

1                   Before the land use commission  
2                   OF THE STATE OF HAWAII  
3     In the Matter of the Petition of)DOCKET NO. A06-771  
4     D.R. HORTON-SCHULER HOMES, LLC, )  
5     A Delaware limited liability     )  
6     Company, d.b.a. D.R. HORTON     )  
7     SCHULER DIVISION                )  
8     To Amend the Agricultural Land   )  
9     Use District Boundaries into the)  
10    Urban Land Use District for     )  
11    Approximately 1,525.516 Acres in)  
12    'Ewa District, Island of O'ahu, )  
13    Tax Map Key Nos.(1) 9-1-017:004 )  
14    (Por)059 and 072:(1)9-1-018:001 )  
15    and 004                            )  
16    \_\_\_\_\_)

12                   HEARING AND ACTION  
13     Held on October 23, 2015, commencing at 9:00 a.m., at  
14     the Honolulu Airport, 400 Rodgers Blvd., Suite 700,  
15     Room 3, Honolulu, Hawaii 96819.

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21     BEFORE:   Jean Marie McManus, CSR #156

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1 APPEARANCES:

2 EDMUND ACZON, CHAIRPERSON  
3 ARNOLD WONG, VICE CHAIR  
4 JONATHAN SCHEUER, VICE CHAIR

5 COMMISSIONERS:

6 NANCY CABRAL  
7 KENT HIRANAGA  
8 CHAD McDONALD  
9 LINDA ESTES  
10 ARNOLD MAHI

11 DIANE ERICKSON, ESQ.  
12 Deputy Attorney General

13 STAFF:

14 DANIEL ORODENKER, Executive Officer  
15 SCOTT A.K. DERRICKSON, AICP Planner  
16 RILEY K. HAKODA, Planner/Chief Clerk

17 BENJAMIN A. KUDO, ESQ.  
18 GREG KUGLE, ESQ.  
19 Ashford & Wriston  
20 First Hawaiian Center  
21 999 Bishop Street, Suite 1400  
22 Honolulu, Hawaii 96813

23 Attorney for Petitioners

24 DR. KIONI DUDLEY  
25 92-1365 Hauone Street  
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For Friends of Makakilo

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SARAH DEVINE, ESQ.  
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Honolulu, Hawaii

For Sierra Club and Clayton Hee

RICHARD D. LEWALLEN, ESQ.  
Deputy Corporation Counsel  
530 S. King Street, Room 110  
Honolulu, Hawaii 96813

1 For the City and County of Honolulu  
APPEARANCES CONTINUED

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BRYAN YEE, ESQ.

3

Deputy Attorney General

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RODNEY FUNAKOSHI, Office of Planning

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425 S. King Street

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Honolulu, Hawaii 96813

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For the Office of Planning

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1                   CHAIRPERSON ACZON: Good morning. Sorry  
2     for the delay and thank you for your patience.

3                   This is a Hearing and Action meeting  
4     regarding A06-771 D.R. Horton-Schuler Homes, a  
5     Petition to Amend the Agricultural Land Use District  
6     Boundaries into the Urban Land Use District for  
7     approximately 1,525.516 acres of land at Honouliuli,  
8     Ewa District, Oahu, Hawaii, Tax Map Key Nos. (1)  
9     9-1-17:4 portion 059 and 072:(1)9-1-18:001 and 004:  
10    Motion for Order to Show Cause filed July 24, 2015 by  
11    Friends of Makakilo.

12                  Will the parties please identify themselves  
13    for the record?

14                  DR. DUDLEY: I'm Dr. Kioni Dudley for  
15    Friends of Makakilo.

16                  MS. DEVINE: Good morning, Sarah Devine and  
17    Eric Seitz for the Sierra Club, including Clayton  
18    Hee.

19                  MR. KUDO: Ben Kudo and Greg Kugle here to  
20    represent the Petitioner, D.R. Horton and Schuler  
21    Homes.

22                  MR. LEWALLEN: Richard Lewallen, Deputy  
23    Corporation Counsel on behalf of City and County of  
24    Honolulu.

25                  MR. YEE: Deputy Bryan Yee on behalf of

1 Office of Planning. With me is Randy Funakoshi from  
2 Office of Planning.

3 MR. SEITZ: Before we proceed, I want to  
4 explain to you why we're late. We received the  
5 notice of this meeting about a week ago. It did not  
6 contain an agenda, and so I called Mr. Orodener  
7 because I was concerned that we could not appear on  
8 Thursday and it didn't indicate which of the two days  
9 this meeting was going on.

10 I got him on the telephone and he told me  
11 8:30 Friday morning, which was fine. We appeared  
12 this morning at 20 after 8:00 at the Land Use  
13 Commission Offices, which is where all the previous  
14 meetings in this case have been held, and for the  
15 first time were able to find a staff member who told  
16 us the meeting was out here at the airport.

17 I apologize to the audience and to the  
18 attorneys that had to wait because we weren't here on  
19 time. However, that kind of notice to us is totally  
20 unacceptable in a matter of this seriousness, and I  
21 have never, in the 45 years that I've practiced, been  
22 late for a court hearing or proceeding. I think that  
23 is very disrespectful to the body before I appear,  
24 but in this circumstance, I think, frankly, more  
25 disrespectful to us and for the audience to provide

1       that kind of notice to us in this circumstance.

2                   CHAIRPERSON ACZON:   Thank you, Mr. Seitz.

3       Your comments are noted.

4                   Before we begin, in the interest of  
5       transparency and full disclosure, the Chair would  
6       like to make this disclosure. During the time that  
7       the Docket No. A06-771, the Ho'opili docket was  
8       before the Land Use Commission, I was the Community  
9       Relations Director and Manpower Specialist of the  
10      Hawaii Regional Council of Carpenters. Members of  
11      the Regional Council of Carpenters testified on the  
12      docket, both for and against the petition. I did not  
13      testify, nor attended any of the hearings.

14                  Since September 11th of September 2014 I am  
15      the Executive Director of the Hawaii Carpenters  
16      Apprenticeship and Training Fund.

17                  In neither capacity do I have a substantial  
18      financial interest in Docket A06-771. Therefore, I  
19      believe that under Chapter 84 of the Hawaii Revised  
20      Statutes, the State Ethics Code, and under the Hawaii  
21      Supreme Court case of Tengan v. State Ethics  
22      Commission, I do not have a conflict of interest and  
23      can fairly and impartially participate in this  
24      matter.

25                  Do the parties have any objection to me

1 continuing to preside over this matter?

2 DR. DUDLEY: No, sir

3 MR. SEITZ: We take no position.

4 MR. KUDO: We do not object.

5 MR. LEWALLEN: No objection from the city.

6 MR. YEE: No objection.

7 CHAIRPERSON ACZON: Thank you.

8 Let me update the record.

9 On July 24, 2015, the Commission received  
10 Movant's Motion; Affidavit of Dr. Kioni Dudley, and  
11 Exhibits 1-62, with digital copies of same and \$1000  
12 filing fee check.

13 On July 28th, 2015, the Commission received  
14 Movant's Amendment to its Motion adding page 67 of  
15 the Motion, and adding Parties to the Certificate of  
16 Service.

17 On July 29, 2015, the Commission received  
18 written correspondence from OP requesting an  
19 extension of time to respond to Movant's Motion.

20 On August 17, 2015, the Commission received  
21 a copy of correspondence from the Department of  
22 Transportation to OP.

23 On August 18, 2015, the Commission received  
24 Intervenor Hee's Substantive Joinder to Intervenor  
25 Friends of Makakilo's Motion.



1                   On August 20, 2015, the Commission received  
2       correspondence from Michele Lincoln and a Notice of  
3       Intent to sell or donate property within the Petition  
4       Area from D.R. Horton.

5                   On August 24th, 2015, the Commission  
6       received D.R. Horton-Schuler Homes Memorandum of  
7       Opposition to Intervenor Friends of Makakilo's Motion  
8       that the Land Use Order D.R. Horton-Schuler Homes to  
9       Show Cause why the Ho'opili Land should not revert to  
10      its former Land Use Classification filed July 23,  
11      2015; Affidavit of Cameron Nekota; Exhibits A-B;  
12      Affidavit of Matt Nakamoto; Exhibits C-D.

13                  DPP's Memorandum in Opposition to  
14      Intervenor Friends of Makakilo's Inc.'s Motion that  
15      the Land Use Order D.R. Horton-Schuler Homes, LLC to  
16      Show Cause why the Ho'opili Land should not revert to  
17      its former Land Use Classification filed July 23,  
18      2015; Declaration of Don S. Kitaoka, Exhibit A.

19                  On August 25th, Commission mailed copies of  
20      its letter granting OP's requested time extension to  
21      the Parties.

22                  On August 27th, 2015, the Commission  
23      received Sierra Club's Substantive Joinder to  
24      Intervenor Friends of Makakilo's Motion.

25                  On September 29, 2015, the Commission

1 received correspondence from Neighborhood Board No.  
2 34.

3 On October 13, 2015, the Commission mailed  
4 notice of the October 22-23, 2015 LUC meeting to the  
5 Parties, the Statewide and Oahu mailing lists.

6 On October 20th 2015, the Commission  
7 received Friends of Makakilo's Amended Exhibit List  
8 and Exhibits 63-72.

9 On October 21-22, 2015, the Commission  
10 received several emails from members of the public  
11 whose names are on file.

12 Let me briefly describe our procedure for  
13 today on this docket.

14 First we will call individuals desiring to  
15 provide public testimony to identify themselves. All  
16 such individuals will be called in turn to our  
17 witness box where they will provide their testimony.

18 After public testimony, the Commission will  
19 hear argument on the Motion for Hearing, and Order to  
20 Show Cause. We will first hear from the Movant, then  
21 Intervenor who joined in the Motion, the Petitioner,  
22 then City and finally OP.

23 At the conclusion of oral argument, and  
24 after questions from the Commissioners and the  
25 answers thereto, the Commission will conduct its

1 deliberations.

2 Are there any questions on our procedure  
3 for today?

4 MR. KUDO: This is not a question of the  
5 procedures of today, but I wanted to make sure that  
6 there weren't conflicts of interest of any members  
7 sitting today on the Commission.

8 I just wanted a point of clarification, and  
9 this relates to Mr. Scheuer. The Sierra Club is a  
10 party to this proceeding, but for that I wouldn't be  
11 asking the question, but when I looked at the  
12 background of all the members on the Commission, I  
13 noticed that Mr. Scheuer listed down that he was a  
14 Board of Director of the Hawaii Chapter of the Sierra  
15 Club, and I just wanted to verify whether that's true  
16 or not.

17 VICE CHAIR SCHEUER: Mr. Kudo, my name is  
18 pronounced Scheuer, rhymes with lawyer. I am not a  
19 member nor have I been -- I am a member of the Sierra  
20 Club, I have no financial interest in the Sierra Club  
21 or other matters, but happy to disclose that.

22 MR. KUDO: Is the nature of your  
23 membership, are you an active member or is this some  
24 type of passive membership position that you're  
25 taking?

1 VICE CHAIR SCHEUER: I pay dues annually.

2 MR. KUDO: Are you able to render an  
3 unbiased decision in this matter, even though the  
4 Sierra Club is a party to this proceeding?

