

1 LAND USE COMMISSION MEETING  
2 STATE OF HAWAII  
3 Kalanimoku Building  
4 1151 Punchbowl Street  
5 Room B10, Video Conference Center  
6 Honolulu, Hawaii 96813  
7 Via Video Lihu'e State Office Bldg, Kauai  
8 Via Video Kahului, State of Hawaii DOT Bldg.  
9 Kahului, Maui  
10 Via Video Hilo State Office Bldg, Hilo, Hawaii  
11 Held on September 30, 2015  
12 Commencing at 9:07 a.m.

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REPORTED BY: Jean Marie McManus, CSR #156

1 APPEARANCES:  
2 EDMUND ACZON, CHAIRPERSON  
3 COMMISSIONERS:  
4 NANCY CABRAL, (via video Hilo)  
KENT HIRANAGA (Via video Maui)  
5 LINDA ESTES (via video Kauai)  
CHAD McDONALD  
6 AARON MAHI  
7  
8 DIANE ERICKSON, ESQ.  
Deputy District Attorney  
9  
10 STAFF:  
11 DANIEL ORODENKER, Executive Officer  
SCOTT A.K. DERRICKSON, AICP Planner (Via video Maui)  
12 RILEY K. HAKODA, Planner/Chief Clerk  
13  
14 JENNIFER A. LIM, ESQ.  
Carlsmith Ball LLP  
15 ASB Tower, Suite 2200  
1001 Bishop Street  
16 Honolulu, Hawaii 96813  
17 Attorney for Petitioner  
Makila Land Co., LLC  
18  
19 MICHELE CHOUTEAU McLEAN  
Deputy Planning Director  
20 County of Maui  
21 RODNEY FUNAKOSHI  
Dept. of Attorney General  
22 Office of Planning  
23  
24  
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## AGENDA

- I. Adoption of Minutes Page 4
- II. Tentative Meeting Schedule Page 4
- III. ACTION: A15-799 Makila Land Co. Page 6

1                   CHAIRPERSON ACZON: Good morning. This is  
2     September 30th, 2015, Land Use Commission Meeting.

3                   The first order of business, adoption of  
4     September 10th meeting.

5                   Are there any corrections or comments on  
6     them? If not, is there a motion to adopt minutes?

7                   COMMISSIONER CABRAL: I will make a motion  
8     to adopt the minutes.

9                   COMMISSIONER ESTES: Second.

10                  CHAIRPERSON ACZON: Moved by Commissioner  
11     Cabral, second by Commissioner Estes. Those in favor  
12     say "aye", opposed.

13                  (All Commissioners responded in the  
14     affirmative.)

15                  CHAIRPERSON ACZON: Motion carries.

16                  Next agenda, tentative meeting schedule.

17                  EXECUTIVE OFFICER: Thank you, Mr. Chair.

18                  October 22 and 23rd meeting at Honolulu  
19     Airport Conference Room to address the Special Permit  
20     Application Status Report for Waimanalo Gulch  
21     Landfill and Motion for Order to Show Cause in Dudley  
22     OSC Motion.

23                  November 4th and 5th the calendar is  
24     currently open.

25                  November 18th and 19th, we will be at Maui

1 Arts and Cultural Center to consider the acceptance  
2 of the FEIS for Olowalu, LLC position.

3 December 9th and 10th we will be on Maui  
4 once again at the DOT meeting room for Commissioner  
5 training and site visit to Maalaea Plantation.

6 January 11th, tentatively we have Maalaea  
7 Plantation DBA as we do in February, and that takes  
8 us out through February.

9 CHAIRPERSON ACZON: Thank you, Mr.  
10 Orodenker.

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1                   BEFORE THE LAND USE COMMISSION

2                   OF THE STATE OF HAWAII

3     In The Matter of the                    )DOCKET NO. A 15-799  
       Petition of                            )  
       )   
       MAKILA LAND COMPANY, LLC            )  
       )   
       To Amend the Agricultural           )  
       Land Use District                    )  
       Boundaries into the Rural           )  
       Land Use District for                )  
       Approximately 231 Acres of)   
       Land, Consisting of Tax             )  
       Map Key Nos. (2)                    )  
       4-7-013:001, 002, 003,004,)   
       005, 006 (por.), 007 (por.)   
       008(por.), 009, 010, 011, )   
       012, and into the Urban             )  
       Land Use District for                )  
       Approximately 40 acres of )   
       Land, consisting of Tax             )  
       Key Nos. (2) 4-7-013:006            )  
       (por.), 007(por.), 008             )  
       (por.), at Launipoko,               )  
       Polanui, Lahaina, Island            )  
       and County of Maui, State )   
       of Hawaii.                            )  
       \_\_\_\_\_)

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VIDEO ACTION HEARING

17

18     Held on September 30, 2015, commencing at 9:07 a.m.,  
       19     at Kalanimoku Building, 1151 Punchbowl Street, Room  
       20     B10, Honolulu, Hawaii 96813; Lihue, Kauai State  
       21     Office Bldg, Kauai; Maui State DOT, Kahului, Hawaii;  
       22     and Hilo State Office Bldg, Hilo, Hawaii.

