 5. You must stop this development before even more  
13 irreparable harm is done to this community. Holden  
14 Kepoli Kela Gannon, a concerned citizen. Thank you  
15 for the opportunity.

16           CHAIRMAN McDONALD: Parties, any  
17 questions? Commissioners? Thank you for your  
18 testimony.

19           MR. ORODENKER: Tascha Wright.

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

23           THE WITNESS: Yes.

24           CHAIRMAN McDONALD: Please state your name  
25 and address and proceed.

1 PUBLIC WITNESS: Hi. Good morning.  
2 Thanks so much for allowing me to talk to you guys  
3 this morning. My name is Tascha Wright. And I live  
4 at 87 Anamuli Street over in the Na Hoku subdivision  
5 of Maui Lani. I've lived there for 4 years since it  
6 was first developed.

7 I'm requesting that the Commission  
8 recognize that the DLNR has violated conditions of the  
9 LUC D&O, particularly Condition 21. A&B presented  
10 their Project for Waiale Town to your Commission and  
11 thankfully received a District Boundary Amendment from  
12 the agriculture to Project District.

13 Maui does need more housing in my opinion.  
14 And this will benefit for Maui. I have a lot of  
15 family and friends who are growing and they're coming  
16 back from the Mainland because they love Maui life.  
17 And there is more housing that's needed.

18 But the land remains zoned county  
19 Agricultural. It's my understanding that all parts of  
20 this Wai'ale Town Project would go through a change in  
21 zoning process before the Maui County Council like all  
22 other development projects, so I assume it would go  
23 through that change.

24 But instead I learned that the County of  
25 Maui permitted DLNR to build the sports complex on

1 land zoned for Agriculture by considering it to be a  
2 special use. A&B represented that the entire Petition  
3 Area would go through a change in zoning. This change  
4 in zoning would allow for the Maui County Council and  
5 the people of Maui to consider the impacts of this  
6 sports complex to its uniquely planned Waiale Town  
7 Community, which is supposed to have features like  
8 bike paths, green belts, and a buffer zone between  
9 Maui Lani.

10 I...am...not against the park. We  
11 actually were very welcoming of a park. But I am  
12 against a sports complex that is going to bring in  
13 more traffic. I have -- me and my neighbors have  
14 keikis who are growing up. We bought into this  
15 expensive place to be able to have our kids grow up  
16 safe, as safe as we possibly can be.

17 And we were told that there was going to  
18 be a park that my keikis could be able to grow up in  
19 that had gym equipment, had places where I could walk  
20 my dogs, things like that. But now it's gonna be  
21 fenced off. And it's gonna have a sports complex all  
22 around.

23 My kids play soccer. I'm a team mom. And  
24 there is a lot of parks that we can use. We go to  
25 Lahaina. We go to Upcountry.



1 MR. ORODENKER: Two minutes.

2 PUBLIC WITNESS: We go to wherever we need  
3 to go for this. We never had a shortage on sports  
4 fields. But there's only Keopulani Park that's nearby  
5 really. For example, I understand -- sorry, going  
6 back. I'll wrap it up. I humbly request that this  
7 Commission consider and find that the DLNR has not  
8 properly obtained its required zone changes and  
9 therefore is violating this Commission's Decision and  
10 Order which is binding on DLNR.

11 I really appreciate you guys for hearing  
12 me out and for seeing to this matter as soon as  
13 practicable considering the fact that DLNR is  
14 developing quickly and is already making a headache  
15 for all the neighbors in the community. Thank you.

16 CHAIRMAN McDONALD: Parties, any  
17 questions? Commissioners? Thank you, Ms. Wright for  
18 your testimony. At this time, Mr. Pierce, before I  
19 get to your presentation, why don't we just break for  
20 lunch already. Seeing we're on a tight timeline we  
21 have a bunch of Commissioners that have to catch  
22 flights out, why don't we reconvene at 12:30.

23 (Lunch recess was held 12:00)

24 CHAIRMAN McDONALD: (12:35) Back on the  
25 record. Is there anybody else in the public that

1 would like to offer public testimony at this time?  
2 Seeing none, Mr. Pierce, will you please proceed with  
3 your presentation. Oh, actually before I get started.  
4 For scheduling purposes, and believe me want to get  
5 through this today, so we're going to have to break  
6 for the day at no later than 2:15 for the  
7 Commissioners to get back.

8           If we do not finish today -- I was talking  
9 with our attorney general and our executive officer,  
10 what we'll do is we'll be back on December 10th. But  
11 our intention is to get through today. Please  
12 proceed.

13           MR. PIERCE: Thank you, Chair. I think  
14 that's feasible. And I will actually work on keeping  
15 my comments short. As you know we've asked -- I'm  
16 here on behalf of Maui Lani Neighbors, which is a  
17 citizen group that was formed to deal with this  
18 particular issue. It's a group of Maui Lani residents  
19 that are representing their interests as well as the  
20 interests of the public in general. And you've heard  
21 from some of those folks today.

22           We're asking today, as I understand the  
23 primary issue that's before the Commission, is we're  
24 asking you to permit this to proceed to a contested  
25 case hearing. Obviously at that point in time there

1 will be another opportunity, I would hope, for me to  
2 make a more formal opening statement. And obviously  
3 there will be the opportunity for the Commissioners to  
4 hear the facts that we know. So I'm going to keep it  
5 short and in the interest of making sure the other  
6 parties have sufficient time here today and we can  
7 take care of any matters necessary. So I do thank you  
8 for putting us on the agenda today.

9           One of the points I would just make and a  
10 couple of just big quick overview pictures about why  
11 we're asking for this Petition for Declaratory Relief.  
12 This is not about -- the issue before you is not about  
13 whether or not a sports complex should or should not  
14 be there. That's not what the issue is.

15           The point that my clients are making and  
16 I'll be making through this case, is that just like  
17 any other project, the developer in any kind of  
18 project needs to follow the Land Use Commission  
19 Decision and Order whether that person be the one  
20 who's originally here as the Petitioner or someone who  
21 later on owns the property.

22           In this case that someone who later owns  
23 the property is DLNR. And it doesn't make any  
24 difference that DLNR is a government agency. In this  
25 case they put themselves in the role of developer. So

1 throughout this case I'll be asking you to do what you  
2 would do for any person and, in fact, certainly that  
3 is what would be fair for the private developers as  
4 well. They want to know that there's not an uneven  
5 playing field here where the government agencies and  
6 the developer's get a different look.

7               So we're asking you to look at this just  
8 like you would any other person who comes before the  
9 LUC for the development.

10              I think it's already in our pleadings, but  
11 just to be clear what DLNR is developing is 3 soccer  
12 fields, 9 baseball and softball fields. There will be  
13 nighttime lights, lights for nighttime playing.  
14 There's going to be over 8 acres.

15              This information is coming directly from  
16 the Environmental Assessment that was prepared by  
17 DLNR. So these are undisputed facts.

18              There will be over 8 acres of hardened  
19 surface area in the process of creating the sports  
20 complex.

21              They'll create parking for 700 cars for  
22 events of that size, 600 of them will be asphalted.  
23 Another hundred will be overflow parking on grass.  
24 There'll be multiple restaurant facilities. There'll  
25 be concession stands. They're having to dig a well to

1 provide for the irrigation that's coming from Kahului  
2 Aquifer, which is already considered by the state, the  
3 water experts, being pumped at unsustainable yields.

4           They're going to be pumping 400,000  
5 gallons per day to water grass. They will also need a  
6 retention basin for that hardened surface area that  
7 will be over 5 acres in size, and probably about  
8 9 feet deep as I understand it.

9           In addition, we'll have all of the  
10 infrastructure that was originally intended by  
11 Alexander & Baldwin for that particular 65-acre parcel  
12 as they presented it during their Petition process.  
13 That includes what A&B called the backbone  
14 infrastructure for their Project that includes roads,  
15 includes a very significantly-sized retention basin.  
16 The retention basin is 176-acre feet in size.

17           To give you an idea of what size magnitude  
18 that is, 1 acre foot is 1 foot deep and 1 acre. So in  
19 order to get 176-acre feet you either have to have a  
20 lot of acreage for a shallow -- for a shallow  
21 retention basin, which is what was originally proposed  
22 by A&B, or it has to go much, much deeper.