5 VICE CHAIR SCHEUER: I believe I am.

6 MR. KUDO: I don't normally take this  
7 position, but I just want to be extra careful in this  
8 situation. I think the public deserves it, that if  
9 there's a mere appearance of impropriety, you know, I  
10 think it hurts the Commission's decision to move  
11 forward, when members of the Commission are members  
12 of an organization which are a party to the  
13 proceeding.

14 And so I normally don't do this, but I  
15 would, on that basis, feel that Mr. Scheuer should be  
16 recused from this his participation on this board in  
17 this matter.

18 VICE CHAIR SCHEUER: Chair, I would like to  
19 ask to go into executive session to address the  
20 powers of Land Use Commission in response to the  
21 questioning by Mr. Kudo.

22 VICE CHAIR WONG: Second.

23 CHAIRPERSON ACZON: It was moved by Vice  
24 Chair Scheuer and seconded by Vice Chair Wong to go  
25 into executive session. Those in favor say "aye".

1     Opposed? Staff please clear the room, please. You  
2     stay, we'll leave.

3                     (Executive session.)

4                     CHAIRPERSON ACZON: We're back on the  
5     record.

6                     After consulting with counsel, the Chair  
7     has determined that the fact Commissioner Scheuer is  
8     a passive member of the Sierra Club does not rise to  
9     the level of impropriety to the have the Commission  
10    recuse.

11                    Mr. Kudo, your objections and comments are  
12    noted for the record.

13                    MR. KUDO: Thank you.

14                    CHAIRPERSON ACZON: Let me remind you that  
15    the Commission is addressing a specific matter of  
16    whether or not to grant the motion for issuance of an  
17    Order to Show Cause. The Commission may grant the  
18    motion when the Commission has reason to believe that  
19    there has been a failure to perform to the conditions  
20    imposed or the representations or commitments made by  
21    the Petitioner.

22                    This is not an evidentiary hearing. The  
23    Commission is only making a determination on whether  
24    or not there is reason to believe that there may have  
25    been a failure to perform. If the motion is granted,

1 a full evidentiary hearing will be held at a later  
2 time and the parties and public will be given the  
3 opportunity to present their case.

4 For those that are testifying, the  
5 Commission would appreciate if you could confine your  
6 testimony to issues consistent with this matter and  
7 avoid repetitive testimony.

8 In addition, a three-minute time limit  
9 testimony will be reinforced.

10 Are there any individuals desiring to  
11 provide public testimony on this document?

12 EXECUTIVE OFFICER: Mr. Chair, we have 32  
13 people signed up to testify. I'll be calling them in  
14 order, and I also note those signed up to testify  
15 subsequent and we would ask the second person to take  
16 a seat over by the camera over there, and we would  
17 also ask testifiers to please use the microphone.

18 First testifier, Rodney Boucher followed by  
19 Tom Berg.

20 CHAIRPERSON ACZON: Can I swear you in?

21 Did you swear or affirm that the testimony  
22 that you're about to give is the truth?

23 THE WITNESS: Yes.

24 RODNEY BOUCHER

25 Was called as a public witness, was sworn to tell the

1 truth, was examined and testified as follows:

2 DIRECT EXAMINATION

3 CHAIRPERSON ACZON: Please state your name  
4 and address.

5 THE WITNESS: For the record, my name is  
6 Rodney Boucher. Point of disclosure, I'm a member of  
7 Ewa Neighborhood Board. I am here to speak on my own  
8 behalf, and my address is Ewa Beach.

9 I stand opposed to the motion for an Order  
10 to Show Cause, and I continue to be a strong  
11 supporter for the Ho'opili development.

12 I have family members that want an  
13 affordable home close to family in Ewa and Kapolei.  
14 I want them to have the opportunity, and believe  
15 Ho'opili is one of the best options.

16 Last night when I reviewed the LUC Oahu  
17 mapping, I saw just how important the LUC's original  
18 decision to approve Ho'opili was to Kapolei and West  
19 Oahu's group as a vibrant community.

20 My understanding is that Kapolei-Makakilo  
21 continues to expand with ongoing phased construction  
22 by Department of Hawaiian Home Lands, UH West Oahu,  
23 Kroc Center, and other developers, including the  
24 state's second largest mall being built, I believe.

25 All of this is occurring, as we speak, next

1 to the proposed Ho'opili development which is  
2 critical.

3 I am a proud graduate of UH West Oahu and  
4 want the campus to be vibrant with local growth from  
5 the Ho'opili community.

6 In my opinion D.R. Horton has been a  
7 proactive developer and has worked with the community  
8 on hundreds of concerns to help shape the Ho'opili  
9 community.

10 Thank you for this opportunity to share my  
11 support for the proposed Ho'opili community. I do  
12 stand opposed to the motion.

13 CHAIRPERSON ACZON: Any questions, Mr.  
14 Dudley?

15 DR. DUDLEY: No questions.

16 MR. SEITZ: No questions.

17 MR. KUDO: No questions.

18 MR. LEWALLEN: No questions

19 MR. YEE: No questions.

20 CHAIRPERSON ACZON: Next.

21 THE WITNESS: One last statement in  
22 reference to the comment made earlier about not being  
23 notified of the location. I was notified a week ago.  
24 I'm here. I was here at 7:40. I don't find that as  
25 a reasonable excuse.



1 CHAIRPERSON ACZON: Next testifier.

2 THE WITNESS: My name is Tom Berg from Ewa  
3 Beach.

4 EXECUTIVE OFFICER: Excuse me, next  
5 testifier following will be Victoria Cannon.

6 CHAIRPERSON ACZON: May I swear you in?

7 Do you swear or affirm that the testimony  
8 you are about to give is truthful?

9 THE WITNESS: Yes, it is truthful.

10 TOM BERG

11 Was called as a public witness, was sworn to tell the  
12 truth, was examined and testified as follows:

13 DIRECT EXAMINATION

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

16 THE WITNESS: Tom Berg, 91-203 Hanapouli,  
17 Ewa.

18 MS. ERICKSON: Could you please talk slowly  
19 for the court reporter?

20 THE WITNESS: I'm glad you said that. May  
21 I commence?

22 Failure to perform, there are three counts.

23 Counts 1. Ewa Neighborhood Board 2009  
24 10-01 took a vote that the east/west connective road  
25 must be built first. Sent testimony to the LUC. Do

1 not do what you did to us on the Fort Weaver Road.  
2 After years of suffering, the message is clear. The  
3 failure has been no concessions for 96706 unless  
4 there is something in it for you like a house or  
5 something else, but if there is nothing in it for you  
6 and concerned about other things, let me get into  
7 that count one.

8 That east/west connector road, if not built  
9 first, according to the Ewa Roadway Connectivity  
10 Study, which I pay taxes for, 2009 its findings says  
11 if you don't build that road first -- it was never  
12 meant to serve as an arterial road, and you by design  
13 are going to make it such knowingly and willingly  
14 causing harm.

15 There's four schools on that road. You  
16 can't widen it. There is no relief that you can do  
17 other than build east/west connector road first of  
18 which my understanding -- I hit up Senator Menor, he  
19 won't answer. A month gone unabated. When will the  
20 developer have this road open to the public? He  
21 doesn't know. Wow.

22 Second count, 1978 the will of the people  
23 was to do the following: Map all important ag land,  
24 and as a council member in 2012 had a resolution  
25 12-23 and I came here before the Land Use Commission

1 to tell you of that. That is a nine to nothing vote  
2 that no land should be disposed of.

3 Bill three codified the council, your  
4 actions. It was always ag until Bill 3 passed. Up  
5 until such time the failure was to not map and  
6 identify that property.

7 Now, when Laura Thielen was hired 2011 she  
8 said it would be mapped within a year. She left  
9 office, it's been four years later and it's still not  
10 mapped, and that was done by design.

11 Had the Ho'opili property been mapped and  
12 identified, which was the council's wish nine to  
13 nothing, map it, you would know. Again, here's the  
14 failure count two.

15 That property has to be mapped before you  
16 can dispose it. That's the failure.

17 Finally, the third one is the one who can't  
18 speak here today. And that's the Pueo owl. If you  
19 will notice that because I'm in favor of this, yes,  
20 you come back for a hearing, I'm in favor. The Pueo  
21 can't come here and say that. Why? Because everyone  
22 on the Ewa plain who say they're for this wants to  
23 decimate that bird by saying it doesn't exist, its  
24 habitat doesn't exist. That's a failure. That's a  
25 failure.

1 CHAIRPERSON ACZON: Please summarize.

2 THE WITNESS: There is other people with  
3 expertise to talk about the Pueo, what have you.

4 Traffic. I just gave you three counts in  
5 three minutes. If you gave me ten minutes, I'll give  
6 you ten counts. When do you want to stop me because  
7 it's endless that this project doesn't fit as  
8 designed. We need that hearing. We need that  
9 hearing bad.

10 CHAIRPERSON ACZON: Thank you. Any  
11 questions, Mr. Dudley?

12 DR. DUDLEY: No.

13 MR. SEITZ: No questions.

14 THE WITNESS: Thank you for this  
15 opportunity.

16 MR. KUDO: No questions.

17 MR. LEWALLEN: No questions.

18 MR. YEE: No questions.

19 CHAIRPERSON ACZON: Thank you,  
20 Commissioners?

21 EXECUTIVE DIRECTOR: Victoria Cannon  
22 followed by John Bond.

23 CHAIRPERSON ACZON: Do you swear or affirm  
24 that the testimony you're about to give is the truth?

25 THE WITNESS: I do.

1 VICTORIA CANNON

2 Was called as a public witness, was sworn to tell the  
3 truth, was examined and testified as follows:

4 DIRECT EXAMINATION

5 CHAIRPERSON ACZON: Please state your name  
6 and address.

7 THE WITNESS: Victoria Cannon. The address  
8 is 92-102 Olou Place, Makakilo. I have been a  
9 resident of Makakilo for 28 years.

10 I have testified from -- I got involved  
11 with this project in 2006. I started testifying in  
12 2010. I'm here to support the motion. I think there  
13 are failures, there are issues that need to be looked  
14 at.

15 I'm only going to talk about two of them.  
16 The first one is this ALISH map that always seems to  
17 be in question. This is in my hand. It is from the  
18 Office of Planning dated 1983, and it clearly  
19 shows -- and you Commissioners are welcome to this  
20 copy -- two copies that the lands we're talked about  
21 which is not Ho'opili, actually Honouliuli District  
22 to be proper about it -- are designated by the State  
23 of Hawaii as prime ag land. And not only is it prime  
24 ag land, but A and B soils. And that is covered in  
25 the constitution. That's all I'm going to say about

1 it.

2           The Petitioner has constantly told us that  
3 they are going to do this and this and this for  
4 certain traffic mitigations. I think we can clearly  
5 all say in this room there is no way any traffic is  
6 going to be mitigated on Oahu, especially not after  
7 the addition of the 48000 homes that are already  
8 zoned and approved to be built on the west side. And  
9 for outer-island Commissioners, West side means  
10 before the H-1/H-2 merge.