23

24

25     BEFORE:   Jean Marie McManus, CSR #156

1 APPEARANCES:  
2 EDMUND ACZON, CHAIRPERSON  
3 COMMISSIONERS:  
4 NANCY CABRAL, (via video Hilo)  
KENT HIRANAGA (Via video Maui)  
5 LINDA ESTES (via video Kauai)  
CHAD McDONALD  
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8 DIANE ERICKSON, ESQ.  
Deputy District Attorney  
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Carlsmith Ball LLP  
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16 Honolulu, Hawaii 96813  
17 Attorney for Petitioner  
Makila Land Co., LLC  
18  
19 MICHELE CHOUTEAU McLEAN  
Deputy Planning Director  
20 County of Maui  
21 RODNEY FUNAKOSHI  
Office of Planning, Dept. of Attorney General  
22  
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1                   CHAIRMAN ACZON: This is an action  
2 meeting on Docket No. A15-799 to consider  
3 Petitioner's Motion Requesting Land Use Commission to  
4 be the Accepting Authority for an Environmental  
5 Impact Statement under HRS Chapter 343, and  
6 Requesting that the Land Use Commission determine  
7 that the Proposed Action warrants the preparation of  
8 an Environmental Impact Statement to be initiated  
9 with the Preparation Notice.

10                   On September 11, 2015, the Commission  
11 received a Petition to Amend the Land Use District  
12 Boundaries into the Rural Land Use District for  
13 approximately 231 acres of land, consisting of Tax  
14 Map Key No. (2) 4-7-013: Lots 1, 2, 3, 4, 5, portion  
15 of 6, portion of 7, portion of 8, 9, 10, 11 and 12.

16                   And into the Urban Land Use District for  
17 approximately 40 acres of land consisting of Tax Map  
18 Key No. (2) 4-7-013 portion of 6 -- portion of 7 and  
19 8 at Launiupoko, Polanui, Lahaina, Island and County  
20 of Maui, State of Hawaii, along with Petitioner's  
21 Exhibits 1-7, a Cashier's check for \$5,000 filing fee  
22 and Petitioner's Motion.

23                   On September 14th, 2015 the Commission  
24 received one CD containing filed copies of the  
25 Petition for Land Use Boundary Amendment and Exhibits

1 1 through 7, and Petitioner's Motion and Revised  
2 Table of Contents for the Petition for Land Use  
3 Boundary Amendment.

4 On September 18, 2015, the Commission  
5 received Petitioner's Notice of Corrected Certificate  
6 of Service and mailed the September 30th Meeting  
7 Notice of Agenda to the Parties, the Statewide,  
8 Kauai, Hawaii, Oahu and Maui mailing lists; and a  
9 deemed incomplete letter to the Petitioner.

10 On September 19, 2015, the Commission  
11 mailed the Amended September 30th Meeting Notice of  
12 Agenda to the Parties, and the Statewide, Kauai,  
13 Hawaii, Oahu and Maui mailing list.

14 On September 23rd, 2015, the Commission  
15 received OP's Statement of No Objection to  
16 Petitioner's Motion.

17 On September 28, 2015, the Commission  
18 received an emailed Notice of Intent to Intervene  
19 from David Jenkins, Makila Plantation Home Owner's  
20 Association together with the Makila Plantation's  
21 Home Owner's Association Position Statement.

22 On September 29th, 2015, the Commission  
23 received the Makila Plantation's Home Owner's  
24 Association Amended Certificate of Service and  
25 Position Statement.

1           Let me briefly describe our procedure today  
2   on this docket.

3           First, we will have the parties identify  
4   themselves for the record.

5           I will then give opportunity for the  
6   Petitioner to comment on the Commission's Policy  
7   governing reimbursement of hearing expenses.

8           I will then call for those individuals  
9   desiring to provide public testimony, including the  
10   representative from Makila Plantation Home Owner's  
11   Association, if any, to identify themselves.

12           All such individuals will be called in turn  
13   to our witness box where they will be sworn in prior  
14   to their testimony. The public testimony today  
15   should be limited to Petitioner's Motion and should  
16   not go into the merits for the Petition for District  
17   Boundary Amendment.