23           And what has happened during the process  
24 of DLNR taking over this land -- and I'll get into it  
25 in a minute -- is that that whole initial scenario

1 that the Land Use Commission saw as A&B had  
2 represented at the time, has changed dramatically in  
3 terms of what's on the land. We've identified -- I'll  
4 get into this in a few minutes.

5 But we've identified and you've heard a  
6 little bit about it this morning from some of the  
7 public testifiers, a number of conditions that we  
8 believe were either not properly met where the intent  
9 and faith was not met. That's what the evidence is  
10 going to be about is having you ascertain for  
11 yourselves after seeing the evidence, whether or not  
12 DLNR's Project is meeting those conditions.

13 So with that, let me also mention one  
14 other thing. The Project that DLNR has entered into  
15 because they were able to obtain a Special Use Permit  
16 from the county, which we think is illegal -- let me  
17 first mention this. As you know from reading the  
18 Petition we also have a court case. This case  
19 originated in the Second Circuit Court. That court  
20 case will proceed there as well at some point in time.

21 What we've filed there is these  
22 allegations that are before you today, as well as  
23 additional allegations. Those allegations included  
24 challenges to the Environmental Assessment that was  
25 prepared by DLNR and a question of that. Let me just

1 briefly mention this.

2           This Commission was the accepting  
3 Authority for the original EIS, the Waiale EIS as  
4 prepared by A&B. Later, when DLNR decided to go  
5 forward with the sports complex they prepared an  
6 Environmental Assessment, not an EIS, an EA.

7           And they did not come back to this  
8 Commission for acceptance, even though this Commission  
9 was already -- had made the initial decision on the  
10 EIS with respect to this particular piece of property  
11 in fact. Instead, they went to BLNR. DLNR, the  
12 Department of Land and Natural Resources, went to  
13 their commission, the Board of Land and Natural  
14 Resources, and asked *them* to accept it.

15           So we have some challenges with respect to  
16 the EIS. That issue is not squarely in front of you  
17 but I want you to be aware of what's happening at the  
18 court level.

19           In addition, we are challenging the County  
20 of Maui's interpretation of their own zoning code and  
21 their decision that even though this land -- then just  
22 remind you, take you back to what this Commission did.

23           This Commission, when it was making its  
24 decision on the Petition before, the question was  
25 whether it would be moved from state Ag to state

1 Urban. That was the decision that was before the  
2 state. And during that process the Land Use  
3 Commission heard from A&B representing that there  
4 would be many years of continuing deliberations,  
5 opportunities for community input, opportunities for  
6 governmental scrutiny at the county level.

7 And that included potentially changes to  
8 the Maui Island Plan, if they were determined  
9 necessary. As you know the Maui Island Plan is a  
10 comprehensive document dealing with Maui that's  
11 supposed to identify and deal with our planning here  
12 for the next 15 years or more.

13 And the Maui Island Plan, by the way, and  
14 you'll hear this in the testimony, has very specific  
15 information with respect to this property in terms of  
16 the parks, identifying which lands should be active  
17 and which should be passive. And by the way, let me  
18 just mention with respect to the gentleman, my friend  
19 David Jorgenson, who testified in favor of this saying  
20 that there was a need for soccer fields.

21 I want the Commission to understand that  
22 while the Commission was initially going through the  
23 Wai'ale process, one of the other properties that was  
24 being vetted that the county would purchase, was a  
25 208-acre parcel directly south of Wai'ale, the Wai'ale



1 parcel. And, in fact, the county *did* purchase that  
2 208-acre parcel. It's identified on the Maui Island  
3 Plan as a place for a regional park facility. So it's  
4 exactly what was supposed to happen. And that land is  
5 now available for soccer fields and all those kinds of  
6 things.

7               So I would just point out the fact that  
8 land was appropriated by the county to meet that  
9 regional park facility requirement in the Maui Island  
10 Plan. But continuing on.

11              The other part that we have before the  
12 circuit court is a challenge on whether or not there  
13 was a need for a change -- here's where I was. I  
14 apologize. What I wanted you to understand is once  
15 you -- once you granted or your predecessors, the  
16 predecessor Commissioners granted from State Ag to  
17 State Urban, what happened after that was there was an  
18 expectation, and this was going to go down and  
19 possibly go through a change of the Maui Island Plan.  
20 Secondly, an amendment to the Wailuku Community Plan.

21              The Wailuku Community Plan currently  
22 designates the property as Agriculture. So there was  
23 an understanding that there'd be community input  
24 opportunity and agency review of what was appropriate  
25 for the Wailuku Community Plan.

1           And my friend Mr. Spence to my right,  
2   hopefully still my friend after all these years.  
3   (chuckling), but Mr. Spence did, in fact, testify to  
4   you at the hearing. You'll hear this evidence. He  
5   testified and informed the Land Use Commission that  
6   there is going to be a Wailuku-Kahului Community Plan  
7   update process going to be happening. And that's  
8   because the current Community Plan is from 2000. So  
9   it's quite outdated.

10           It was understood that the parks -- what  
11   would go in as parks would be evaluated during that  
12   Community Plan process. That did not happen. And  
13   that's why this proceeding.

14           Finally, it's our position at the county  
15   level that the change in zoning was necessary. Once  
16   again, all the things that we're telling you that we  
17   think should have happened at the county level are  
18   consistent with A&B's representations to this group.

19           I want to emphasize that we are not here  
20   today to attack A&B. We have not ever been in that  
21   position. We don't think that A&B was going to do  
22   anything, even though there might have been some  
23   slipups, which I think I can identify as we proceed  
24   forward with the evidence. Even though there might  
25   have been some slipups with respect to A&B, we know

1 that A&B was intent on making sure that they followed  
2 the LUC rules.

3 And they were intent -- and I imagine they  
4 still are intent on with the remaining lands going  
5 through that process. They'll amend the Maui Island  
6 Plan if they anticipate it's necessary. They'll get a  
7 Community Plan Amendment to the Wailuku Community Plan  
8 as it goes through the update process. And they will  
9 also get that change in zoning.

10 They know that they have to go through a  
11 project district zoning that's going to take 'em --  
12 it's a 3-phase process that'll probably take 'em close  
13 to 3 to 5 years if everything goes according to plan.  
14 They understood that process. That was the process  
15 that they presented to the LUC.

16 So I want to make it very clear that we  
17 are not attacking A&B. We understand that they're  
18 concerned about our Petition. And we'll address that  
19 issue, but that's not where we our placing the blame.

20 We're placing the blame with DLNR. The  
21 reason that DLNR pushed the envelope on this Project  
22 is because they were concerned about a funding lapse.  
23 The funding for this Project, as you heard in public  
24 testimony, relates to the Sports Development  
25 Initiative which is a -- came out of Governor

1 Abercrombie, Lt. Governor Shan Tsutsui's just recently  
2 in 2013 they identified the funding. They started  
3 bringing the funding on line over the last year or so.  
4 They wanted to make sure that funding got happened.  
5 And, Commissioners, what I think happened here is that  
6 the funding was driving the boat. The funding was  
7 what was making people make the decisions here. They  
8 dropped planning to the wayside in order to make sure  
9 that the funding did not lapse. That's not right.  
10 That's not how good projects are supposed to go  
11 forward.

12               What we're going to understand by the time  
13 we complete the evidence, as you're going to  
14 understand, that this is a very poorly planned Project  
15 for this particular space. You'll probably get that  
16 idea already from the public testimony.

17               Now, I just mentioned a few things that  
18 related to our circuit court action. The circuit  
19 court, as you know and as the Chairman explained in  
20 the beginning of this, has referred the matter to this  
21 Commission.

22               At this time we have no -- we don't  
23 believe that anything will change, although we did  
24 file a Motion for Reconsideration of that decision  
25 because we did want the court to take action

1 immediately in the form of a preliminary relief to  
2 protect us.

3           The reason that was important is that  
4 DLNR, based upon their own schedule, plans to have all  
5 of the work done for this Project, or a majority of it  
6 done by May of 2015. We all know, especially those of  
7 you who are experienced, that it doesn't take too many  
8 months of us working through the procedural process  
9 for that May date to be here upon us. They will have  
10 the Project entirely completed by November 2015.  
11 That's their final walk through, so to speak.