11           With those added houses and Ho'opili 11,500  
12 and the 70,000 plus, 70,000 plus cars that are going  
13 to be put on the freeway before that merge, that even  
14 the mitigation of narrowing lanes so they can add  
15 another lane and then actually adding another lane,  
16 that's not going to be enough to mitigate the  
17 existing traffic and the 70,000 plus cars that are  
18 going to come after it all going to the same place  
19 because that merge, eventually, no matter how narrow  
20 the lanes are, no matter how many one added lanes,  
21 they are all coming the same place.

22           This photo is the Olou Lane Traffic  
23 Mitigation after the lanes were narrowed and core one  
24 was added, narrowing lanes is not adding a lane in my  
25 book.

1                   Anyway, this is after. Obviously there is  
2   no mitigation. It does not work. Having said that,  
3   I just want to briefly point out three or four  
4   personal experiences I've had in this year on the  
5   freeway.

6                   I left for an appointment at Queen's  
7   Hospital, left Makakilo now, and ten minutes after  
8   9:00 for a 10:45 appointment at Queen's. Usually  
9   30 minutes tops. I did not arrive at Queen's parking  
10   facility until 10:30, and that was the day the two  
11   military buses got involved with a Mini Cooper on  
12   H-1/H-2.

13                  Before that when the dead body was found on  
14   the freeway, and Pali Highway was closed I was on my  
15   way --

16                  CHAIRPERSON ACZON: Please summarize.

17                  THE WITNESS: I am summarizing. We're  
18   doing nothing but sitting on the freeway now, that is  
19   our lives, period. And especially, please,  
20   Commissioners, the folks on the outer-islands need to  
21   understand that. This is our life. We plan around  
22   the traffic.

23                  CHAIRPERSON ACZON: Thank you, Ms. Cannon.  
24   Any questions, Mr. Dudley?

25                  DR. DUDLEY: No questions.

1 MR. SEITZ: No questions.

2 MR. KUDO: No questions.

3 MR. LEWALLEN: No questions.

4 MR. YEE: No questions.

5 CHAIRPERSON ACZON: Commissioners? You may  
6 leave.

7 EXECUTIVE DIRECTOR: John Bond followed by  
8 Melvin McAulton.

9 CHAIRPERSON ACZON: Can I swear you in?  
10 Do you swear or affirm that the testimony  
11 you're about to give is the truth?

12 THE WITNESS: Yes, sir.

13 JOHN BOND

14 Was called as a public witness, was sworn to tell the  
15 truth, was examined and testified as follows:

16 DIRECT EXAMINATION

17 CHAIRPERSON ACZON: Thank you.

18 Please state your name and address for the  
19 record.

20 THE WITNESS: My name is John Bond,  
21 resident of Ewa. My address P.O. Box 5578, Ewa  
22 Beach, Hawaii.

23 I am president of Kaneohe Cultural Hui.  
24 We're an organization concerned with the cultural  
25 Hawaiian history of the other areas. We're



1 consulting partly with the HART rail project, U.S.  
2 Navy on other projects, so a widely recognized group.

3 I'm speaking today on behalf of the Pueo  
4 owl which I've lived on islands most of my life. I  
5 lived on the Big Island seven years. Pueos are very  
6 common over there, used to see them quite often in  
7 our yard and so forth.

8 But they are very rare now in Ewa. Hardly  
9 ever seen. On the super moon of September 27th, this  
10 very rare picture was taken of a Pueo owl. And it is  
11 an important 'aumakua of the Hawaiian people and  
12 spirit of bird is guiding our culture out there.  
13 It's part of what is called a spiritual weeping place  
14 which the Federal Transit Administration, HART and  
15 FDA have all officially recognized as a national  
16 register site that they go on the national register,  
17 ancient spiritual site.

18 The Pueos are very important and are part  
19 of that. And we believe it appeared at the time of  
20 the super moon as a sign for all of us, trying to  
21 tell us, hey, I'm trying to survive here. I live on  
22 this land, and my habitat is being destroyed.

23 So we just got a letter yesterday from  
24 Senator Gabbard that said that there has been no  
25 studies done at all of the Pueo habitat, and DLNR has

1 no record of any studies done other than relying on  
2 what the Ho'opili EIS has said that there's just  
3 nothing there.

4 So we know they are there. We have seen  
5 their nests. We hear them at night. We hear them in  
6 the daytime because they're generally a daytime bird.

7 I would like to say there's plenty of other  
8 very endangered migratory birds out there. Carol Cox  
9 has taken pictures of ducks, ibises and many other  
10 rare Hawaiian birds, because they do nest out there.  
11 There are water features out there that they go to.  
12 So there's great deal of bird population. I forgot  
13 to say Pueo is an endangered bird on Oahu.

14 So that is most of what I wanted to say.  
15 But I want everyone to realize that UH West Oahu  
16 mascot is the Pueo and here we are killing its  
17 habitat in the place that everyone supposedly refers  
18 to this important spiritual bird.

19 So I'm asking you -- I'm for the Motion to  
20 Show Cause. I believe it's very important that this  
21 bird is protected, given a chance to survive. And  
22 there needs to be honest, real studies done to allow  
23 this bird to continue to live. It's an important  
24 part of Hawaiian culture.

25 So if you have any questions, that's all I

1 have to say. Thank you.

2 CHAIRPERSON ACZON: Any questions for the  
3 witness?

4 DR. DUDLEY: Yes.

5 CROSS-EXAMINATION

6 BY DR. DUDLEY:

7 Q I would like to ask, that picture now, was  
8 that taken on Ho'opili?

9 A It's a quadrant of where the bird  
10 habitat -- it happened to be actually on a fence by  
11 the north-south road, because it was a windy day and  
12 couldn't hunt, so it was just hanging out there  
13 waiting for the wind to die down.

14 But we have seen them all out there in the  
15 past, more in the center area. There's gullies out  
16 there. They like the gullies as a place to generally  
17 hang out and nest. There was a nest right by where  
18 the Royal Ilima site is. That's a protected area  
19 that the state has reserved by the south road. But,  
20 unfortunately, we later saw that site was burned and  
21 there was feathers on the ground.

22 We don't know, could have been another bird  
23 that was killed there. We don't know what happened.  
24 But this is a younger bird. It probably maybe was  
25 raised, born around January is when we saw all the

1 birds out there. So it's fairly young.

2 Again, there's just nothing being done to  
3 protect this bird.

4 DR. DUDLEY: Thank you.

5 CHAIRPERSON ACZON: Mr. Seitz?

6 MR. SEITZ: No questions.

7 MR. KUDO: No questions.

8 MR. LEWALLEN: No questions.

9 MR. YEE: No questions.

10 CHAIRPERSON ACZON: Commissioners?

11 COMMISSIONER HIRANAGA: Mr. Chair, just for  
12 clarity.

13 In answer to Mr. Dudley's question, is that  
14 a yes? He asked if the picture was taken on the  
15 property?

16 THE WITNESS: Was it taken on Ho'opili  
17 property?

18 COMMISSIONER HIRANAGA: Is that a yes?

19 THE WITNESS: No, taken by the north-south  
20 road.

21 COMMISSIONER HIRANAGA: That's a yes, it's  
22 in the boundary?

23 THE WITNESS: Yes.

24 CHAIRPERSON ACZON: Thank you.

25 EXECUTIVE DIRECTOR: Melvin McAulton

1 followed by Henry Kwok.

2 CHAIRPERSON ACZON: May I swear you in?

3 THE WITNESS: Good morning, Chair, members  
4 of LUC.

5 CHAIRPERSON ACZON: May I swear you in?

6 THE WITNESS: For the record, my name is  
7 Melvin McAulton. And I speak on behalf of the people  
8 of Ho'opili. My address is 1212 Kinou Street.

9 CHAIRPERSON ACZON: Do you swear that the  
10 testimony that you are about to give is the truth?

11 THE WITNESS: Yes.

12 CHAIRPERSON ACZON: Thank you. Please  
13 state your name and address for the record and  
14 proceed.

15 MELVIN McAULTON

16 Was called as a public witness, was sworn to tell the  
17 truth, was examined and testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: My name is Melvin McAulton.  
20 My address is 1212 Kinou Street.

21 For the record, I would like to state that  
22 I'm for the Order to Show Cause, and my statement is  
23 in regards to the disclosure law.

24 I found in the disclosures on Hawaii  
25 Revised Statute 514A that there was no disclosure on

1 D.R. Horton's financial past regarding court cases  
2 that he had.

3 There's also Hawaii Revised Statute 514B  
4 bout in good faith.

5 If we're going to let this man have a  
6 permit to build anything, we need to know if he has  
7 good faith in his history from the past and not the  
8 present or the future based on the fact that his good  
9 faith may tarnish his record in the present as well  
10 as the future. So we take that into consideration.

11 This case right now at Ho'opili is still in  
12 court. It doesn't show it as being viable at this  
13 time to even get a permit when the case is still  
14 outstanding.

15 On other cases regarding this, we find that  
16 the Ho'opili case itself involves agricultural land.  
17 Other research that I've done so far in the past from  
18 2000 all the way up until now, we're down to like  
19 five-and-a-half percent of agricultural land.

20 If the people in the mainland are going to  
21 be our supporter and supplier of produce or any food  
22 products that comes in from the mainland, they have  
23 weather conditions that Hawaii does not have. They  
24 have snow. They have thunder storms, tornadoes.  
25 They have every type of weather conditions Hawaii

1 doesn't have.

2           What is going to happen here if they get  
3 hit from the East Coast to West Coast with weather  
4 conditions? We falter from getting any produce from  
5 them. Shipping cost goes up, and also supply of  
6 demand goes down. We lose economy here.

7           With agricultural land here in Hawaii, we  
8 have our own agriculture. We have our own  
9 sustainability. We need to protect that  
10 sustainability.

11           That's all I have to say. Thank you.

12           CHAIRPERSON ACZON: Any questions for the  
13 witness?

14           DR. DUDLEY: No questions.

15           MR. SEITZ: No questions.

16           MR. KUDO: No questions.

17           MR. LEWALLEN: No questions.

18           MR. YEE: No questions.

19           CHAIRPERSON ACZON: Commissioners? Thank  
20 you. Leave the witness box, please.

21           EXECUTIVE DIRECTOR: Henry Kwok followed by  
22 Michael Lee.

23           CHAIRPERSON ACZON: May I swear you in?

24           Do you swear or affirm that the testimony  
25 you are about to give is truthful?

1 THE WITNESS: Yes, I do.

2 DIRECT EXAMINATION

3 CHAIRPERSON ACZON: Please state your name  
4 address.

5 THE WITNESS: My name is Henry Kwok. My  
6 address is 91-1004 Ophehuna Street, Ewa Beach.

7 Good morning, Land Use Commissioners.  
8 Thank you for this opportunity to testify in light of  
9 the motion.

10 I fight traffic to go to work every day to  
11 downtown, but I do not oppose any development in West  
12 Oahu. The is reason that I'm lucky enough to own a  
13 reasonable priced market home and I want younger  
14 generations to own one day.

15 A small percentage of selfish homeowners in  
16 West Oahu are using bad traffic and farm protection  
17 as a reason to oppose development and deny  
18 homeownership to others.

19 For ten years the developer follows the law  
20 and procedures to gain approval of this development.  
21 However, a few individuals continue to file lawsuits  
22 to stop this middle class housing project. Being  
23 attorney themselves, some of them, they only spend a  
24 few dollars, maybe \$1000 to file the motion, but the  
25 developer has to spend hundreds of thousands of



1     dollars in attorneys fees. This additional cost is  
2     added on to the final selling price of the homes.