18           After completion of the public testimony  
19   portion of the proceedings, the Petitioner will make  
20   its presentation on its Motion.

21           After the completion of the Petitioner's  
22   presentation, we will receive any comments from the  
23   County of Maui Planning Department and the State  
24   Office of Planing on Petitioner's Motion.

25           The Commission will then conduct its

1 deliberations.

2 The Chair would also note for the parties  
3 and the public that from time to time I will be  
4 calling for short breaks.

5 Are there any questions on our procedure  
6 for today? Hearing none, will the parties please  
7 identified themselves for the record?

8 MS. LIM: Good morning. This is Jennifer  
9 Lim, and I represent Petitioner, Makila Land Co.,  
10 LLC. And to my right is Mr. Rory Frampton,  
11 Petitioner's representative. To my left is Tom  
12 Witten, PBR Hawaii. Tom Witten is the lead land use  
13 planner and environmental consultant for the project.

14 And I would also like to note that at our  
15 Maui location is Ms. Heidi Bigelow who is also the  
16 landowners' representative of Makila Land Co., and  
17 the representative with Ms. Bigelow is Mariah Gill  
18 who works with both Mr. Frampton and Ms. Bigelow.

19 Thank you very much.

20 CHAIRPERSON ACZON: Good morning. Has our  
21 staff informed you of the commitment regarding the  
22 reimbursement of hearing expenses?

23 MS. McLEAN: Good morning, Michele Chouteau  
24 McLean, Deputy Planning Director for the County of  
25 Maui.

1                   MR. FUNAKOSHI: Rodney Funakoshi for the  
2     State Office of Planning. With me is Katie McNeal.

3                   CHAIRPERSON ACZON: Good morning.

4                   Ms. Lim, as I informed you of the  
5     Commission's policy regarding the reimbursement of  
6     hearing expenses --

7                   MS. LIM: Yes, the Petitioner is aware of  
8     that and will comply with that policy.

9                   CHAIRPERSON ACZON: Anyone in the audience  
10    want to give public testimony on Petitioner's Motion?

11                  MR. DERRICKSON: Yes, Chair, we have two  
12    sign-ups for public testimony. The first would be  
13    Mr. David Jenkins.

14                  CHAIRPERSON ACZON: Please state your name  
15    and address.

16                  THE WITNESS: My name is David Jenkins, 74  
17    South Lauhoe Place, Lahaina.

18                  CHAIRPERSON ACZON: Do you affirm that your  
19    testimony you're about to give is truthful?

20                  MR. JENKINS: I do.

21                                 DAVID JENKINS

22    Was called as a public witness, was sworn to tell the  
23    truth, and testified as follows:

24                  CHAIRPERSON ACZON: Thank you. Please  
25    proceed.

1 DIRECT EXAMINATION

2 THE WITNESS: As I said, my name is David  
3 Jenkins. I'm board member of the Makila Plantation  
4 HOA. And the reason that I have become involved in  
5 this is clearly the existing development of Makila  
6 Plantation Phases 1, 2, 3 and 4. The ones which  
7 geographically are completely on the front line of  
8 this new development.

9 And because obviously the Petition itself  
10 is likely to have a very large environmental impact,  
11 I wanted to be sure that the existing homeowners'  
12 interest in this development were represented from  
13 the very earliest hearing.

14 So I accept that I may be a little  
15 premature on this. I've never done this sort of  
16 thing before, but I wanted to insure that because the  
17 Petition itself, the dba is going to totally alter  
18 the character of the area, I wanted to get involved  
19 from this very earliest stage.

20 CHAIRPERSON ACZON: Thank you. Parties,  
21 any questions from the parties?

22 MS. LIM: Petitioner has a question.

23 CROSS-EXAMINATION

24 BY MS. LIM:

25 Q Mr. Jenkins, good morning.

1           A     Good morning.

2           Q     You indicated that you are on the  
3 Homeowners' Association Board. Is that correct?

4           A     Yes, we have a board, correct.

5           Q     What is your position on that board,  
6 please?

7           A     I am a board member, and pro tem. It's a  
8 board of three people, and one person has been in  
9 Poland for a month, the other one is working  
10 full-time.

11                   I am retired, and therefore, we have agreed  
12 between us that I am the voice fronting up this  
13 position that the HOA is taking.

14          Q     Thank you for that.

15                   To clarify, you don't have an official  
16 position as a director on that board, but through an  
17 arrangement with the existing appointed directors,  
18 you're acting as a director?