12           So I would just mention one thing. Let me  
13 tell you why we think this is extremely harmful, why  
14 we're asking the LUC to hear this at your earliest  
15 possible time. It was ironic that the 2 other matters  
16 on the docket this morning related to quarries.  
17 There's going to be hundreds of thousands of cubic  
18 feet of dirt that are removed in this process. It has  
19 a significant elevation slide towards Maui Lani. They  
20 have to -- DLNR has to basically make this property as  
21 flat as a pancake in order to take care of this.

22           And in the process they have to build a  
23 massive, over 5-acre retention basin at the initial  
24 phase. So this is a massive Project even for this  
25 Phase 1. They're going to install a number of their

1 softball fields. There's not soccer fields at this  
2 stage. I'm going to come back to that in a moment.

3 Okay. With that said the reason I  
4 mentioned that, Commissioners, is that we are being  
5 harmed. We asked the court to make a decision. The  
6 court was concerned about what this Commission thought  
7 about the issues, because the court felt that the  
8 Commission issues, the issues before the Land Use  
9 Commission had precedence. And that's why we're here  
10 today. So we're going to be asking you to move  
11 forward as quickly as possible with this Project.

12 Let me just back up now and give you a  
13 little bit more background then I'll be done,  
14 Mr. Chair. 2010 is when Alexander & Baldwin  
15 originally filed this Petition for District Boundary  
16 Amendment with the Commission. In 2011 A&B presented  
17 their AIS to the Commission and the AIS was accepted.

18 It's important for you to note that this  
19 property that we're talking about was just a green  
20 field there on the EIS. And I've dug into as well as  
21 the folks that I'm working with, we've dug into it.  
22 If you look at that they were making no assumptions  
23 with respect to the sports complex uses.

24 They were not assuming there was going to  
25 be 8 acres of hardened surface there. They didn't

1 account for that. They also didn't account for these  
2 massive traffic impacts resulting from this. So none  
3 of that was originally evaluated by you. The point is  
4 that that was not an issue before you. A&B made it  
5 clear that these were preliminary drawings. As they  
6 worked through the county process they would get into  
7 greater specifics.

8 For example, their engineering drawings  
9 were called "preliminary engineering drawings". This  
10 is usually the case with District Boundary Amendments.  
11 So that gets us through 2011. In February of 2012  
12 right along in there, you and your Commissioners held  
13 hearings, a few days of hearings on this matter.

14 At that point in time no one mentioned  
15 that this was going to be a sports complex. In June  
16 of 2012 the Commission issued its Decision and Order,  
17 the D&O. And there's no mention of a sports complex.  
18 But what you *will* see there is that it talks about  
19 passive uses for what's appear to be this part of the  
20 property. And it talks about active use to the south,  
21 either the southern part of the Wai'ale property.

22 And to be clear this Petition Area was  
23 545 acres. There's a map that I note one of the  
24 public testifiers presented to you today. You'll see  
25 this in a lot greater detail as we move forward, but

1 there's a map of the Petition Area.

2           So the Project that we're seeking  
3 declaratory relief on is the northern-most 65 acres of  
4 that 545 acres. All of it was subject to the Decision  
5 and Order. Then what happens after that, that's June  
6 12, 2012. A year goes by. Suddenly the county  
7 approves for A&B a 3-lot subdivision of the northern  
8 part of land. That's about 420 acres, I believe.

9           So that 3-lot subdivision, one of those  
10 lots is the 65-acre lot that was then conveyed. So  
11 that was October 2013. The county granted subdivision  
12 approval. No one asked or inquires as to whether the  
13 LUC conditions are met or to the extent that that  
14 happened, A&B made a representation that they were  
15 being met.

16           Then what happens is, let's fast forward  
17 to June of this year, June of 2014. At that point in  
18 time DLNR and A&B enter into negotiations and they  
19 enter into something called a disposition agreement.  
20 This is how they're going to deal with the piece of  
21 property.

22           Key in this disposition agreement is that  
23 they parsed out for each other what they literally  
24 understood, each of the parties clearly understood,  
25 that the LUC conditions were affecting this property.



1 What they said was that what DLNR agreed was that they  
2 would be responsible, DLNR would be responsible for  
3 Conditions 1, 2, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16,  
4 19 and 21 of the Land Use Commission Decision and  
5 Order as such conditions relate to the 65-acre  
6 property only.

7               So DLNR is not an innocent party in this.  
8 They understood. They have their attorneys reviewing  
9 these documents. A&B negotiated this. A&B said,  
10 "Look, if there's any conditions to be met with this  
11 piece of property with respect to these that just  
12 enunciated, they're now your responsibility."

13               DLNR had the opportunity at that point in  
14 time to come to you and seek any relief DLNR needed in  
15 order to make sure that they were in compliance. And  
16 to the extent necessary they could have sought an  
17 amendment to the Decision and Order as necessary.  
18 That would have given the public an opportunity to  
19 review it, given you an opportunity to scrutinize the  
20 changes that were happening.

21               But DLNR did *not* do that. They moved  
22 forward with their Project which is now slated to be  
23 completed by November 2015. I just want to finish  
24 with one example of what has changed here that is so  
25 significant.

1           Originally, if you go back, and you will  
2 see this in the evidence, then I'm going to finish,  
3 Mr. Chair. If you go back and look at what was  
4 originally proposed in the preliminarily engineering  
5 drawings, it looks like a good majority of the  
6 property was initially intended to be 1 to 2 feet  
7 deep, a very shallow retention basin possibly. That  
8 was preliminary.

9           It's our position that that might have  
10 changed dramatically during the course of the next 5  
11 years because that was based upon an assumption of  
12 maximum buildout that A&B was presenting to the LUC.

13           And as you all know, a lot of times what  
14 is okay for you is not okay once it gets done and you  
15 get into the specifics at the county level. You're at  
16 the 30,000 feet level. The county's at the 5,000 feet  
17 level or lower I guess.

18           From that perspective that was a  
19 preliminary drawing. But the preliminary drawing,  
20 nonetheless, tells you a lot. Because what happened  
21 is the other thing that happens in that disposition  
22 agreement is that A&B preserved all of the things that  
23 they had agreed with you with respect to this  
24 property.

25           So they have a number of easements, 21

1 easements covering this 65-acre parcel. They  
2 continue to control what happens with a large majority  
3 of it. But one of the things they did was A&B agreed  
4 that they would reduce the overall square footage used  
5 by the retention basin and make it a much smaller foot  
6 print. So now it appears that it's around 15 acres on  
7 the maps instead of what was before well over 35 acres  
8 or maybe larger, maybe a lot closer to 50 acres. I  
9 think that's actually a closer number, Commissioners.  
10 They were gonna make that smaller. Guess what's  
11 going to go into those retention basins? In the  
12 second phase that's where the soccer fields are gonna  
13 go.

14               So what DLNR's been promising to the  
15 community they never mentioned to the community. And  
16 I think my friend Mr. Jorgenson was not aware, that  
17 those 3 soccer fields they are proposed for that, just  
18 3, are going to be inside a retention basin that has  
19 to be 10 to 15 deep feet. It's going to be handling  
20 all the runoff for all of the 422 acres that is on the  
21 north side of the property. This...is...not...good...  
22 planning.

23               It would have become good planning and  
24 something right would have happened here if they had  
25 gone through the community plan amendment process.

1 And if they had an opportunity to go through the  
2 change in zoning process, *my* clients would have had an  
3 opportunity to have meaningful hearings and meaningful  
4 opportunity to meet with councilmembers and other  
5 elected officials to make sure that the right thing  
6 was done.

7               So what has happened here is that relates  
8 to going back to the conditions that we had before  
9 you. Condition No. 5 relates to -- and I've reviewed  
10 carefully the testimony. And my colleague Mr. Yee  
11 from the Office of Planning was -- the Office of  
12 Planning was very concerned about what was going to  
13 happen with traffic.