3             With the lawsuit denying this development,  
4     construction costs are also skyrocketing due to the  
5     million dollar condo development in town and they  
6     still going on every day and they have no opposition  
7     there. Nobody filed lawsuit to stop those condos,  
8     and they're selling to the foreigners and also  
9     million dollars, you know, the rich people, you know.

10            Because of their selfish actions, average  
11     home prices in Hawaii are escalating. Without  
12     affordable priced homes, our homeless population  
13     continues to grow, and we will lose our Hawaii born  
14     sons and daughters to the mainland.

15            Commissioners, please give your support to  
16     provide affordable housing to Hawaii and deny this  
17     motion.

18            Thank you for this opportunity to share my  
19     thoughts with you. Aloha.

20            CHAIRPERSON ACZON: Mr. Dudley?

21            DR. DUDLEY: No questions.

22            MR. SEITZ: No questions.

23            MR. KUDO: No questions.

24            MR. LEWALLEN: No questions.

25            MR. YEE: No questions.

1                   CHAIRPERSON ACZON: Commissioners? Thank  
2     you. Next.

3                   EXECUTIVE DIRECTOR: Michael Lee followed  
4     by Maelani Lee.

5                   CHAIRPERSON ACZON: Do you swear or affirm  
6     that the testimony you are about to give is the  
7     truth?

8                   THE WITNESS: I do.

9                   MICHAEL KUMUKAUHOA LEE  
10    Was called as a public witness, was sworn to tell the  
11    truth, was examined and testified as follows:

12                   DIRECT EXAMINATION

13                   THE WITNESS: My name is Michael Kumukauhoa  
14    Lee, 91-1200 Keaunui Street, Ewa Beach, Hawaii,  
15    20-year resident.

16                   I've been recognized by the City Council  
17    ten years ago as a Hawaiian native cultural  
18    practitioner of limu and other.

19                   In the D.R. Horton Land Use Commission  
20    April 2nd, 2012 for the Sierra Club, Exhibit 53B,  
21    Docket No. A06-771, Affidavit of Michael Kumukauhoa  
22    Lee, D.R. Horton's attorneys recognize me as an  
23    expert and cultural practitioner of Honouliuli, Ewa  
24    in relationship to the limu and other native Hawaiian  
25    cultural practices.

1           I'm here today to support the Motion for  
2   Cause. The water quality for the cumulative impacts  
3   proposed for this storm drain project bringing in  
4   nutrients for the load do pose a present danger to  
5   the limu of Ewa Beach, known as Hale O Limu, the  
6   House of Limu.

7           One of the exhibits that I put in, the  
8   Papipi Road drainage, the motion ruled on by Judge  
9   Hifo, aka Bambi Weil, for Laura Thielen, Chairperson  
10   of Board of DLNR May 10, 2010, stop the drainage,  
11   putting the drainage directly into the ocean. The  
12   judge said you had to have mitigation with the direct  
13   outlets to protect the limu.

14           And I'm also here talking about the shark  
15   god cave. Kaahapahau is my 17th-great grand aunt,  
16   the Hawaiian shark goddess. I'm a consulting party  
17   to the 106 of the rail under Kanehili Hui, cultural  
18   descendants. We have told them where the places of  
19   the underground shark god cave and the natural the  
20   habitats that exist today under TCP.

21           Susan Lipo, in a meeting that we had a  
22   month ago, said she was going to do a study on the  
23   material that we are bringing to the table for TCP  
24   for the rail, for the shark god cave that goes up  
25   Ho'opili which we testified three years ago, and

1 brought numerous documentation to that affect of the  
2 shark god cave that goes right under the rail depot  
3 at Ho'opili.

4 So that is being looked at right now by the  
5 head archeologists of SHPD which gives you cause of  
6 establishing imminent harm to a cultural site which  
7 is a family site as a lineal descendant of  
8 Kaahupahau.

9 Also we would like to admit that the Pueo  
10 owl is there in the gulches next to the property of  
11 Ho'opili that does fly over Ho'opili. I've witnessed  
12 it myself under oath, under penalty of perjury. And  
13 as a Hawaiian cultural practitioner, I know six  
14 breeding pairs of Pueo owl in that gulch, Kalo'i  
15 Gulch. So that is cause --

16 CHAIRPERSON ACZON: Please summarize.

17 THE WITNESS: So you have enough data here,  
18 and what was put in of cause of standing of imminent  
19 harm under the State Constitutional, Article 12,  
20 Section 7, we will not overregulate or destroy  
21 Hawaiian religious practice for the health of the  
22 Hawaiian people. Mahalo.

23 CHAIRPERSON ACZON: Any questions for the  
24 witness?

25 DR. DUDLEY: No questions.

1 MR. SEITZ: No questions.

2 MR. KUDO: No questions.

3 MR. LEWALLEN: No questions.

4 MR. YEE: NO questions.

5 CHAIRPERSON ACZON: Commissioners? Thank  
6 you.

7 EXECUTIVE DIRECTOR: Next witness is  
8 Maelani Lee followed by Alan Gottlieb.

9 CHAIRPERSON ACZON: Can I swear you in?  
10 Do you swear or affirm that the testimony  
11 you are about to give us the truth?

12 THE WITNESS: Yes.

13 MAELANI LEE

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

17 DIRECT EXAMINATION

18 CHAIRPERSON ACZON: Please state your name  
19 and address for the record and proceed with your  
20 testimony.

21 THE WITNESS: My name is Maelani Lee, P.O.  
22 Box 1054, Waianae. I am here to support Kioni  
23 Dudley's motion.

24 I live out on the west side and I sit in  
25 gridlock traffic throughout the day already. It has

1     gotten worse over the years, to the point where  
2     having droopy eyes while driving to and from work is  
3     becoming normal. It will only get worse if Ho'opili  
4     is built as Urban development because that is 11,750  
5     homes, which means that there will be 11,750 more  
6     cars if there is only one car per household. Double  
7     or triple that if they have more than one car.

8             Gridlock traffic going home to the west  
9     side is tiresome as the sun sets on the West side, so  
10    we drive with the sunlight in our eyes already in  
11    traffic.

12            We cannot do much about the natural sun, so  
13    I am really not complaining about the sun, but we can  
14    do something about the extra cars that will make our  
15    traffic situation worse.

16            I witnessed someone sleeping at the wheel  
17    while at a complete stop. That is dangerous.

18            Also building Ho'opili will only make it  
19    worse for everyone on the island. If D.R. Horton  
20    says that the rail will be used for the Ho'opili  
21    residents to go to and from work, what about the days  
22    when they are not working? Traffic will be crazy at  
23    all hours of the day, and it is bad already in  
24    Kapolei and on my way home to Waianae, which takes  
25    lots of time away from my family.

1                   Now, let's talk about Ho'opili as farmland.

2       This land has more benefits as farmland vs. Urban  
3       development. Everyone can eat crops from the land.  
4       We wouldn't have to worry about additional cars  
5       causing traffic, and the land can be utilized at its  
6       best. This land has rich soil, aquifers, and the  
7       best sunlight, to say the least, so why throw that  
8       away?

9                   If homes are built on the land, that means  
10      less local produce for us, therefore prices go up.  
11      This will affect us all, including you guys sitting  
12      in front of me. We would all benefit from this land  
13      as farmland, so why let D.R. Horton gain instead? It  
14      does not make any sense.

15                  Just listen. If the land zone change  
16      allows Urban development, the only company that will  
17      gain is D.R. Horton, as they will be making money off  
18      the homes, edible gardens, and I wouldn't be  
19      surprised if they will make money off solar since the  
20      sunlight there is unbeatable.

21                  That land has no shade from mountain  
22      valleys or anything, which means it is best to be  
23      kept as farmland. If it is hot, it will be used  
24      more.

25                  Ho'opili as Urban development will cause

1     our water bill and sewer bill to go up, so we have  
2     more to lose if Ho'opili is built as Urban  
3     development, therefore, Ho'opili should remain as  
4     Agriculture land.

5             I mean, our best bet is to keep it as  
6     farmland for all, all of us locals, so we can gain  
7     from it, not just D.R. Horton.

8             We all know that Ho'opili is currently  
9     producing food for us. If it is changed to Urban  
10    development, only a small portion of the land will  
11    grow Ho'opili tomatoes. Now, this is the fruit that  
12    has 94% of water in it. I'd rather get full off of  
13    corn, green beans, watermelons, cantaloupes,  
14    mushrooms, pumpkin and whatever else is grown there,  
15    not just tomatoes.

16            If D.R. Horton's project goes through, the  
17    only one who will benefit from the land is D.R.  
18    Horton, and the small community that will live there,  
19    not all of us like we currently do.

20            There is an edible garden option to the new  
21    homeowners, but D. R. Horton will gain extra money  
22    from the purchasers, and the community will not gain  
23    anything from it at all.

24            Again, the community currently gains from  
25    the lands as farmland, and right now. Please don't



1 change it.

2 I call D.R. Horton selfish because they are  
3 not thinking of our community by wanting to build  
4 homes on land that is currently feeding us. They are  
5 in it for the money and they could care less about  
6 how the community benefits from the land today. We  
7 need to stop this kind of business in Hawaii,  
8 especially since we are not self-sufficient on food  
9 yet, but we do have potential as long as our  
10 agriculture land is not rezoned for Urban  
11 development. Thank you.

12 CHAIRPERSON ACZON: Any questions for the  
13 witness?

14 DR. DUDLEY: No question.

15 MR. SEITZ: No questions.

16 MR. KUDO: No questions.

17 MR. LEWALLEN: No questions.

18 MR. YEE: No questions.

19 CHAIRPERSON ACZON: Commissioners? Next.

20 EXECUTIVE OFFICER: Alan Gottlieb.

21 CHAIRPERSON ACZON: Do you swear or affirm  
22 that the testimony that you are about to give is the  
23 truth?

24 THE WITNESS: Yes.

25 -o0o-

1                               ALAN GOTTLIEB

2       Was called as a public witness, was sworn to tell the  
3       truth, was examined and testified as follows:

4                               DIRECT EXAMINATION

5                       CHAIRPERSON ACZON:   Please state your name  
6       and address.

7                       THE WITNESS:   My name is Alan Gottlieb,  
8       92-6931 Puliko Street, Kapolei, as in Makakilo.   I  
9       lived there for -- well, I've lived on the west side  
10      for 35 years.   I'm here today to speak in opposition  
11      to the motion.

12                      Our company is Second City Property  
13      Management.   I've been in the agricultural business  
14      in the State of Hawaii, ranching and farming, for  
15      over 35 years.   We are the manager of the Ho'opili  
16      property, the farmland for the past 20 or so years  
17      before D.R. Horton bought it from the Estate of James  
18      Campbell.   We work with the farmers on a daily basis.  
19      We manage the water systems on this particular  
20      property, in addition to other properties on Oahu and  
21      Big Island.

22                      I am personally involved in over 15,000  
23      acres of agricultural land, ranches and farming in  
24      the State of Hawaii.