19          A     Yes, indeed.

20          Q     Thank you.

21                   Because in reviewing the Department of  
22 Commerce and Consumer Affairs filings for Makila  
23 Plantation Homeowners' Association, we did not see  
24 you listed as one of the three directors. So I do  
25 want to make it clear that in fact you are not the

1 president of the HOA; is that correct?

2 A Correct. I was requested to join the board  
3 and did so. I think your information is probably  
4 slightly out of date. We have an Annual Homeowners'  
5 Meeting, which I attended as a board member. I'm not  
6 sure if that's on your records, but that took place  
7 in April, I believe. So I've certainly been on the  
8 board prior to that annual meeting.

9 We have an upcoming quarterly meeting on  
10 October the 8th with myself and the other two  
11 directors. So I'm not sure exactly what you have,  
12 but that's the situation on the ground.

13 I am a board member. I was elected in as a  
14 board member. I've been acting as board member. I  
15 do not -- I think one of your other questions, I do  
16 not carry the title of president. So that's the  
17 situation.

18 Q Thank you very much.

19 You do not carry the title of president, so  
20 what is your title on the board, Mr. Jenkins?

21 A I don't know if I have a title. I'm board  
22 member.

23 Q I have no further questions. Thank you,  
24 sir.

25 No further questions, Chair.

1 CHAIRPERSON ACZON: County, Ms. McLean, any  
2 questions?

3 COMMISSIONER HIRANAGA: No questions from  
4 the county.

5 CHAIRPERSON ACZON: Office of Planning.

6 CROSS-EXAMINATION

7 BY MR. FUNAKOSHI:

8 Q How many owners are in your association?

9 A We have Makila stages 1, 2, 3 and 4, which  
10 are the only sub parts of Makila Plantation. We have  
11 73 lots.

12 This information is all available on the  
13 Maui County tax key. Exactly how many owners there  
14 are on any particular day residing is something  
15 that's really hard to know, but if you look at the  
16 Maui County tax key, there's 73 owned lots.

17 Q Thank you. No further questions.

18 CHAIRPERSON ACZON: Thank you, Mr. Jenkins.  
19 Commissioners?

20 Thank you, Mr. Jenkins. Next testifier.

21 MR. DERRICKSON: Next speaker, George E.E.  
22 Brown.

23 CHAIRPERSON ACZON: Please state your name  
24 and address.

25 MR. BROWN: Good morning. My name is

1 George E.E. Brown. I live 82 South Laupoe Place,  
2 Lahaina, Hawaii.

3 CHAIRPERSON ACZON: Do you affirm that your  
4 testimony that you're about to give is truthful?

5 MR. BROWN: Yes, I do.

6 GEORGE E.E. BROWN  
7 Was called as a public witness, was sworn to tell the  
8 truth, and testified as follows:

9 DIRECT EXAMINATION

10 CHAIRPERSON ACZON: Please proceed.

11 THE WITNESS: In my mind I think that this  
12 application is incomplete. As the Applicant says on  
13 page four, and I'll quote:

14 The Petitioner acknowledges that this  
15 Petition does not satisfy the Commission's  
16 requirements for an acceptable petition.

17 I would like to say that if one of your  
18 sons and daughters went into the driver's licensing  
19 division to get a license, there are certain  
20 requirements, legal name, legal presence, Social  
21 Security number, proof of date of birth, parental  
22 signatures and so on. They would be turned down, I  
23 would presume in that because they didn't provide the  
24 information.

25 This Petitioner, by their own admission,

McMANUS COURT REPORTERS 808-239-6148

1 has not given that information, and so I would  
2 suggest that maybe you should consider asking them to  
3 provide more complete application.

4 Secondly, I like to say on April 9th, 2003,  
5 this Petitioner, under West Maui Land -- there are  
6 several different names they go by -- was asked to  
7 come up with ideas how water, both potable and  
8 nonpotable water, could be handled, and to work with  
9 the surrounding landowners. This hasn't happened AS  
10 far as I know.

11 I've been on the board from about 2009 to  
12 2015. We have had water problems, and we have been  
13 notified by West Maui Land by their water division  
14 that there are problems, but they haven't been  
15 solved.

16 They were asked to solve them in 2003. It  
17 hasn't happened yet. I would like to see a more  
18 complete application before we can, as homeowners,  
19 make comments. Thank you.

20 CHAIRPERSON ACZON: Any questions, Ms. Lim?

21 MS. LIM: No comments, no questions.

22 CHAIRPERSON ACZON: Ms. McLean?

23 MS. McLEAN: County has no comments or  
24 questions.

25 MR. FUNAKOSHI: OP has no comments or

1 questions.