14               So one of the conditions that happened  
15 there, with respect to traffic, was that the  
16 subdivision approval -- before a subdivision approval  
17 that there would be a TIAR, Traffic Impact Analysis  
18 Report. The reason that was so important was  
19 because we all know that once subdivision occurs a new  
20 landowner steps into the shoes. And that's exactly  
21 what's happened here. But none of those things  
22 happened during that period.

23               What I think has happened is now that  
24 we've identified them DLNR is scrambling to do  
25 something that makes it look right. So I anticipate

1 that you're going to be hearing some testimony from  
2 some of them during the period that they scrambled  
3 after we put them on notice of these issues and they  
4 tried to fix the matters.

5 That does not solve the violations,  
6 Commissioners. That goes to No. 5, the traffic  
7 impacts, as you heard. What's gonna happen is the  
8 traffic is going to be funneled through Maui Lani. It  
9 was never anticipated that was going to happen but  
10 that's what results from the fast track.

11 What I would also note is in the  
12 disposition agreement DLNR agreed that A&B might *never*  
13 build this subdivision, in which case there might  
14 never be those accessways that were originally  
15 intended for that park. Major problems in terms of  
16 planning.

17 Then we go to the other conditions which  
18 I'll just hit very quickly. Conditions 8 and 16 and  
19 24, but I want to focus on 21 going back to the  
20 representations made by A&B. I stand here today and  
21 say that I am not concerned that A&B isn't going to do  
22 what's right in terms of their Project. But they sell  
23 this piece of property after they got subdivision  
24 approval.

25 And it's DLNR. You all understand that

1 those conditions run with the land. DLNR is obligated  
2 to fulfill them. They have not fulfilled them.  
3 That's what the evidence will show, Commissioners.  
4 Thank you very much.

5 CHAIRMAN McDONALD: Thank you, Mr. Pierce.  
6 Commissioners, are there any questions for Mr. Pierce  
7 at this point? Commissioner Wong.

8 COMMISSIONER WONG: Mr. Pierce, I wanted  
9 to understand. You're going to file a Motion to  
10 Reconsider with the courts?

11 MR. PIERCE: Yes, Commissioner. The  
12 Motion to Reconsider has been filed with the court.  
13 And we don't know exactly when the court might render  
14 a ruling on that.

15 COMMISSIONER WONG: So let me ask you this  
16 opinion then. Let's say we go to, you know,  
17 evidentiary. But the court says, "No you don't need  
18 to." What would happen?

19 MR. PIERCE: Let me answer that way. I  
20 think that's a very important question. Before we  
21 initiate the hearing we need to make sure that we  
22 understand whether or not the court would consider our  
23 motion. But let me explain.

24 As a non-hearing motion the opposition  
25 papers were due from the county and the state today, I

1 believe. And the reply's due within 3 days after, 3  
2 to 5 days depending upon how they serve me. The court  
3 could really -- if I hear from the Commissioners of a  
4 date being set today, I will file a Supplemental  
5 Notice to the court to let the court know that we're  
6 asking for an early ruling on that. And then we can  
7 inform the Commission. And I think that would take  
8 care of the issue and make sure that there weren't 2  
9 jurisdictional things going on here at the same time.

10 But let me also say one other thing,  
11 Commissioner. The way we positioned that is we've  
12 asked the court for preliminary relief. And the point  
13 that we made to the court is that is preliminary. So  
14 even if the court were to rule preliminarily, okay,  
15 that this here, the Land Use Commission, could still  
16 grant and would grant *permanent* relief.

17 In other words, what your decision would  
18 would be, would be the final decision. Any decision a  
19 the court would make would be preliminary in nature in  
20 order to protect us from irreparable harm. So that  
21 would be in the nature of a TRO, a temporary  
22 restraining order, if some of you are familiar with  
23 that.

24 So what we've asked the court, we said,  
25 "Look, we're asking for you just to stop the Project

1 based upon us showing that we're likely to succeed on  
2 the merits. Now give us time to go to the LUC and  
3 have them rule on those issues that are related only  
4 to the LUC." I hope that helps.

5 COMMISSIONER WONG: Yeah. It's just that  
6 I'm concerned that it's going in a 2-track system.  
7 And that we do one thing and the court does another or  
8 visa versa. That the courts may overrule us or not.

9 MR. PIERCE: Commissioners, I would ask  
10 you -- I mean right now the only thing we have in  
11 front of us is the Order. The Order was an Order to  
12 Refer. The court made it clear that the court is not  
13 insisting that the LUC do anything. They made it very  
14 clear in their Order that it's up to the LUC to decide  
15 what they gotta decide.

16 But what I'm asking you is right now all  
17 we have is an Order from the court. And I would ask  
18 for a hearing date. And it would be my promise to you  
19 to make sure that we have any jurisdictional concerns  
20 alleviated before we ever get to that hearing date.

21 COMMISSIONER WONG: So the other question  
22 I have then, is because the courts did say, as you  
23 stated, it's up to us. What if we say we boot it back  
24 to the courts and say, "you take it now"?

25 MR. PIERCE: Then I'm going to have a



1 problem on my hands, but we'll figure that out when  
2 the time comes. Once again that certainly is a  
3 decision that I think the court anticipated and it  
4 would, of course, force the jurisdiction, I think back  
5 to the court. And the court would have to do  
6 something at that point in time. So I appreciate  
7 those questions because you're right on, you're right  
8 on the issues that have to be presented to the LUC  
9 today.

10 COMMISSIONER WONG: I just have the  
11 concern about the two jurisdictions. The other  
12 question I have is you're also dealing with the county  
13 on their issues, is that correct?

14 MR. PIERCE: Everything is either at the  
15 court -- we do have -- we do have an appeal lodged  
16 with the Board of Variances and Appeals. But we don't  
17 have any hearing dates set in the near future on that  
18 one. So there is an administrative action there as  
19 well. But the primary action is with the circuit  
20 court.

21 COMMISSIONER WONG: But there is something  
22 at the county level.

23 MR. PIERCE: That's correct. But that  
24 does relate, let me state that to be clear it would be  
25 possible for the court to render its rulings with

1 respect to everything but the LUC, that's our  
2 position, and for the LUC to stay focused obviously  
3 only on those issues that are within the LUC's  
4 jurisdiction which are ones I talked about today.

5 COMMISSIONER WONG: Just because there is  
6 the outstanding issues with the courts of the other  
7 conditions, correct? That was in the other issues?

8 MR. PIERCE: Right. We have multiple  
9 claims for relief that we've positioned with the  
10 circuit court. Among them one is the LUC issue.  
11 That's right.

12 COMMISSIONER WONG: Thank you.  
13 Commissioner Scheuer.

14 COMMISSIONER SCHEUER: Sorry, Mr. Pierce.  
15 Sorry if this was what you tried to say to Mr. Wong,  
16 and I just didn't get it. Having read your Petition,  
17 I'm not actually clear what it is the relief that you  
18 seek from this body.

19 MR. PIERCE: Okay. We're asking --  
20 there's 2 ways that the Land Use Commission could  
21 assist a Petitioner from the public. One is where we  
22 ask for -- where we ask for an Order to Show Cause,  
23 and we ask for the land to be reverted. That's one of  
24 the enforcement powers the LUC has or one of the  
25 jurisdictional powers and one of its levels of

1 authority.

2           The other one is what we've done here,  
3 which is we're not asking to take any enforcement  
4 positions. We're asking for you to declare, so it's a  
5 form of declaratory relief. So what that means in  
6 this instance and in all instances, is that you as the  
7 tribunal would be declaring whether we're right or the  
8 state is right in terms of the interpretation of those  
9 5 conditions that we're asking about.

10           We're focused on 5 conditions. So we're  
11 asking for you to rule that there were violations of  
12 those. What would happen is once that was declared --  
13 in fact the court made a point of asking this question  
14 to both the state and the county when we had our  
15 initial hearing.

16           What would happen at that point in time is  
17 that under the Chapter 205 if you declared that any  
18 one of these was a violation or all of them were  
19 violations, once you reach that and you issue an  
20 order, what the court then asks -- and there was a  
21 confirmation by the County's attorney on this point --  
22 is would the Planning Department using its enforcement  
23 powers under the Chapter 205 then enforce.