25                      We've worked with D.R. Horton for the last

1     ten years as liaison for the farmers, and I wanted to  
2     state when they say they're going to do something,  
3     they do it and always followed through on everything  
4     they have said. They have treated the farmers  
5     fairly, and continue to accommodate all of their  
6     needs.

7             I'm heartened by all the testifiers coming  
8     up and in support of ag in the State of Hawaii. This  
9     is not always the case, and I would urge them to come  
10    out to the legislature -- we go to the legislature  
11    every year -- and help us support the right to farm  
12    in the State of Hawaii, because there is opposition  
13    to that on a year-to-year basis.

14            And we try to get those bills heard, but  
15    the right to farm and farm following science-based  
16    practices, and the legal use of pesticides. We would  
17    love to see these folks come out and support us  
18    because we have opposition to farming every single  
19    year.

20            So thank you for giving me the opportunity  
21    to testify today.

22            I just want to reiterate that D.R. Horton  
23    has shown by their record that they do what they said  
24    they're going to do.

25            CHAIRPERSON ACZON: Any questions for the

1 witness?

2 DR. DUDLEY: No questions.

3 MR. SEITZ: No questions.

4 MR. KUDO: No questions.

5 MR. LEWALLEN: No questions.

6 MR. YEE: No questions.

7 CHAIRPERSON ACZON: Commissioners?

8 COMMISSIONER CABRAL: Based on your expert  
9 information, because of the fact that you do  
10 professionally deal with this question of farming as  
11 well as land and space, are you aware if the farmers  
12 are being displaced in a sense?

13 Then, are you aware they have been able to  
14 find land elsewhere?

15 Are they able to still meet production  
16 levels that they were doing on this land?

17 Are they in the process of being moved?

18 Where are they going?

19 And are they just all going out of business  
20 or being moved?

21 What is the plan?

22 Are they going to be able to make up for  
23 this loss of ag production?

24 THE WITNESS: The farmers that are on this  
25 particular property, all of them I believe have farms

1 in other places. And in a lot of ways, farming, the  
2 farmers are constantly moving, trying to find new  
3 opportunities, different grounds, et cetera. Whether  
4 they will be replaced 100 percent of what they  
5 produce on this particular property, I can't speak to  
6 that, but I know all of them have opportunity.

7 And I know that D.R. Horton participated in  
8 the Galbraith acquisition by the State of Hawaii ADC  
9 and most, if not all of them, have some land  
10 opportunities up in Central Oahu.

11 COMMISSIONER CABRAL: Thank you very much.

12 I would like to make note that I'm from the  
13 Big Island. We have a lot of land. We need a better  
14 way to ship it to the market place. Thank you.

15 CHAIRPERSON ACZON: Thank you, Commissioner  
16 Cabral.

17 EXECUTIVE OFFICER: Shin Ho followed by  
18 Jebson Quartero.

19 CHAIRPERSON ACZON: May I swear you in?

20 Do you swear or affirm that the testimony  
21 that you are about to give is the truth?

22 THE WITNESS: Yes, thank you.

23 SHIN HO

24 Was called as a public witness, was sworn to tell the  
25 truth, was examined and testified as follows:

1 DIRECT EXAMINATION

2 CHAIRPERSON ACZON: Please state your name  
3 and address.

4 THE WITNESS: My name is Shin Ho, address  
5 is P.O. Box 569 Kahuku 96731.

6 CHAIRPERSON ACZON: Please proceed.

7 THE WITNESS: Aloha, my name is Shin Ho. I  
8 am the general manager of Whole Farms, a family farm.  
9 Our farm has been in business for over 23 years and  
10 we are based out of Kahuku. We started in Ho'opili  
11 about two-and-a-half years ago. It was a great  
12 opportunity for us, because we have been farming in  
13 Kahuku for over 20 years on the same 40, 50 acres.

14 With the new land in Ho'opili, we were able  
15 to, I would say, almost more than double our  
16 production. And now we are able to supply our  
17 products not just on Oahu, but on the neighbor  
18 islands, consistently in the supermarkets such as  
19 Safeway, Foodland and Times.

20 We currently grow primarily cherry  
21 tomatoes, Japanese cucumbers, beans. We do  
22 butternut, okra, long squash and eggplant.

23 I'm in the process of certifying an organic  
24 parcel in Ho'opili that has been fallow for several  
25 years. And next year will be our 10th anniversary as

1 the Whole Farms brand, and I hope that we will be  
2 able to launch our first line of organic cherry  
3 tomatoes and butternut.

4 We know that the market is moving that way,  
5 and I think our customers will be very happy with it.

6 We are part of the "Grown in Ho'opili  
7 Farm", and we label our products with a sticker that  
8 notates the product is grown in Ho'opili. It just  
9 helps local customers identify the product, that it  
10 is coming from the Ho'opili farm. And with the  
11 organic parcel, I'm hoping to diversify more farming  
12 for restaurants and go into maybe citrus, maybe some  
13 exotic stuff like bamboo and ulu and also be able to  
14 do some agricultural education.

15 But I am -- I ask that you allow Ho'opili  
16 to move forward. I intend to continue farming and  
17 we, our business -- we have the intentions of  
18 continuing to grow food for Hawaii and we can  
19 definitely do it as Ho'opili moves forward.

20 Thank you.

21 CHAIRPERSON ACZON: Any questions?

22 DR. DUDLEY: No questions.

23 MR. SEITZ: Yes.

24 CROSS-EXAMINATION

25 BY MR. SEITZ:

1           Q     I don't understand. Are you going to stay  
2     and continue your operations in the present level if  
3     the project is built?

4           A     Yes. We can continue in the present level.

5           Q     What about the other farmers who are there?

6           A     I don't know about the other farmers.

7           Q     The other farmers have much larger  
8     operations than you, correct?

9           A     Yes.

10          Q     And you would agree that their future is  
11     very uncertain in terms of whether or not they can  
12     find equivalent lands on which to grow products that  
13     they're presently producing, correct?

14          A     I would not agree with that. As Alan said,  
15     as farmers we're constantly looking for land. And  
16     we're constantly looking for land.

17          Q     But is there land available that has the  
18     infrastructure that would enable the farmers that are  
19     presently utilizing --

20          A     Yes.

21          Q     There is?

22          A     I'm actually farming about 100 acres right  
23     now. And we also have another 50 acres up in the  
24     Galbraith land that we are probably going to prepare  
25     for in the next year.



1           Q     What about the land that Aloun Farms is  
2     growing, how many acres do they grow?

3           A     I don't know.

4           Q     Do you know if there are parcels anywhere  
5     near the size that they are currently utilizing to  
6     which they can move their operation if Ho'opili  
7     proceeds?

8           A     No.

9           Q     There are not?

10          A     I don't know what they have.

11          Q     Have you read the record in this case that  
12     all the expert testimony that was provided about  
13     whether or not there is land available --

14               CHAIRPERSON ACZON:  Mr. Seitz, the  
15     testifier said she doesn't know.

16               MR. SEITZ:  Okay.  Thank you, I'm done.

17               But I resent the fact that Ms. Cabral, who  
18     apparently knows the previous witness, was asking  
19     questions designed to illicit testimony about the  
20     fact that there are substitute land, when in fact the  
21     record in this case, which apparently she hasn't  
22     read, indicates there are serious problems about  
23     relocating these lands.

24               CHAIRPERSON ACZON:  Thank you.  Your  
25     comments are noted.  Any other questions?

1 MR. LEWALLEN: No questions.

2 MR. KUDO: No questions.

3 MR. YEE: No questions.

4 CHAIRPERSON ACZON: Thank you.

5 EXECUTIVE DIRECTOR: Next, Jebson Quartero,  
6 followed by Phylis Kacher.

7 CHAIRPERSON ACZON: Do you swear or affirm  
8 that the testimony that you are about to give is the  
9 truth.

10 THE WITNESS: Yes.

11 JEBSON QUARTERO

12 Was called as a public witness, was sworn to tell the  
13 truth, was examined and testified as follows:

14 DIRECT EXAMINATION

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

17 THE WITNESS: Jebson Quartero. My address  
18 is Waipahu.

19 I'm a Native Hawaiian farmer, a new farmer.  
20 For some reason I decided to become a farmer. As  
21 I've seen -- as a Native Hawaiian growing up in  
22 homesteads, you see the problems that everybody has  
23 to do deal. Your neighborhood doesn't look like  
24 Hawaii Kai.

25 So my wife and I, we decided to start

1     farming. So we looked for programs to help teach us  
2     to farm. I mean, the state you have to be a  
3     part-time farmer for two years or four years and  
4     full-time farmer for two years to be a recognized  
5     farmer.

6                 So we found the GoFarm Program which is  
7     offered by UH. But unfortunately they are losing  
8     resources because they don't have land that they can  
9     give their students that graduate.

10                The land at Honouliuli could be a perfect  
11     proposed land for educational programs whether it be  
12     for farming or for Hawaiian education.

13                Another thing that I was amazed to see was  
14     for the first time last weekend my wife and I took  
15     our kids to the pumpkin patch. Just amazing to see  
16     how many thousands of people come out there. This  
17     place doesn't just provide us with food, brings  
18     families together, communities together, not just  
19     local. Most of the population was military and  
20     tourist. Celebrate America Day or whatever. That  
21     kind of resource is important for our communities.

22                What really trips me out is the land at  
23     Honouliuli that is currently producing the pumpkin  
24     patch is something that's present now, not something  
25     that's in the past. The food that's there is

1 currently being grown now, not something that they  
2 say that's hearsay or whatever. It's not abandoned  
3 land.

4 I can see houses are needed, I can see  
5 using abandoned farmland for housing, but not  
6 something that is actually growing something now  
7 that's tangible.

8 Also the soil over there is A and B soil,  
9 top two soils in the world most fertile and most  
10 agricultural production. All that's a Native  
11 Hawaiian resource not brought by foreigners that was  
12 naturally occurring here and protected and should be  
13 protected. Something that native Hawaiians live by:  
14 He ali'i ka'aina; he kauwa ke kanaka, the land is  
15 chief, mankind is its servant.

16 I'm here to show support for Kioni Dudley's  
17 Motion to Show Cause.

18 CHAIRPERSON ACZON: Any questions for the  
19 witness?

20 DR. DUDLEY: No questions.

21 MR. SEITZ: No questions.

22 MR. KUDO: No questions.

23 MR. LEWALLEN: No questions.

24 MR. YEE: No questions.

25 CHAIRPERSON ACZON: Commissioners? The

1 chair calls for a five-minute recess.

2 (Recess was taken.)

3 CHAIRPERSON ACZON: Back on the record.

4 Just for your information, I'll be calling  
5 recess several times, and this is for the court  
6 reporter to have a break.

7 EXECUTIVE DIRECTOR: Phylis Kacher followed  
8 by Keith Timson.

9 CHAIRPERSON ACZON: May I swear you in?  
10 Do you swear for affirm that the testimony  
11 you're about to give is the truth?

12 THE WITNESS: Yes.

13 PHYLIS KACHER

14 Was called as a public witness, was sworn to tell the  
15 truth, was examined and testified as follows:

16 DIRECT EXAMINATION

17 CHAIRPERSON ACZON: State your name and  
18 address for the record.

19 THE WITNESS: My name is Phylis Kacher, and  
20 my address 3652 Hilo place, Honolulu 96816.

21 I'm here to support Ho'opili and oppose the  
22 motion. I served as Waikele Community Association  
23 president for seven years while D.R. Horton built  
24 about 2000 homes there. My parents were both  
25 life-long farmers. The homes in Waikele started at

1     \$79,1000 and today they're selling for about  
2     \$350,000, the affordable units there.