2 CHAIRPERSON ACZON: Ms. Lim, will you  
3 please make your presentation?

4 MS. LIM: Thank you, Chairman, and thank  
5 you to the Commission for arranging it where we can  
6 have a meeting here in Honolulu and Maui and the Big  
7 Island and Kauai.

8 It's extremely convenient for us, and I  
9 know it's a lot of technological headache for  
10 everybody on the staff, but we very much appreciate  
11 it.

12 As indicated on your agenda, the matter  
13 that we're really before you here today on is a  
14 request that the Land Use Commission agree to be the  
15 Accepting Authority for the Environmental Impact  
16 Statement that Makila Land Co., LLC, the Petitioner,  
17 intends to prepare.

18 The reason why an Environmental Impact  
19 Statement -- which I'll refer to as EIS from here on  
20 in -- the reason why we anticipate an EIS is  
21 appropriate Environmental Review for this project is  
22 because of the nature of the project will first of  
23 all definitely trigger the requirements to do some  
24 sort of Environmental Review for at least two, likely  
25 three reasons.

1           First of all, if we're successful getting  
2   our District Boundary Amendment through the  
3   Commission, Petitioner will need to go to the county  
4   and ask for Community Plan Amendment. Under Chapter  
5   343 it's a mandatory trigger for Environmental  
6   Review. So we know we will have to do an  
7   Environmental Review.

8           The second trigger under Chapter 343 is the  
9   development or construction of wastewater treatment  
10   facility that serves over 50 lots or 50 homes. In  
11   this case, the project the Petitioner is proposing is  
12   150 rural lots, and then between 50 to 75  
13   single-family work force housing units.

14           So clearly we will exceed 50 units  
15   triggering therefore wastewater treatment system  
16   developed for this project, it triggers requirements  
17   to prepare an Environmental Assessment or EIS.

18           Then the third likely trigger is the use of  
19   state or county lands. And like with any development  
20   project, particularly when installing infrastructure,  
21   there is often utility lines within or under state or  
22   county roadways and entry points onto state or county  
23   roadways. So that will very likely be part of this  
24   project.

25           So that is why we are preparing an

1 Environmental Review. The reason why we're asking  
2 that the Commission be the Accepting Authority is  
3 because the first land use, major land use  
4 entitlement that we will be seeking once  
5 Environmental Review is complete, would be District  
6 Boundary Amendment, and that is District Boundary  
7 Amendment of approximately 231 acres to go from the  
8 State Land Use Agricultural/Rural and State Land Use  
9 Urban.

10 The reason those are very approximate at  
11 this time is because through the EIS process there  
12 will be much more defined and exact metes and bounds  
13 acreage by the time that we're back before this  
14 Commission. With the Amended Petition we will have  
15 refined metes and bounds acreage of the exact amount  
16 of Urban reclassification and Rural reclassification  
17 that we will be seeking.

18 However, in no event will we be asking for  
19 more than 40 acres of State Land Use Urban. We  
20 thought it was safer to error on caution, so because  
21 District Boundary Amendment is the first major land  
22 use entitlement, Land Use Commission would be the  
23 appropriate Accepting Authority. That is one of the  
24 things we're asking the Commissioners to decide  
25 today.

1               Second thing we are asking is that pursuant  
2   as to Act 172, which was passed in 2012, developers,  
3   applicants, petitioners whoever is doing  
4   Environmental Review is now permitted to start that  
5   Environmental Review directly, EIS Notice rather than  
6   going through Environmental Assessment knowing full  
7   well in fact the project will have the significant  
8   effect on the environment.

9               So that's why we filed as Exhibit 1 to our  
10   Draft EIS Preparation Notice. If this Commission  
11   agrees to be both Accepting Authority and authorizes  
12   to formally begin the EIS process with EIS  
13   Preparation Notice.

14              I'll let Tom maybe describe the EIS process  
15   in the future, but that would get the process off,  
16   and then that would be followed by Draft EIS and  
17   eventually a Final EIS.

18              One of the concerns the legislator, or one  
19   of the interests that they had expressed in passing  
20   172 was first let's not make applicants waste time  
21   preparing Environmental Assessment when everybody  
22   knows from the onset it's maybe a significant effect.

23              And we actually have filed as Exhibit A to  
24   our motion, a copy of Act 172. And the preamble  
25   petty much lays that out, the efficiency of going

1 straight to the EIS process.

2 But another concern articulated more by  
3 Office of Environmental Quality Control, and not so  
4 much by legislature, is that while the Draft EISPN  
5 process could be seen as accelerating the Environment  
6 Review, in fact, it is incumbent upon the Applicant  
7 to insure that there is public outreach and  
8 consultation throughout the EIS process.