24           The response was, and you can ask the  
25 county attorney, I don't want to put words in the

1 county's face -- county's mouth. But I understand was  
2 that the county is saying: "Yes. If you tell us what  
3 the position is, then we will enforce." Then the  
4 court say of course, "If you don't enforce then the  
5 court will enforce." What it would mean is that under  
6 the Primary Jurisdiction Doctrine, which is how this  
7 got referred back to the Land Use Commission, the  
8 Court believes that the expertise lies here to make  
9 the decision with respect to LUC D&O because that is  
10 within your Authority.

11 So what we're asking you to do is use your  
12 jurisdiction here and declare one way or the other on  
13 this. Once we get that declaration it will create  
14 clarity in the law with respect to the facts. Then  
15 the appropriate other agencies would deal with the  
16 declaration at that point in time. I hope that answers  
17 the question.

18 COMMISSIONER SCHEUER: Thank you.

19 CHAIRMAN McDONALD: Commissioner Wong.

20 COMMISSIONER WONG: I guess what happened  
21 is I was listening to all the public testimonies. It  
22 appears as if some of the public testimonies were a  
23 little tangential to your request for relief. Is that  
24 correct or am I mistaken?

25 MR. PIERCE: I think, Commissioner, that a

1 lot of it was very much focused. In other words, I  
2 did hear public testimony where they were asking you  
3 to find there's been a violation of Condition 5, for  
4 example on traffic, or a condition on the Fish and  
5 Wildlife Service issue; or on 21 what were the  
6 substantial representations made by A&B? And should  
7 those apply to DLNR? So I did hear those being  
8 referred to.

9               So I guess I would say that -- you know,  
10 certainly there were some other ones that were,  
11 perhaps, unrelated but the focus here, to be clear, is  
12 on these 5 conditions of the LUC D&O.

13               COMMISSIONER WONG: I need to ask the  
14 attorney general something then. Because the public  
15 has asked for other relief besides those five points.  
16 Can we bring that in or we cannot?

17               MS. ERICKSON: Do you want to go into  
18 executive session?

19               COMMISSIONER WONG: Can we go into  
20 executive session on that, please?

21               CHAIRMAN McDONALD: Sure. There's a  
22 motion for executive session by Commissioner Wong,  
23 second by Commissioner Ahakuelo. The Commission will  
24 now go into formal executive session -- sorry. All  
25 those in favor of executive session say, "Aye".

1 COMMISSIONERS: Aye.

2 CHAIRMAN McDONALD: Any opposed? Hearing  
3 none, if you folks would all leave the room our chief  
4 clerk will come get you once our executive session is  
5 concluded. (1:15-1:30 executive session)

6 CHAIRMAN McDONALD: Okay. We're back on  
7 the record. Commissioners, any more questions for  
8 Mr. Pierce? County, do you wish to offer any public  
9 testimony at this time?

10 MS. TARNSTROM: We wish to defer to the  
11 State first if that's okay with the Commission.

12 CHAIRMAN McDONALD: Excuse me?

13 MS. TARNSTROM: We'd have the State  
14 present argument first, if that's okay with the  
15 Commission.

16 CHAIRMAN McDONALD: State, are you okay  
17 with that?

18 MS. WESTON: Good afternoon,  
19 Commissioners. My name's Amanda Weston. I'm a deputy  
20 attorney general with the state of Hawai'i. The  
21 community of Maui has repeatedly expressed a need and  
22 desire for parks with sports fields. There is a known  
23 shortage of sports fields on Maui. A small sample of  
24 that support was submitted to you on November 18th by  
25 the Hawai'i Soccer Federation. And that was made up

1 of 769 signed petitions and a 150 comments. That's  
2 just a small sample of the people showing support for  
3 the park.

4           The state is developing 65 acres to  
5 satisfy the part of this, just part of this need.  
6 It's important to note that right now only Phase 1 of  
7 3 is being developed. The development of the park has  
8 been legal. The state has taken -- the state is  
9 sensitive to and has taken legal precautions to  
10 protect both endangered species and any culturally  
11 sensitive areas.

12           An archaeological monitor is present for  
13 ground disturbing activities. All conditions of the  
14 LUC's Decision and Order have been satisfied. All the  
15 conditions precedent to those conditions have not yet  
16 been triggered. The most important is the state has  
17 not violated that Order.

18           The community of Maui supports this park,  
19 needs this park. And the state is working to provide  
20 the park. Contracts have been signed well before the  
21 plaintiffs filed any action in this case. And the  
22 cost to the state and to the taxpayers would be huge  
23 if the construction of the park was delayed.

24           The delay is not justified because there  
25 have been no violations or wrongdoing. The state is

1 also in favor of having an evidentiary hearing on this  
2 matter. So I would ask that that be set. Thank you.

3 CHAIRMAN McDONALD: Thank you, State.  
4 Commissioners, any questions? Mr. Yee, do you have  
5 anything else to add?

6 MR. YEE: Very quickly. I note there's  
7 been sort of a long discussion about what the facts of  
8 this case are. To a certain extent we don't really  
9 need to know all of that right now. The only thing  
10 we're trying to figure out is whether or not to set  
11 this matter for a hearing. And I think the parties  
12 are all in agreement the answer is "yes". So that  
13 seems to be a fairly simple initial decision.

14 There probably may be some much more  
15 complicated issues we're going to have to deal with in  
16 the future. We're going to have to have a better  
17 understanding. Some of the allegations involve  
18 certain things that should be done before final  
19 subdivision approval. We're going to have to get a  
20 better understanding what that means before we have  
21 final subdivision approval. There are allegations  
22 about compliance, substantial compliance with  
23 representations.

24 And we're going to need a better  
25 understanding of specifically what are those



1 representations. Record citations, transcript  
2 citations, what page of the document is being referred  
3 to, so we could have a very clear understanding of  
4 that so we can link everything very clearly.

5           So I think the parties will be working on  
6 that as we move forward. And I think the only thing  
7 the Office of Planning has a concern about is the  
8 timing. I think there are conflicting issues going on  
9 right now. On the one hand there's a lot of work to  
10 be done. I think a lot of those specificity of  
11 representations is not present yet. There's a  
12 substantial record to go through just to understand  
13 the context of the representations.

14           Then, of course, we're going to have to  
15 prepare that in order to present it to you in a way we  
16 can distill all this information in a way that would  
17 be organized and hopefully understandable. Because  
18 it's fairly complicated, at least even for me who was  
19 present at the original A&B.

20           I was getting a little lost among all the  
21 details of what was going on. So we're going to need  
22 to work on that some more, as well as getting some  
23 more information from some various state agencies of  
24 which the Office of Planning has begun the process on.

25           Having said that let me also acknowledge

1 that because construction is ongoing, we certainly  
2 acknowledge the need to move forward with this and  
3 this case shall not languish.

4           So very likely the Office of Planning is  
5 going to be pushed a little bit to get its job done,  
6 but recently that does not seem to be anything new.  
7 (audience chuckling)

8           But our proposal is simply leave the date  
9 to your executive director to discuss the parties both  
10 what are the needs, what can be done, where are the  
11 parties. Where's the construction going? What's the  
12 potential impact as well as, and probably very  
13 importantly, what is the LUC's schedule like?

14           So that your executive director can fit it  
15 into everything else that's going on, if there's some  
16 sort of disagreement by the parties about the length  
17 of this process, anyone can obviously always file a  
18 motion, but I'm very confident that won't be  
19 necessary.

20           If what I anticipate to be cooperation on  
21 the process among the various parties I think we'll be  
22 able to get that done in some regular fashion.

23           The pending or potential reconsideration  
24 is somewhat of a concern because one of the reasons  
25 for the Office of Planning's support for the hearing

1 was the idea that this circuit court specifically  
2 said: "We're going to delay our proceedings in order  
3 to allow the LUC to consider this."

4 If the court changes its mind, I'm going  
5 to want to know what the court says and how they  
6 changed their minds. So I think that's also something  
7 your executive director can look at and see whether or  
8 not there's something that needs to be brought back  
9 for further hearing on, or as well as any of the  
10 parties obviously could do the same.