3             Even in the worst of times, D.R. Horton,  
4     then called Schuler Homes, always stepped up to the  
5     plate, always did the right thing. They are now -- I  
6     think they were Schuler Homes at that time, and now  
7     D.R. Horton. They're probably the top home builder  
8     in the country.

9             I went on-line and did some research in  
10    preparation of this. I don't know if people know  
11    that, but we are so lucky because they've got the  
12    heart and soul of a local company, yet they've got  
13    the strong backing of a multi-dollar corporation that  
14    can really see this project through, which is a rare  
15    combination of opportunity for the State of Hawaii.

16            I love the owls and I think those pictures  
17    are great, but I'm more concerned about the kids that  
18    don't have a home. These two kids are living in the  
19    park next to the medical school, and I think that's  
20    sort of more important.

21            There is like 7200 people living without a  
22    roof over their head, and I think that's what the  
23    priority should be. We're in a crisis situation  
24    where there is not enough homes. And I know that the  
25    people that buy the Ho'opili homes are not going to

1 be the homeowners, but there is a thing called the  
2 food chain that I know that the people that buy the  
3 affordable units or rent them in Ho'opili, they're  
4 going to leave a rental unit vacant and a food chain  
5 that will be a positive thing and eventually help  
6 people like these two kids that don't have a home.

7 I think that's what the priority needs to  
8 be. You've got a developer that has a wonderful  
9 track record, winning track record under the worst of  
10 times. Two recessions during the time I served as  
11 president at Waikele, and they always came through.  
12 They did more than they needed to do. I just don't  
13 think you can do better than that.

14 And they have come through even on this  
15 project, done more than what you've asked them to do  
16 to try to satisfy the concerns of the public.

17 And I ask you for the courage to be able to  
18 see this project through and help these type of  
19 people, the homeless and the people that need jobs.

20 Thank you so much.

21 CHAIRPERSON ACZON: Any questions for  
22 witness?

23 DR. DUDLEY: No questions.

24 MR. SEITZ: No.

25 MR. KUDO: No questions.

1 MR. LEWALLEN: No questions.

2 MR. YEE: No questions.

3 CHAIRPERSON ACZON: Commissioners?

4 EXECUTIVE DIRECTOR: Next testifier, Keith  
5 Timson, followed by Mike Golojuch.

6 THE WITNESS: I thought I was behind her,  
7 so you better go call Keith Timson.

8 EXECUTIVE OFFICER: Keith Timson followed  
9 by Mike Golojuch.

10 CHAIRPERSON ACZON: May I swear you in?

11 Do you swear or affirm that the testimony  
12 you are about to give is the truth?

13 THE WITNESS: Yes.

14 KEITH TIMSON

15 Was called as a public witness, was sworn to tell the  
16 truth, was examined and testified as follows:

17 DIRECT EXAMINATION

18 CHAIRPERSON ACZON: State your name and  
19 address.

20 THE WITNESS: My name is Keith Timson. I  
21 live at 92-684 Nohona Street, Makakilo.

22 CHAIRPERSON ACZON: Please proceed.

23 THE WITNESS: I'm a 51-year resident of  
24 Makakilo, and I raised my family in this community  
25 and now I get to see my grandchildren and raise them



1 as they grow up there.

2 D.R. Horton has been trying to start the  
3 Ho'opili project for a long time. I should know, I  
4 was there in the beginning when Ho'opili Community  
5 Task Force started. That was ten years ago. Imagine  
6 being committed for ten years.

7 This group of west side residents and  
8 community leaders met regularly for years because  
9 D.R. Horton wanted our feedback on different ideas he  
10 had for this community called Ho'opili.

11 We talked about everything from biking  
12 trails to schools to creating a community where you  
13 actually know your neighbors. And I should know, I  
14 came from a neighborhood, an old time neighborhood of  
15 Wahiawa, and we knew everyone there. The markets,  
16 everything was really a good place -- you could  
17 charge back then and come back and pay your monthly  
18 bill.

19 Based on my experience on this task force  
20 with the people from the company, I believe D.R.  
21 Horton is a company of its word. It will continue to  
22 do its part to make housing and home ownership  
23 affordable for local families.

24 These constant suits and motions and legal  
25 action continue to waste our time, energy and

1 efforts. Enough already. Time to move forward.

2 I respectfully ask the LUC to please let us  
3 move forward with Ho'opili.

4 CHAIRPERSON ACZON: Any questions for the  
5 witness?

6 DR. DUDLEY: No questions.

7 MR. SEITZ: No questions.

8 MR. KUDO: No questions.

9 MR. LEWALLEN: No questions.

10 MR. YEE: No questions.

11 CHAIRPERSON ACZON: Commissioners? Next  
12 testifier, please.

13 EXECUTIVE OFFICER: Mike Golojuch followed  
14 by Rich Hargrave.

15 CHAIRPERSON ACZON: May I swear you in?

16 Do you swear or affirm that the testimony  
17 that you are about to give us the truth?

18 THE WITNESS: Yes.

19 MIKE GOLOJUCH

20 Was called as a public witness, was sworn to tell the  
21 truth, was examined and testified as follows:

22 DIRECT EXAMINATION

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

25 THE WITNESS: I am Michael Golojuch, 92-954

1 Makakilo Drive, Kapolei, speaking on my own behalf.

2 I continue to be a strong supporter for  
3 Ho'opili development. I've been a resident of  
4 Makakilo for over 34 years, and have been part of the  
5 Ho'opili Community Task Force since its inception ten  
6 years ago.

7 In addition, I serve as President of  
8 Palehua Townhouse Association, a board member of the  
9 Hawaii Community Development Authority - Kalaeloa,  
10 and the Vice-Chair, Citizens Advisory Committee to  
11 the Oahu Metropolitan Planning Organization.

12 Although I am speaking as an individual, I  
13 mention my association with some of the boards that I  
14 sit on to show my involvement and commitment to the  
15 community.

16 I, along with many others, look forward to  
17 Ho'opili so it will provide additional housing that  
18 is required for all people on Oahu. It also allows  
19 us to build the Kapolei community into the new city  
20 that is becoming.

21 Ho'opili is planned around a multi-model  
22 transportation system, including a well-connected  
23 street network where residents can walk, bike or ride  
24 the bus and use the rail. D.R. Horton has worked  
25 with both State and City Transportation Departments

1 to ensure they comply with the legal requirements.

2 D.R. Horton has also been a proactive  
3 developer and has worked with the Community Task  
4 Force to allow us to help shape the project and  
5 community. We look forward to their multi-faceted  
6 project.

7 Let me add that for the 12 years I served  
8 on the Makakilo-Kapolei-Neighborhood Board, we  
9 supported Ho'opili, as did Ewa and Waipahu  
10 Neighborhood Boards.

11 Please deny the Friends of Makakilo Motion  
12 for Order to Show Cause.

13 Thank you for this opportunity to share my  
14 support for D.R. Horton-Schuler Division's proposed  
15 Ho'opili community in East Kapolei.

16 CHAIRPERSON ACZON: Any questions for the  
17 witness?

18 DR. DUDLEY: No.

19 MR. SEITZ: No.

20 MR. KUDO: No.

21 MR. LEWALLEN: No.

22 MR. YEE: No.

23 CHAIRPERSON ACZON: Commissioners?

24 EXECUTIVE OFFICER: Richard Hargrave,  
25 followed by Jack DeFeo.

1 CHAIRPERSON ACZON: May I swear you in?

2 THE WITNESS: Yes, you may.

3 CHAIRPERSON ACZON: Do you swear or affirm  
4 firm that the testimony you are about to give is the  
5 truth?

6 THE WITNESS: Yes.

7 RICHARD HARGRAVE

8 Was called as a public witness, was sworn to tell the  
9 truth, was examined and testified as follows:

10 DIRECT EXAMINATION

11 CHAIRPERSON ACZON: State your name and  
12 address.

13 THE WITNESS: Rich Hargrave, Ewa Beach  
14 96706.

15 CHAIRPERSON ACZON: Please proceed.

16 THE WITNESS: Good morning, Chair,  
17 committee members or council members.

18 I appreciate the time and opportunity to  
19 offer my support for the Ho'opili project. I am Rich  
20 Hargrave, long-time resident of Ewa Beach.

21 Over the years my involvement within the  
22 community has been extensive and always in support of  
23 basic lifestyle improvements.

24 I think we all agree in the years to come  
25 there will be needs to accommodate the state's

1 predicted population growth. Ho'opili, along with  
2 other developments, will provide this inevitable  
3 growth.

4 Ho'opili offers a well-planned community  
5 for local and first time buyers. Their mixed use  
6 project allows for housing, parks, farms, and of  
7 course a direct connection to HART, our new rail  
8 system.

9 Development of Ho'opili will reduce traffic  
10 concerns and add jobs close to where people live and  
11 play.

12 This needed growth provides alternatives  
13 for future generations, where they can live, work and  
14 enjoy time with their families.

15 Again, I appreciate the time to hear my  
16 testimony in support of Ho'opili. Thank you.

17 CHAIRPERSON ACZON: Any questions for the  
18 witness?

19 DR. DUDLEY: No questions.

20 MR. SEITZ: No.

21 MR. KUDO: No.

22 MR. LEWALLEN: No questions.

23 MR. YEE: No.

24 CHAIRPERSON ACZON: Commissioners?

25 EXECUTIVE OFFICER: Jack DeFeo followed by

1 Shannon Alvodo.

2 CHAIRPERSON ACZON: May I swear you in?

3 THE WITNESS: Yes.

4 CHAIRPERSON ACZON: Do you swear or affirm  
5 that the testimony you are about to give is the  
6 truth?

7 THE WITNESS: Yes, it is.

8 JACK DeFEO

9 Was called as a public witness, was sworn to tell the  
10 truth, was examined and testified as follows:

11 DIRECT EXAMINATION

12 CHAIRPERSON ACZON: Thank you. Please  
13 state your name and address for the record.

14 THE WITNESS: My name Jack DeFeo and I  
15 reside in Makaha. My address is 85-175 Waianae  
16 96792.

17 CHAIRPERSON ACZON: Please proceed.

18 THE WITNESS: I would like to bring to your  
19 attention that what is missing in this scenario are  
20 the consequences should Ho'opili go forward.

21 We're leaving food security, number one.

22 Number two, we're putting profits ahead of  
23 people.

24 The negative impacts that will put the  
25 State of Hawaii in such an untenable position moving

1 forward into the future has consequences that you  
2 can't imagine.

3 To put short-term gains towards long-term  
4 consequences is unconscionable. You're taking the  
5 most prime ag land on the planet, not only in the  
6 State of Hawaii, but on the planet. And the negative  
7 impacts, once this project goes in place, won't be  
8 felt until five, ten, 15 years later.

9 What will you say to your family when you  
10 can't put food on the table? When you have to rely  
11 upon agencies, corporations outside of the State of  
12 Hawaii to bring food to your table?