9 For that I would like to let Mr. Frampton  
10 talk briefly about some of the history that Makila  
11 Land has filed prior to filing this and then what we  
12 anticipate doing throughout the EIS process.

13 CHAIRPERSON ACZON: Please state your name  
14 and address.

15 MR. FRAMPTON: Rory Frampton. I reside at  
16 340 Napoko in Kula, Maui.

17 CHAIRPERSON ACZON: Do you affirm that your  
18 testimony will be truthful?

19 MR. FRAMPTON: Yes.

20 RORY FRAMPTON

21 Was called as a witness by and on behalf of the  
22 Petitioner, was sworn to tell the truth, was examined  
23 and testified as follows:

24 CHAIRPERSON ACZON: Please proceed.

25 DIRECT EXAMINATION

1                   THE WITNESS: Thank you, Commissioners.

2       Again, my name is Rory Frampton, and I've assisted  
3       Makila Land Company with long-range planning efforts  
4       in this area for a number of years now.

5                   We have been involved in several regional  
6       planning efforts, one of which is, or still is the  
7       southern extension of the Lahaina bypass with working  
8       with the State DOT, and also worked with the County  
9       of Maui in terms of preserving coastal lands and open  
10      space.

11                  And that process resulted in the county  
12      acquiring 185 acres of land along or abutting the  
13      coastal highway in that area, and that's for future  
14      preservation of coastal open space as well as  
15      providing recreational opportunities.

16                  Lahaina bypass in these coastal lands are  
17      not part of the project area we are talking about,  
18      but those planning efforts help set the stage for  
19      what we are doing right now, which is requesting the  
20      entitlements for what we call the Rural Growth Area.

21                  This Rural Growth Area was included in the  
22      Maui Island Plan as Rural Growth Area.

23                  For those of you who are not familiar with  
24      Maui Island Plan, it's a new process, adopted by law  
25      in to 2012 after several years of debate. And

1     essentially this Maui Island Plan sets the stage for  
2     future growth on the island by designating Urban  
3     Growth Boundaries, as well as Rural Growth  
4     Boundaries.

5             Makila was very much involved in that  
6     formation of the Maui Island Plan every step along  
7     the way. Multiple appearing in front of the general  
8     Maui Planning Commission as well as Maui Planning  
9     Council. Again, we participated in all of those  
10    procedures and we -- the end result was the inclusion  
11    of the 271-acre project that we're bringing before  
12    you right now.

13            Prior to the General Plan update process,  
14    we had extensive community outreach in '06 and '07  
15    that helped, again, frame it, so helped set the stage  
16    for regional planning efforts regarding coastal area,  
17    the bypass highway, and then the rural project area  
18    which is going to be above the Lahaina bypass.

19            So, again, that was an extensive outreach  
20    program with all the neighbors in the area as well as  
21    with community groups and associations in West Maui.  
22    So those outreach efforts really helped define this  
23    project.

24            So we recently have reached out to various  
25    groups, again the neighbors, neighborhood

1     associations, as well as some community groups in  
2     West Maui to let them know about us starting this EIS  
3     process. And we have informed them that we are  
4     starting the -- that the formal EISPN comment period  
5     will be upcoming and we look forward to continual  
6     dialogue with the community to help further shape  
7     this project.

8                   CHAIRPERSON ACZON: Please continue, Ms.  
9     Lim.

10                   MS. LIM: To put some color behind what Mr.  
11     Frampton was saying, if you care to look through  
12     Petitioner's Exhibit 1 of the Petition that we filed,  
13     that's the EIS Prep Notice, and Figure 6 shows Maui  
14     Island Plan's designation.

15                   You can see this area is clearly within the  
16     Rural Growth Boundary, but as we mentioned, Figure 7  
17     shows the West Maui Community Plan designation and  
18     shows the property is Agricultural, that's why we  
19     need to get a Community Plan Amendment if we are  
20     successful here with the Commission.

21                   I know this isn't a hearing on the project,  
22     so I don't want to belabor the details. It is a  
23     hearing asking the Commission to be the Accepting  
24     Authority.

25                   I would like to just briefly allow Mr.

1 Witten to discuss the studies that we are  
2 anticipating having prepared during the EIS, and  
3 perhaps the Commissioners or other parties may have  
4 questions about that or other ideas.

5 Mr. Witten.

6 CHAIRPERSON ACZON: State your name and  
7 address.

8 THE WITNESS: Tom Witten, 2277 Halakau  
9 Street, Honolulu.

10 CHAIRPERSON ACZON: Do you affirm that your  
11 testimony you're about to give is truthful?

12 MR. WITTEN: Yes.

13 TOM WITTEN

14 Was called as a witness by and on behalf of the  
15 Petitioner, was sworn to tell the truth, was examined  
16 and testified as follows:

17 CHAIRPERSON ACZON: Please proceed.

18 DIRECT EXAMINATION

19 THE WITNESS: PBR Hawaii will be the lead  
20 consultant on preparing the EIS statement Preparation  
21 Notice and subsequent EIS.