11 Nevertheless, for today the Office of  
12 Planning -- I think all the parties agree -- that this  
13 matter should be set for a contested case hearing.  
14 The only question is whether you should set a specific  
15 date. And the Office of Planning's recommendation is  
16 to leave it to your executive director to set that  
17 date after a consultation with the parties. Thank  
18 you.

19 CHAIRMAN McDONALD: Commissioners, any  
20 questions for Mr. Yee?

21 COMMISSIONER WONG: Chair. Mr. Yee, I  
22 have a question. What is your feeling about their  
23 motion to -- the Petitioner's Motion to Reconsider at  
24 the court? 'Cause that sounds like it is asking the  
25 court to decide now.

1           MR. YEE: I think it's going to depend  
2 what the court says. (pausing) I'm hesitating  
3 between the short and long answer. Let me go with the  
4 medium. (general audience chuckles) If the court  
5 issues a preliminary injunction and determines that  
6 the Petitioner is likely, or perhaps not likely, to  
7 succeed on the merits, the court then looked at the  
8 substance of the allegations.

9           If those allegations are relating to the  
10 LUC Decision and Order, then one would think -- why  
11 would the court then wait for a decision from the LUC?  
12 You already looked at it to make a preliminary  
13 determination. Just make the final one.

14           But I don't know that that's what the  
15 court's gonna do. I mean there's so many  
16 possibilities, so many different ways this could go.  
17 That my only suggestion is the court hasn't ordered it  
18 yet. So let's set it for hearing. Let's leave the  
19 date to your executive director. And if that order  
20 comes in later and something else changes, we'll need  
21 to deal with it and we'll deal with it after we get  
22 the order.

23           COMMISSIONER WONG: So a follow up to this  
24 issue is we have DLNR, who is a sister agency, is that  
25 correct, to LUC, approximately to DBEDT. So isn't

1 that we're deciding about our sister agency?

2 MR. YEE: First of all, this happens  
3 frequently. State agencies appear in front of other  
4 state agencies. That just always happens. State  
5 agencies go to the Clean Air Branch. The Department  
6 of Health asks for permits. So that's not anything  
7 new. Kihei High School came before you. That was the  
8 Department of Education.

9 COMMISSIONER WONG: I guess this is --  
10 it's just interesting that what if we -- what if we  
11 decide against the sister state agency. And then they  
12 say, "We're going to appeal it." That's up -- it's  
13 just an issue that's gonna come up, right?

14 MR. YEE: Yeah. I was going to say, then  
15 they appeal it. I mean then let them appeal. I don't  
16 mean to be cavalier about this, but you treat them  
17 just like as any other private agency that would be  
18 here. If it's A&B in front of you and they appeal,  
19 A&B appeals it. Let them appeal it. If it's DLNR not  
20 A&B then there really is no differences. Technically  
21 it could be the Office of Planning, but we just have  
22 never done it.

23 COMMISSIONER WONG: Yet. But it's just  
24 interesting how, you know if we do decide against  
25 DLNR, how would that impact any, you know, things in

1 court right now with the Petitioner?

2 MR. YEE: Yes, well...

3 COMMISSIONER WONG: We found the  
4 violation.

5 MR. YEE: My general thought is it is what  
6 it is. You decide whatever the right decision is and  
7 let the chips fall as they may. And don't worry about  
8 what happens outside would be my thought. That's why  
9 you're an independent agency.

10 COMMISSIONER WONG: Thank you.

11 CHAIRMAN McDONALD: Anything else,  
12 Commissioners, for Mr. Yee? I'm just curious,  
13 Mr. Yee. You know, DLNR, the Office of Planning, you  
14 just stated that they're in agreement to schedule this  
15 for hearing. However, we heard from DLNR that they  
16 feel that they haven't violated any of the conditions.  
17 So just a little confused as to the statement that was  
18 made as far as no violations of the conditions and,  
19 you know, they're willing to schedule the matter for  
20 hearing.

21 MR. YEE: You mean why is there an  
22 inconsistency?

23 CHAIRMAN McDONALD: Yes.

24 MR. YEE: Because we're not coordinating  
25 with DLNR about a state position. The Office of

1 Planning is an agency. The DLNR in this particular  
2 case the landowner. It's not that I'm not talking to  
3 them. It's not that I'm not going to be talking to  
4 Mr. Pierce either. But we're not -- we're reaching  
5 our positions separately.

6 CHAIRMAN McDONALD: I see. So that's the  
7 position of the Office of Planning versus the position  
8 of the state which includes DLNR.

9 MR. YEE: Yes. I mean there is not a  
10 single agency before you representing all -- let me  
11 backtrack. Typically the Office of Planning comes to  
12 you on behalf of all state agencies to present a  
13 single position. In this case we're exempting out  
14 DLNR from that. So if we want information from DLNR  
15 we'll send the request to their attorneys, not to  
16 DLNR. We're going to ask their attorneys to get us  
17 the information.

18 CHAIRMAN McDONALD: Okay. Thanks for the  
19 clarification, Mr. Yee. County?

20 MS. TARNSTROM: I'm Kristin Tarnstrom,  
21 deputy corporation counsel for the County of Maui. I'm  
22 here with William Spence, the director of the  
23 Department of Planning of the County of Maui. I fully  
24 support also setting this case for a hearing. I want  
25 to echo the state's arguments about the county needs

1 for a park.

2 And that's especially true as will come  
3 out in the evidentiary hearing. As population grows  
4 in the center of Maui, it's intended to be our  
5 population center. And if the wall project goes  
6 forward more parks will be needed. And they are  
7 already needed now.

8 The circuit court, just to clarify, they  
9 made several statements while figuring out how and  
10 what to do with the Land Use Commission conditions  
11 that have been challenged by the Petitioner.

12 And in trying to formulate an opinion the  
13 court very much struggled and thought this would be  
14 best considered by this Commission because of its  
15 specialized expertise. And because of these 5  
16 conditions and the Commission's position on these 5  
17 conditions, touch upon a lot of different issues  
18 within the case itself.

19 It's all kind of a web of allegations and  
20 one thing relies upon another a great deal. And the  
21 Land Use Commission's decision here and on these  
22 issues greatly informs the court's position as the  
23 court said on all the other issues.

24 So when they remanded it here they  
25 definitely didn't want to provide you guys with any



1 instruction. You should act independently. It's just  
2 worth noting that the court -- the fact of the issues  
3 and the resolution of these issues before this  
4 Commission were very important.

5 I just wanted to add that the public  
6 testimony provided here today demonstrates how  
7 important it is to send it to a contested case hearing  
8 or evidentiary hearing.

9 Much of the testimony was based in either  
10 legal argument of expert opinion or facts that would  
11 be better generated by experts, and factual testimony.  
12 The state and county have defenses to every single  
13 allegation that has been brought up to today, but  
14 obviously can't present them to the Commission at any  
15 length or with any specificity because they've been  
16 presented very badly and without factual backing.

17 Yeah. So I just wanted to reiterate that  
18 we should be sending this to a hearing. And the  
19 decision here will touch upon all the issues in the  
20 circuit court case and build a foundation for that  
21 case as well.

22 CHAIRMAN McDONALD: Thank you, County.  
23 Commissioners, any questions for County?

24 COMMISSIONER WONG: Chair? I have a  
25 question. The Petitioner stated that he also filed a

1 claim with the county for -- is that correct?

2 MS. TARNSTROM: Petitioner has filed  
3 several lateral actions, this being one of them.  
4 Another one being a declaratory Petition to the County  
5 Planning Commission as well as a dba appeal before the  
6 Board of Variances and Appeal. This is the only  
7 active lateral action they took after they took it to  
8 circuit court. They filed their circuit court  
9 complaint. And then they took these 3, what I  
10 consider lateral actions in agencies. This is the  
11 only one that's become relevant, greatly relevant to  
12 the circuit court action as the other 2 are, from what  
13 I understand, I haven't received any information that  
14 they've moved forward at all.

15 COMMISSIONER WONG: But it's pending in  
16 the county, those other actions, correct?

17 MS. TARNSTROM: As far as -- as far as I  
18 know it hasn't been brought -- those actions haven't  
19 taken their next steps in terms of a decision being  
20 made whether or not the Board of Variances appeal will  
21 take the appeal or if the declaratory relief sought by  
22 the Planning Commission will be granted either. So  
23 they're kind of in that limbo state between having  
24 filed the request and having a decision made on that  
25 request.