13 Here in the State of Hawaii, we call it  
14 paradise, for the simple reason that we have some of  
15 the most incredible real estate land, agricultural on  
16 the face of the planet. Everybody wants to come  
17 here, because not only the climate but the land  
18 itself, the beauty, the potential, we have got it  
19 all.

20 So if we are to project a livable lifestyle  
21 well into the future in regards to the children that  
22 we bring into the State of Hawaii, you must think of  
23 the long-term consequences, not just the short-term  
24 gains of putting profit ahead of people.

25 Please keep in mind the misalignment here



1 is simply put in this way, and I love bringing this  
2 up. Align your heart with your mind, and you'll see  
3 and be guided by the principles that will take us  
4 into the future.

5 The negative impacts to Ho'opili are a  
6 disaster. It's a disaster waiting to happen. If you  
7 let this project go through, you'll see it, and  
8 you're families will. It's not going to go well.  
9 Thank you.

10 CHAIRPERSON ACZON: Any questions?

11 DR. DUDLEY: No questions.

12 MR. SEITZ: No questions.

13 MR. KUDO: No questions.

14 MR. LEWALLEN: No questions.

15 MR. YEE: No questions.

16 CHAIRPERSON ACZON: Commissioners?

17 EXECUTIVE DIRECTOR: Shannon Alvodo,  
18 followed by David Mulinix.

19 CHAIRPERSON ACZON: Do you swear or affirm  
20 that the testimony you are about to give is the  
21 truth?

22 THE WITNESS: Yes, I do.

23 SHANNON ALVODO

24 Was called as a public witness, was sworn to tell the  
25 truth, was examined and testified as follows:

1 DIRECT EXAMINATION

2 CHAIRPERSON ACZON: Thank you.

3 State your name and address for the record  
4 and you may proceed.

5 THE WITNESS: Thank you, Chair.

6 Shannon Alvodo, 1065 Ohua Street, Honolulu,  
7 Hawaii 96813.

8 My name is Shannon Alvodo on behalf of the  
9 General Contractors Association. I would like to  
10 state my position in opposition to the Motion of the  
11 Friends of Makakilo and for the reasons being it's  
12 unsubstantiated and without merit.

13 If I may share my continued support of D.R.  
14 Horton's project, Ho'opili. If I could just somewhat  
15 summarize what I had to say.

16 I actually was quite surprised to find out  
17 that this was on the docket, because earlier this  
18 year we thought maybe we could see some shovels in  
19 the ground and this project going forward, and  
20 celebrate somewhat homes for our future families, a  
21 lot of them my classmates who are now looking for  
22 homes that may be in their affordable range and  
23 actually have a home to call their own.

24 So it's with surprise that I'm here, and  
25 similar to the other previous testifiers, it's almost

1 as though we are wasting another day, another day  
2 where people could be working, people could be  
3 enjoying their family time.

4 But with regard to the project, the project  
5 will have a positive impact on the economy, the  
6 housing inventory, and improve accessibility to  
7 various services.

8 This project is important to local  
9 residents in many ways, including but not limited to  
10 the existing housing crisis we have right now, not  
11 only to our homeless and houseless, but also to those  
12 that have no homes within their range of  
13 affordability.

14 If I could just, Chair, if I could just go  
15 on a personal note. I just wanted to talk a little  
16 bit about the ag, because it's a personal passion to  
17 me, and I wanted to share some information about the  
18 GoFarm Program, because I was a graduate of the  
19 second class from Windward Community College of the  
20 GoFarm Program which is trying to target part-time  
21 working adults to get into farming as if it's a  
22 commercial endeavor, or if it is a part-time wanting  
23 to provide food for your family, because I think it  
24 affects all of us who live in Hawaii.

25 What we know is that there is a shortage of

1 local food, and we all kind of want to make up an  
2 impact in whatever way we can. So the gentleman  
3 indicated that, yeah, potentially there's no land  
4 available for his class, if he wants to graduate, but  
5 for our class, if I could share my personal  
6 experience, we had a class of graduates, eight.

7 Out of the eight, there was land available  
8 for us, not only from the University of Hawaii, but  
9 the Kamehameha Schools who are looking for people to  
10 put on their land, whether it's partnerships or  
11 opportunity through private owners who may have  
12 excess land. They were available to the GoFarm  
13 graduates because they knew that they may have a  
14 commitment to producing agriculture locally in  
15 Hawaii.

16 And I think, I mean, all of us in this  
17 program and the Ho'opili group, they want to work as  
18 partners, not in opposition to what could be good for  
19 the State of Hawaii. And I think -- sorry for being  
20 so personal about it -- but I think it all brings  
21 together what the mission is, and I think it's to  
22 make Hawaii a better place.

23 And how do we do that? I think in working  
24 together.

25 So if the Commission can, please deny this

1 motion. Don't bring it to evidentiary hearing. Let  
2 the project go on and let's make this happen.

3 Thank you.

4 CHAIRPERSON ACZON: Any questions?

5 DR. DUDLEY: Yes.

6 CROSS-EXAMINATION

7 BY DR. DUDLEY:

8 Q I'm really surprised that you were a GoFarm  
9 graduate, that's beautiful. But as a GoFarm  
10 graduate, why is it that you folks had land and now  
11 they don't have land? And yet you're plenty happy to  
12 give away Ho'opili, even though that could in the  
13 future be purchased back perhaps and turned into  
14 exactly what you're looking for future farmers?

15 A I think I would have to disagree with "give  
16 away land" because I think it's clear that the  
17 project has designated certain areas for agricultural  
18 use. So I'm not sure if that's a give-away, but  
19 they're incorporating into their plan. And what  
20 stops a homeowner from starting a garden in their  
21 backyard?

22 Everyone is doing it on homestead land with  
23 aquaponics. They're doing it farm to table within  
24 their own homes.

25 Q So the GoFarm Project is really just for

1     backyard farmers?

2             A     I would disagree.

3             DR. DUDLEY:   Thank you.

4             MR. SEITZ:   No questions.

5             MR. KUDO:   No questions.

6             MR. LEWALLEN:  No questions.

7             MR. YEE:   No questions.

8             CHAIRPERSON ACZON:  Commissioners?  Next,  
9     please.

10            EXECUTIVE OFFICER:  David Mulinix followed  
11     by Sherry Pollack.

12            CHAIRPERSON ACZON:  David Mulinix.  Sherry  
13     Pollack.

14            UNKNOWN SPEAKER:  I think they had to go.

15            EXECUTIVE DIRECTOR:  Georgette Stevens  
16     followed by Al Frenzel.

17            CHAIRPERSON ACZON:  Do you swear or affirm  
18     that the testimony you are about to give is the  
19     truth?

20            THE WITNESS:  Yes.

21                         GEORGETTE STEVENS

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

24                         DIRECT EXAMINATION

25            CHAIRPERSON ACZON:  Thank you.  Please

1 state your name and address for the record.

2 THE WITNESS: Georgette Stevens, P.O. Box  
3 75414 Kapolei.

4 I'm a life-time resident of West Oahu and I  
5 want to thank you for your time today.

6 I've been testifying in support of Ho'opili  
7 for ten years from the very beginning. And I'm also  
8 a part of the task force that some of our previous  
9 testifiers have indicated.

10 Over the years D.R. Horton -- we have let  
11 D.R. Horton know that schools, rail, the gathering  
12 places and agriculture were vital components to our  
13 community. I believe this community plan for  
14 Ho'opili captures all of these and more.

15 Ho'opili is the last piece of the puzzle to  
16 complete the vision for Kapolei. After decades of  
17 planning, Kapolei is finally coming to life. Keep in  
18 mind that cities are not built overnight. We now  
19 have shopping, restaurants, the Kroc Center, a number  
20 of essential non-profits, a senior living facility,  
21 the FBI and city and state buildings right in our  
22 community.

23 East Kapolei, where Ho'opili is located, is  
24 planned to be a major economic corridor. With the  
25 Kroc Center and UH West Oahu, and more Hawaiian Homes

1 in the future, East Kapolei could soon be the model  
2 community we look at for smart growth and sustainable  
3 developments.

4 I am sure D.R. Horton will do the best job  
5 in building Ho'opili. We need it and we need it now.

6 CHAIRPERSON ACZON: Any questions?

7 DR. DUDLEY: No questions.

8 MR. SEITZ: No questions.

9 MR. KUDO: No.

10 MR. LEWALLEN: No.

11 MR. YEE: No.

12 CHAIRPERSON ACZON: Commissioners?

13 EXECUTIVE DIRECTOR: Al Frenzel followed by  
14 Cynthia Frith.

15 CHAIRPERSON ACZON: Do you swear or affirm  
16 that the testimony that you are about to give is the  
17 truth?

18 THE WITNESS: I do.

19 AL FRENZEL

20 Was called as a public witness, was sworn to tell the  
21 truth, was examined and testified as follows:

22 DIRECT EXAMINATION

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

25 THE WITNESS: Al Frenzel, 84-923 Ala Hale

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1 Street, Makaha, Hawaii.

2 CHAIRPERSON ACZON: Please proceed.

3 THE WITNESS: I'm here to speak about three  
4 individuals or groups that are disenfranchised by  
5 this process and this process that makes us say  
6 failure and violation. And I'm in support of the  
7 motion before you today.

8 The first of which we have heard about the  
9 Pueo. The Pueo is not mentioned in the EIS  
10 statement. That land is private land. We don't  
11 know, we can't access that land, but I do know that  
12 if there is a Pueo on the north-south road,  
13 undoubtedly there are Pueos on those lands.

14 So I would ask that this EIS be  
15 readdressed. The EIS does not address, totally  
16 ignores this endangered species.

17 I want to talk about the farmers, not the  
18 farmers that were testifying here today, but the ones  
19 that can't be here. The ones that are working that  
20 have implied gag orders that they can't speak here  
21 with risk of losing their leases.

22 I'm pretty sure, based on the previous  
23 testimony, that at least one young lady has a great  
24 opportunity for a lease on the few acres that remain  
25 in Ho'opili for farming. But those that have to

1     worry about going from four crop per year farmlands,  
2     the best A, B lands in the world, and now have to go  
3     find some two crop farmlands elsewhere, they're  
4     disenfranchised. They won't be properly mitigated.

5             And, finally, I'm disenfranchised. I won't  
6     be mitigated, as well as my 45,000 neighbors that  
7     live west of Makakilo from Nanakuli all the way to  
8     Makaha. 45,000 folks live and won't have their  
9     traffic situation mitigated by the one lane that is  
10    added to the H-1, nor by the failed rail project, nor  
11    by the transportation-oriented development concept of  
12    Ho'opili.

13            Our commute into town is about 1 hour,  
14    45 minutes average each way, for those that don't  
15    live on Oahu, and aren't aware of what we go through.  
16    So we spend an average of three to four hours  
17    commuting into town. That is a disincentive to work  
18    for 45,000 people, and a large community that hasn't  
19    been addressed by this project. That is totally  
20    ignored by those that are in the Ho'opili area that  
21    say they've supported this project for the last ten  
22    years.

23            Our transit, our commute into town is going  
24    to be horrible after this project is approved. So I  
25    ask you to relook at this for the sake of the Pueo,

1 for the sake of the farmers who weren't allowed to  
2 testify today at risk of losing their leases or their  
3 opportunity to farm on the best lands in the world,  
4 and also for me and my neighbors who have to go  
5 through this traffic mess that's about to be created.