22 The opportunity with the LUC being  
23 Accepting Authority if that action is taken, then we  
24 will finalize the EIS Preparation Notice. It will  
25 get submitted to Office of Quality -- OEQC and get

1 published, presented and provided for 30-day public  
2 comment period.

3 With the EISPN in the abbreviated form,  
4 it's really a scoping effort to identify issues and  
5 technical studies that should be undertaken and  
6 included in the Draft EIS.

7 We have identified in the EISPN Draft the  
8 areas of technical studies that would be undertaken  
9 would be air quality assessment, acoustical  
10 assessment for noise, agricultural impact assessment,  
11 archeological inventory survey, biological survey,  
12 cultural impact assessment, economic and fiscal cost  
13 benefit analysis, hydrological study, market study,  
14 preliminary engineering report, traffic impact  
15 analysis and wastewater analysis.

16 And through the public review period there  
17 may be other issues raised, and that may require  
18 other technical studies be performed, but until those  
19 issues are identified this is sort of our standard  
20 passage of technical studies that we typically look  
21 at and become informative as we refine the plans.

22 As we mentioned, the concepts are  
23 relatively general in this stage, and we look forward  
24 to refining those with the community's impact and  
25 consistent with the vision that was established under

1 the Maui Island Plan for this Rural Growth District  
2 at this area and close proximity with work force  
3 housing near Lahaina.

4 BY MS. LIM:

5 Q Is the project going to be considered low  
6 impact development?

7 A Yes. One of the elements of the Maui  
8 Island Plan speaks specifically to incorporating low  
9 impact design into the planning and engineering of  
10 the projects, so we will be looking at low impact  
11 design, primarily directed at drainage, but also  
12 integral to making this concept very walkable and  
13 connected.

14 There is a network of trail systems that  
15 have been established, and we look at expanding and  
16 connecting to those, so that there will be good  
17 access both mauka-makai and sort of north-south all  
18 the way down to the shoreline, but also on the mauka  
19 areas also.

20 CHAIRPERSON ACZON: Thank you, Mr. Witten.

21 Please continue, Ms. Lim.

22 MS. LIM: With that, Chair, I'm prepared to  
23 conclude our presentation and be available for any  
24 questions other parties or Commissioners may have.

25 CHAIRPERSON ACZON: Any questions, parties?

1 County?

2 MR. DERRICKSON: None from the County of  
3 Maui.

4 CHAIRPERSON ACZON: Mr. Funakoshi.

5 MR. FUNAKOSHI: Is there any anticipated  
6 time frame for completing the EIS process?

7 MS. LIM: Well, thank you, I'll respond to  
8 that.

9 You know, Mr. Funakoshi, that that's always  
10 sort of an iterate matter. It depends on the studies  
11 that are done, how quickly they're done, and also the  
12 volume of comments on the Draft EIS.

13 But with that said, so you know it's an  
14 approximation, but I would anticipate completing the  
15 Final EIS within the next eight months, and filing a  
16 First Amended Petition shortly thereafter.

17 We may slip a little bit, but that's about  
18 it.

19 MR. FUNAKOSHI: Thank you, that's all.

20 CHAIRPERSON ACZON: Thank you.

21 Commissioners, any questions?

22 Hearing none, Ms. McLean, will you please  
23 provide the Commission with the comments of the  
24 County of Maui Planning Department on Petitioner's  
25 Motion?

1                   MS. McLEAN: Thank you, Chair. The County  
2 does not have any objection to the Petitioner's  
3 request for the Land Use Commission to be the  
4 Accepting Authority for the EIS, nor do we have any  
5 objections to the request that the Commission  
6 determine that an EIS is warranted and that it's  
7 initiated with the EIS Prep Notice.

8                   CHAIRPERSON ACZON: Any other comments?

9                   MS. McLEAN: That's all for this morning.

10                  CHAIRPERSON ACZON: Any questions for Ms.  
11 McLean? Commissioners?

12                  Mr. Funakoshi, please provide the  
13 Commission with comments of State Office of Planning  
14 on Petitioner's Motion.

15                  MR. FUNAKOSHI: Office of Planning has no  
16 objection to Petitioner's Motion for Land Use  
17 Commission to be the Accepting Authority for the EIS.