1                   COMMISSIONER WONG: As you know the Land  
2 Use Commission has -- we can -- we don't have -- we  
3 can show cause, motion to have a Motion to Show Cause  
4 and that's about it, is that correct?

5                   MS. TARNSTROM: I would add, as Mr. Pierce  
6 said, that you also have the power to discern whether  
7 or not there's been a violation of one of your  
8 Decisions and Orders which is what the County actually  
9 sought dismissal of the circuit court issues that were  
10 more specific to the Land Use Commission's authority.

11                   COMMISSIONER WONG: So what would happen  
12 if we said there *is* a violation?

13                   MS. TARNSTROM: If you said there was a  
14 violation and issued a Decision and Order saying  
15 Condition 5, Condition 8 these all violations, I  
16 assume you'd have a factual basis for that and propose  
17 resolution for it in which case that would be sent to  
18 them.

19                   I'm not sure of exactly the procedure in  
20 place but it would be sent to the Maui Planning  
21 Department to enforce that Order; then Maui Planning  
22 Department with that Decision and Order. And with  
23 that concrete finding by the LUC they'd be able to  
24 take action and make sure that it's brought into  
25 compliance, the state actions would be brought into

1 compliance.

2 COMMISSIONER WONG: So the other question  
3 is doesn't the Maui County also have -- they could do  
4 also the same thing without us?

5 MS. TARNSTROM: Well, this Petition was  
6 brought by the Maui Lani Neighbors to challenge the  
7 State's actions. The Maui Planning Commission -- the  
8 Maui Planing Department, excuse me -- considered all  
9 these allegations a couple months ago. We have had a  
10 very brief period of time in which to respond. But we  
11 took the allegations. We looked at how they were  
12 stated in the Decision and Order by the LUC. We  
13 looked at what the state was actually doing. We  
14 compared the two and discerned that the state was in  
15 compliance.

16 So the Maui Planning Department has  
17 already been requested of to make a finding in this.  
18 Their initial findings were that there was no  
19 violation of this Decision and Order which is probably  
20 why the Petitioner decided to file with the Land Use  
21 Commission.

22 COMMISSIONER WONG: But isn't there an  
23 appeal also pending with the Maui County on this  
24 issue?

25 MS. TARNSTROM: Not on this topic.

1 COMMISSIONER WONG: It's on another topic.

2 MS. TARNSTROM: It's on -- Petitioner  
3 could probably speak to this better than I could. But  
4 those appeals and request for relief do not relate, I  
5 do not believe, to issues presented to the Land Use  
6 Commission.

7 CHAIRMAN McDONALD: Thank you. A&B?  
8 Mr. Matsubara, any public testimony you'd like to  
9 offer?

10 MR. MATSUBARA: Good afternoon, Chair  
11 McDonald, Commissioners. My name is Ben Matsubara and  
12 along with Curtis Tabata represent A&B Properties,  
13 Inc. With me is Grant Chun, A&B Properties Maui  
14 Division Head.

15 I filed a Memorandum in this case  
16 basically agreeing that a contested case should be  
17 conducted. I also indicated it was our intention to  
18 file a Motion to Intervene. I would ask you to grant  
19 us the right to intervene and participate in the  
20 hearing if you so choose to have one.

21 But I wanted to put this in a little bit  
22 of context to let you know what A&B's interest is in  
23 this proceeding, and I'll be brief. We filed the  
24 original District Boundary Amendment proceeding that  
25 requested the reclassification of approximately

1 545 acres from Ag to Urban for a mixed residential  
2 commercial use Project.

3 Now, those uses that were included in the  
4 545 acres we're requesting, included village mixed  
5 use; commercial business; business light industrial;  
6 multi-family; single-family residential; community  
7 center; regional and neighborhood park; greenway open  
8 space; state's cultural preserve; and a middle school.

9 The residential units we are planning on  
10 build their number of excess of 2500 homes to help the  
11 Maui housing situation. On June 21st, 2012 the  
12 Commission granted our Petition, issued the Decision  
13 and Order and the conditions. That's the Decision and  
14 Order and the conditions you're looking at today.

15 And because at the time that District  
16 Boundary Amendment Petition was filed, we were the  
17 only Petitioner. We presented a time schedule  
18 relating to our Project and what we propose to develop  
19 and the representations related to what we would do  
20 with the property we controlled and owned.

21 Our participation in this proceeding  
22 basically is to ensure that our Project is permitted  
23 to continue because we have complied with the  
24 conditions and the representations made.

25 Our only interest is just to ensure that

1 any concerns that arise could be addressed. If  
2 they're related to us or if they're not related to us,  
3 as I understand they could be reached to what applies  
4 and what doesn't. And that would be why we would like  
5 to participate in the hearing. I thank you for your  
6 consideration and time. Thank you.

7 CHAIRMAN McDONALD: Thank you,  
8 Mr. Matsubara. Commissioners, any question for  
9 Mr. Matsubara?

10 COMMISSIONER SCHEUER: Chair, is it  
11 possible to ask a question of Mr. Pierce again?

12 CHAIRMAN McDONALD: Sure. Go ahead,  
13 Commissioner Scheuer.

14 COMMISSIONER SCHEUER: Many of the  
15 testifiers that we listened to, I believe, at least  
16 some of them are members of the Association who you  
17 represent. Certainly live in the community.  
18 People -- some people's testimony was directly related  
19 to the arguments you've made. Some was a broader set  
20 of testimony.

21 What I found when I heard the public  
22 testimony was this sort of united sense of urgency.  
23 There's a serious concern that's being alleged by  
24 these community members and they want some sort of  
25 rapid addressing of the ongoing issues that they're

1 perceiving.

2 That said, Mr. Pierce, you understand the  
3 Land Use Commission's proceedings are fairly slow,  
4 correct?

5 MR. PIERCE: I do understand that.  
6 Although, I guess I'm always an optimist. So I was  
7 hoping that we could be -- we could -- let me answer  
8 it this way. And, Mr. Chair, if you will, this will  
9 be a little bit of a reply to a couple of the  
10 comments. I think Mr. Yee really hit the process on  
11 the head in terms of what could happen here. The  
12 parties are in agreement for a contested case as I  
13 understand it. It's just up to the LUC at this stage.  
14 We could meet with Mr. Orodener by phone and work out  
15 any of the pre-hearing issues, try to schedule a date.

16 I, once again, being an optimist, it would  
17 be my goal to be respectful of the Commission's time  
18 and try to have the hearing done in two days. I think  
19 despite the fact that we've got a narrow set of  
20 issues, I think we can focus it and that possibility  
21 could happen within two days. So then it really  
22 becomes the Commission's schedule with whatever else  
23 they have on the docket.

24 I know at one point in time the 10th and  
25 11th, I believe of December had been proposed. I



1 don't know if that's still available. But certainly I  
2 would be willing to shoot for that on behalf of our  
3 members.

4 I understand. You know, our first shot  
5 at this was to ask the court because the court does  
6 have the ability to grant early relief in the form of  
7 a temporary restraining order, a preliminary  
8 injunction relief. That's what the court had the  
9 ability to do. And we pushed very hard to have that  
10 heard early.

11 This was a very -- took us a while to get  
12 up to speed on it, go through all the necessary  
13 procedural aspects of it. But the court did not grant  
14 that and deferred to you all. So now I have to, as  
15 Mr. Yee said, that order is an order. Until I see  
16 something different, even though I filed a Motion for  
17 Reconsideration I can anticipate it's going to change.

18 So I'd really hope that the LUC would  
19 permit us as necessary to supplement the record. If  
20 the court comes down with something that's different  
21 from today, we can address it with the director and  
22 then go from there, but in terms of if the court  
23 granted a portion of our Motion for Reconsideration.  
24 But I think that can happen before any hearing that  
25 could take place here.

1 COMMISSIONER SCHEUER: Chair?

2 CHAIRMAN McDONALD: Commissioner Scheuer.

3 COMMISSIONER SCHEUER: I want to add, sort  
4 of clarify. When I say we're slow I hesitate to use  
5 the word, say the LUC is slow in front of the planning  
6 director who's not a fan of ours. (Laughter). We  
7 work deliberately and we work as fast as we can but  
8 there's other dockets. There's other pending things.