18                  CHAIRPERSON ACZON: Commissioners, what is  
19 your pleasure on this Petitioner's Motion?

20                  COMMISSIONER HIRANAGA: Mr. Chair, I would  
21 like to make a motion to move to have the Land Use  
22 Commission agree to be the Accepting Authority for  
23 the Environmental Impact Statement, and based on its  
24 judgment and experience, that the proposed project  
25 may have a significant impact on the environment,

1       therefore, an Environmental Impact Statement is  
2       warranted, and the Petitioner should go directly to  
3       the preparation of an Environmental Impact Statement  
4       Preparation Notice.

5               CHAIRPERSON ACZON:   Any second?

6               COMMISSIONER MAHI:   Second.

7               CHAIRPERSON ACZON:   Moved by Commissioner  
8       Hiranaga and seconded by Commissioner Mahi.

9               Mr. Ordenker -- suggestions?   Any  
10       discussions?   Hearing none, Mr. Ordenker, please  
11       repeat the motion before voting.

12              EXECUTIVE OFFICER:   The motion is to grant  
13       Petitioner's Motion to proceed directly to an EIS and  
14       to have the Commission be the Accepting Authority for  
15       the EIS.

16              CHAIRPERSON ACZON:   Thank you.

17              EXECUTIVE OFFICER:   Commissioner Hiranaga?

18              COMMISSIONER HIRANAGA:   Aye.

19              EXECUTIVE OFFICER:   Commissioner Mahi?

20              COMMISSIONER MAHI:   Aye.

21              EXECUTIVE OFFICER:   Commissioner Wong is  
22       not present.

23              Commissioner McDonald?

24              COMMISSIONER McDONALD:   Yes.

25              EXECUTIVE OFFICER:   Commissioner Cabral?

1 COMMISSIONER CABRAL: Yes.

2 EXECUTIVE OFFICER: Commissioner Estes?

3 COMMISSIONER ESTES: Yes.

4 CHAIRPERSON ACZON: Chairman Aczon?

5 CHAIRPERSON ACZON: Yes.

6 EXECUTIVE OFFICER: The motion passes.

7 MS. LIM: Chair, if I may, I need to note  
8 something for the record, if I may.

9 Mr. Jenkins apparently filed something with  
10 the Commission that he characterizes as Notice of  
11 Intent to Intervene.

12 CHAIRPERSON ACZON: That's correct.

13 MS. LIM: This document completely fails  
14 under the Land Use Commission rules for an accurate  
15 and appropriate Notice for Intent to Intervene, both  
16 in content and also in the service requirements.

17 In order for this to be a valid document,  
18 not only are the contents missing, but under  
19 15-15-52, any valid Notice of Intent to Intervene  
20 must be served upon the Petitioner, the State Office  
21 of Planning and respective county planning  
22 departments.

23 I do not know who received this document.  
24 I know I did not formally receive it. It is only  
25 because the Land Use Commission is diligent about

1 posting materials on its website that I discovered  
2 this document.

3 I did want to note that for the record.

4 And I will just add to that. My understanding is  
5 that Petitioner's obligation upon receipt of a valid  
6 Notice of Intent to Intervene is merely to provide  
7 that notifier a copy of the Petition. In this case  
8 the Petition that was filed on the 11th was served on  
9 Makila Homeowners' Association on their agent of  
10 record with the DCCA.

11 So I think it's a no-harm/no-foul kind of  
12 matter. A copy of Petition was filed. And in any  
13 event, Commission staff has it on the website, but I  
14 did need to note that for the record.

15 CHAIRPERSON ACZON: Duly noted.

16 MS. LIM: Thank you, very much.

17 CHAIRPERSON ACZON: Any other comment?

18 Hearing none, this hearing is adjourned.

19 (The proceedings ended at 9:40 a.m.)  
20  
21  
22  
23  
24  
25

1 CERTIFICATE  
2 STATE OF HAWAII )  
3 ) SS.  
4 COUNTY OF HONOLULU )

5 I, JEAN MARIE McMANUS, do hereby certify:

6 That on September 30, 2015, at 9:07 a.m., the  
7 proceedings contained herein was taken down by me in  
8 machine shorthand and was thereafter reduced to  
9 typewriting under my supervision; that the foregoing  
10 represents, to the best of my ability, a true and  
11 correct copy of the proceedings had in the foregoing  
12 matter.

13 I further certify that I am not of counsel for  
14 any of the parties hereto, nor in any way interested  
15 in the outcome of the cause named in this caption.

16 Dated this 30th day of September, 2015, in  
17 Honolulu, Hawaii.

18  
19 \_\_\_\_\_  
20 JEAN MARIE McMANUS, CSR #156

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