9 My understanding from our executive officer  
10 is that we could be looking at months before you  
11 actually got a decision out of this body. So I'm more  
12 stating publicly on the record that even working as  
13 quickly as we could, if we chose to hear this there  
14 might be a disconnect between the urgency that I heard  
15 from the public and the people who are really  
16 concerned with it, and the procedure that you're  
17 seeking from us.

18 MR. PIERCE: I thank you for that. And we  
19 really are struck here. Because we have to deal with  
20 the decisions that have been made in the court even  
21 though we asked them for early relief, move this over,  
22 maybe not understanding. And that's one of the  
23 reasons we filed the Motion for Reconsideration. We  
24 did explain to the court.

25 We tried to explain in my Motion of

1 Reconsideration a little bit how the LUC works, and  
2 the fact that this was going to be a preliminary  
3 hearing, that they were just knowing how things go in  
4 terms of scheduling is going to take a while.

5           Whether the court will take that into  
6 account we don't know for sure. But we're stuck with  
7 what we have right now. We do recognize that this  
8 Project is moving forward at a fairly fast space. We  
9 very well could see tremendous changes out there. So  
10 I would just be asking the LUC to do whatever they  
11 could in their power to fit us in when they can.

12           CHAIRMAN McDONALD: Thank you,  
13 Commissioner Scheuer. Anything else to add,  
14 Commissioners? Okay. Commissioners, section  
15 15-15-100 provides us with various options at this  
16 time. We may issue a declaratory order on the matter  
17 without further hearing; schedule the matter for  
18 hearing, or deny the Petition if it is speculative or  
19 hypothetical. If the Petitioner does not have  
20 standing, the issuance of the order may adversely  
21 affect the State or the Commission in any litigation  
22 which is pending or may be responsibly expected to  
23 arise, or the matter concerns a statutory provision  
24 not administered by the Commission, or is otherwise  
25 not within the jurisdiction of the Commission. Is

1 there any discussion or clarification required as far  
2 as our options?

3 COMMISSIONER WONG: Chair, just wanted to  
4 say I'm going to tell you the truth. I'm still  
5 concerned about the pending litigation. So I just  
6 want to go on record to say that right now I'm just  
7 very concerned about that issue. And that's about it.

8 CHAIRMAN McDONALD: I hear your concern,  
9 Commissioner Wong. I myself will be putting some  
10 thought into this and the repercussions with the  
11 pending circuit court case. I'm looking over the  
12 order that the Second Court had administered, just to  
13 be sure I'm clear as far as the order that was issued  
14 by the circuit court. Okay. One of the items was:  
15 Nothing in the court's order shall require the  
16 Commission to determine if a violation has occurred or  
17 the procedures to be used in making such a finding.

18 Basically the court is not really telling  
19 us a whole lot as far as action or the expectations of  
20 this body. So, you know, we're put in a little  
21 difficult position at this point. And right now I'm  
22 just a little concerned with the ongoing litigation at  
23 circuit court. That's just my position.  
24 Commissioners, if there's any further discussion you  
25 can present it at this time.

1 COMMISSIONER SCHEUER: Or after a motion  
2 is made?

3 CHAIRMAN McDONALD: Absolutely. So,  
4 Commissioners, with that what is your pleasure on this  
5 matter?

6 COMMISSIONER HIRANAGA: Mr. Chair?

7 CHAIRMAN McDONALD: Yes. Go ahead,  
8 Commissioner.

9 COMMISSIONER HIRANAGA: As you had  
10 previously read the LUC Administrative Rules, Chapter  
11 15-15-100 Consideration of Petition for Declaratory  
12 Order, I move that the Petitioner's request for a  
13 Declaratory Order be denied. If there is a second I  
14 will basically recite section 1C of the chapter for  
15 clarity.

16 COMMISSIONER WONG: I'll second.

17 COMMISSIONER HIRANAGA: So discussion  
18 again Land Use Commission Admin Rules Chapter  
19 15-15-100 consideration of Petition for Declaratory  
20 Order section 1C. "The issuance of the Declaratory  
21 Order may adversely affect the interest of the state,  
22 the Commission or any of the officers or employees in  
23 any litigation which is pending or may be reasonably  
24 be expected to arise." That basically is my reasoning  
25 for the Motion to Deny.

1                   CHAIRMAN McDONALD: Thank you,  
2 Commissioner Hiranaga. So there's a motion on the  
3 floor by Commissioner Hiranaga, second by Commissioner  
4 Wong. Commissioners, any discussion? Commissioner  
5 Scheuer.

6                   COMMISSIONER SCHEUER: I'm glad that  
7 there's an agreement in the room that everybody liked  
8 sports fields. I'm glad we're not having that  
9 discussion. Obviously the dispute is where they are  
10 slated for and the manner in which they've evolved.  
11 I'm inclined to vote for this motion. I just want to  
12 be really clear, at least from my perspective. It's  
13 doing so hearing the significance of the arguments  
14 that are being made that some deal with the issues  
15 that really directly relate to the LUC. And some deal  
16 with a much broader set of issues associated with the  
17 development by the State DLNR of these fields.

18                   And I feel that it would actually be a  
19 disservice to the resolution of the larger concerns if  
20 we went into an evidentiary hearing right now on  
21 whether or not the previous order from the Commission  
22 has been violated to actually fundamentally try and  
23 address in a meaningful way the core issues that I  
24 heard raised today.

25                   So I just want that to be really clear

1 that at least for me I would hope nobody would walk  
2 out of here saying: Oh, the guys just punted. They  
3 didn't want to deal with this. It's actually out of a  
4 concern for the validity of the issues raised where I  
5 believe the proper venue is for that to be taken care  
6 of.

7 CHAIRMAN McDONALD: Thank you,  
8 Commissioner Scheuer. Further discussion?  
9 Commissioner Aczon.

10 COMMISSIONER ACZON: Thank you, Mr. Chair.  
11 A couple things bothers me on this one. No. 1 is the  
12 pending litigation. We don't know what the court's  
13 gonna do and whatever the decision we make we don't  
14 know what's going to happen.

15 Second is I understand this project is  
16 ongoing and slated to finish sometime around this time  
17 November. I also understood that the community or the  
18 Petitioner is asking for immediate relief. If we go  
19 to a hearing on this one, like everybody said, the  
20 process. We have a process that we follow and  
21 probably by the time we issue a decision it's going to  
22 be the Project's going to be completed already. So  
23 I'm kind of struggling. Because of that I'll be  
24 supporting the motion.

25 CHAIRMAN McDONALD: Thank you,

1 Commissioner Aczon. Anything further? Seeing none  
2 Mr. Orodenger, could you please poll the Commission.

3 MR. ORODENER: Thank you, Mr. Chair. The  
4 motion is to deny Petitioner's request pursuant to  
5 section 15-15-100(1)(c) due to its adverse effect on  
6 pending litigation. Commissioner Hiragana?

7 COMMISSIONER HIRANAGA: Aye.

8 MR. ORODENER: Commissioner Wong?

9 COMMISSIONER WONG: Aye.

10 MR. ORODENER: Commissioner Mahi?

11 COMMISSIONER MAHI: Aye.

12 MR. ORODENER: Commissioner Scheuer?

13 COMMISSIONER SCHEUER: Aye.

14 MR. ORODENER: Commissioner Aczon?

15 COMMISSIONER ACZON: Aye.

16 MR. ORODENER: Commissioner Ahakuelo?

17 COMMISSIONER AHAKUELO: Aye.

18 MR. ORODENER: Chair McDonald?

19 CHAIRMAN McDONALD: Aye.

20 MR. ORODENER: Mr. Chair, the motion  
21 passes unanimously.

22 CHAIRMAN McDONALD: Thank you, parties.  
23 We're in recess 'til tomorrow.

24 The proceedings were adjourned at 2:05 p.m.)

25 --oo00oo--



## 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 matters on the 20th day of November 2014;

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 \_\_\_\_\_ 2014

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HOLLY M. HACKETT, HI CSR #130, RPR #5910  
Certified Shorthand Reporter