6 Thank you for your time.

7 CHAIRPERSON ACZON: Any questions?

8 CROSS-EXAMINATION

9 BY DR. DUDLEY:

10 Q You say that you take two hours, is that  
11 right?

12 A About an hour and 45 minutes.

13 Q Most of us are aware of the traffic from,  
14 say, Makakilo and Kapolei. Can you talk a little bit  
15 about the traffic going out to the country?

16 A From town to Makakilo is about 45, 30 to 45  
17 minutes, but I live another 19 miles west of there  
18 along with 45,000 other people, so double that time.  
19 And that's assuming that there isn't a traffic  
20 situation.

21 If there is a traffic situation, our  
22 commute can go from three to five hours easily.

23 Q Thank you.

24 MR. SEITZ: No questions.

25 MR. KUDO: No questions.

1 MR. LEWALLEN: No questions.

2 MR. YEE: No questions.

3 CHAIRPERSON ACZON: Commissioners?

4 COMMISSIONER ESTES: I have a question.

5 Just one quick one.

6 Can you verify that farmers weren't allowed  
7 to testify, or that they received a gag order?

8 THE WITNESS: I wish I could. But, you  
9 know, that kind of situation, what happened is a  
10 developer would never -- would never be caught doing  
11 that. But I can tell you that comments from the  
12 hearings in 2011 were: Where are all the farmers?  
13 Why aren't they testifying? Well, connect the dots.

14 CHAIRPERSON ACZON: Anybody else? Next  
15 testifier.

16 EXECUTIVE OFFICER: Cynthia Frith, followed  
17 by Denise Boisvert.

18 CHAIRPERSON ACZON: Do you swear or affirm  
19 that the testimony that you are about to give is the  
20 truth?

21 THE WITNESS: I do.

22 CYNTHIA FRITH

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

25 DIRECT EXAMINATION

1                   CHAIRPERSON ACZON: Please state your name  
2                   and address for the record.

3                   THE WITNESS: My name is Cynthia Frith, and  
4                   I live in Kailua on the other side of the island,  
5                   Windward side.

6                   I'm here today because this is a problem  
7                   for our state, for our island and our community. The  
8                   problem is not Ho'opili, per se, and the development  
9                   of it by D.R. Horton, the problem is that we just  
10                  can't seem to understand. We must save this prime ag  
11                  land.

12                  For years and years and years it has been  
13                  held by the state through different research and  
14                  studies and calculation by them that this is prime  
15                  farm land, pure and simple, the best in our state,  
16                  might be the best in the entire country.

17                  And to lose this productive farm land is  
18                  unconscionable. It's unthinkable. It's not going to  
19                  be replaced. You have elevations that are higher,  
20                  that won't grow the kind of crops that Ho'opili will  
21                  grow. And it's very flat land, extremely flat land  
22                  which is ideal for growing.

23                  And I think it's probably one of the best  
24                  reasons for D.R. Horton to get involved, because it's  
25                  a lot cheaper to build on flat land than to build on

1 the mountain side. That's really a simple thing to  
2 figure out.

3 But the real problem here, in my mind, is  
4 the lack of consideration for how we are going to  
5 sustain and feed our Oahu, the entire island.

6 I'm involved in farming over in Kailua.  
7 It's my backyard farming. If you think it's easy to  
8 be a farmer at any level, let me assure you, it is  
9 not. It's hard work to produce even a backyard crop.  
10 It's not as easy as people would have you believe.

11 I think that we need to allow UH, the  
12 western setup out there, to really work with young  
13 people, as they start to do to work with young people  
14 that want to get involved in farming, and then to be  
15 able to give these young farmers, work out some type  
16 of lease so that they can get their five acres and  
17 really start up over that two-year period to grow and  
18 produce.

19 We can't just rely on backyard farming.  
20 That's just silly. It's nonsense. People can give  
21 it up just like that, even though they start it and  
22 it seemed like a great idea. It's hard work, and we  
23 need to have sustainable true farming that's  
24 applicable to some of these farmers that have been  
25 displaced and are not ever going to be able to grow

1     what you can grow at Ho'opili.  You've got the  
2     sunshine, warmth, infrastructure, the gateway to  
3     distribution on H-1.  It can't be replaced.  Beyond  
4     that --

5                 CHAIRPERSON ACZON:  Please summarize.

6                 THE WITNESS:  One other point I wanted to  
7     make.

8                 We have a very well-known, world well-known  
9     engineer in our U of H and in our world.  His name is  
10    Panos Prevedouros, and he stated very simply over and  
11    over again that this merge between H-1 and H-2 is a  
12    choker, and the more traffic you put on H-1 -- go  
13    ahead and create another lane, make the other lanes  
14    thinner and create another lane -- that choker is a  
15    choker, is a choker.

16                CHAIRPERSON ACZON:  Thank you.

17                THE WITNESS:  And by the time you get to  
18    it, you be can't ameliorate it.  Thank you so much  
19    for your time.  Appreciate it.

20                CHAIRPERSON ACZON:  Any questions?

21                DR. DUDLEY:  No questions.

22                MR. SEITZ:  No.

23                MR. KUDO:  No.

24                MR. LEWALLEN:  No

25                MR. YEE:  No questions.

1                   CHAIRPERSON ACZON: Commissioners?  
2 Commissioner Scheuer.

3                   VICE CHAIR SCHEUER: Forgive me for  
4 addressing this to you, because in some ways this is  
5 for all the previous testifiers.

6                   A specific comment on the matter before us  
7 today, which is whether or not there is a reasonable  
8 basis for us to believe that D.R. Horton has not  
9 complied with the conditions placed upon them by the  
10 LUC Commission in their approval?

11                  THE WITNESS: I really can't answer that as  
12 fully as I would like to because I don't have the  
13 memory or the background to be able to tell what all  
14 of the conditions were.

15                  VICE CHAIR SCHEUER: With great aloha, the  
16 issue before us is actually very narrow. It's  
17 whether or not, in the motion made by Dr. Dudley,  
18 there is sufficient reason for us to believe that one  
19 of these conditions has been violated or not.

20                  And so with great respect for the strong  
21 emotional content for people who want to preserve  
22 farmland, or people who want to see more housing and  
23 jobs, today is not a retrial of whether or not the  
24 Ho'opili development goes forward. It's really  
25 looking at these very narrow issues.



1                   And I think actually our most precious  
2     resource is time, so I encourage everybody, if you  
3     have a comment on that particular issue, that would  
4     be helpful.

5                   THE WITNESS: If I may -- certainly thank  
6     you. If I may, if you would talk to and read what  
7     Panos Prevedouros has stated on and on throughout the  
8     traffic situation and how this H-1/H-2 merge cannot  
9     be mitigated, and D.R. Horton has come up with maybe  
10    half dozen different plans, if you will, of doing it.  
11    But once you hit that merge, it's done, you can't  
12    mitigate it. That would be my biggest --

13                  CHAIRPERSON ACZON: Thank you.  
14    Commissioners anyone? Next testifier, please.

15                  EXECUTIVE OFFICER: Denise Boisvert,  
16    followed by Alicia Malufiti.

17                  CHAIRPERSON ACZON: May I swear you in?  
18                   Do you swear or affirm that the testimony  
19    you are about to give is the truth?

20                  THE WITNESS: I do.

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

24                                 DIRECT EXAMINATION

25                  CHAIRPERSON ACZON: Please state your name

1 and address.

2 THE WITNESS: For the record, my name is  
3 Denise Boisvert. I am speaking on my own behalf, and  
4 my address is 225 Kaiulani Avenue in Honolulu.

5 I actually spend most of my spare time  
6 fighting proposals for skyscrapers in Waikiki,  
7 because I don't understand why developers are so  
8 obsessed with filling up every bit of open air space  
9 instead of just upgrading existing buildings or  
10 replacing some dilapidated ones with new low  
11 mid-rising buildings.

12 But this project, this project is beyond  
13 belief. How is it possible that people actually need  
14 to fight against it? I cannot believe that the  
15 destruction of such fertile land is even on the  
16 table. I feel like I'm in the twilight zone.

17 You don't have to be a member of the Sierra  
18 Club to know that this is wrong. Our Hawaii's  
19 natural resources and wildlife are simply just doomed  
20 by profit-hungry outsiders.

21 In the past century, the outsiders were  
22 somehow able to acquire hundreds and thousands of  
23 acres to plant sugarcane and pineapples. Now, in our  
24 lifetime they are still somehow able to acquire  
25 valuable land to plant concrete, to plant metal and

1 to plant asphalt on the most fertile soil left on  
2 this island, left in the state, for that matter. And  
3 according to some, left in the entire country.

4 Some decision-makers have used the excuse  
5 that the project falls within Oahu's Urban Growth  
6 Boundary and is part of the Island's General Plan.

7 Is it possible that the General Plan is  
8 wrong? The housing shortage could be alleviated by  
9 recycling existing buildings, by upgrading them,  
10 adding a few stories, or by tearing down dilapidated  
11 ones and rebuilding low and mid-rise multi-unit  
12 buildings in their place. That would house more  
13 people and still provide construction jobs.

14 Ask the developers to invest in these types  
15 of properties instead. Or if they really want to  
16 help the state, they should not be allowed to destroy  
17 rich fertile agricultural land to make their millions  
18 in profits.

19 Once it is paved over, it will be gone  
20 forever. You know that. I know that. And the  
21 developers in their hearts know that.

22 Unfortunately, I am not in the twilight  
23 zone. This fight to save the land is really  
24 happening. It sometimes takes courage to do the  
25 right thing, despite the pressure from politicians

1 and deep-pocketed developers, and even despite very  
2 flawed general plans.

3 Please don't sacrifice the land for  
4 unnecessary development. People can live elsewhere.  
5 Please think of all the food that can be grown on it  
6 to meet our future generations. Please don't give  
7 those generations the opportunity to ask "what were  
8 they thinking?" Mahalo. (Applause.)

9 CHAIRPERSON ACZON: Any questions?

10 DR. DUDLEY: No.

11 MR. SEITZ: No.

12 MR. KUDO: No.

13 MR. LEWALLEN: No.

14 MR. YEE: No

15 CHAIRPERSON ACZON: Next testifier. May I  
16 remind you not to applaud.

17 Do you swear or affirm that the testimony  
18 you are about to give is the truth?

19 THE WITNESS: I do.

20 ALICIA MALUFITI

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

23 DIRECT EXAMINATION

24 CHAIRPERSON ACZON: Thank you. Please  
25 state your name and address.

1                   THE WITNESS: Alicia Malufiti, Ewa Beach  
2   96706.

3                   I wish I could get all these people to come  
4   down to the state capitol to support agriculture.  
5   There are like over 100 bills every year. The  
6   farmers have a hard time coming.

7                   They're not here today. Guess where they  
8   all are? Farm Bureau convention on the Big Island.  
9   So today is the last day, and that's why some of them  
10  couldn't come.

11                  We are kind of all in the same boat. We  
12  understand the challenges facing farmers, but the  
13  folks here today, advocates for agriculture, they're  
14  not there for us. We're here for the farmers, and  
15  what we want to make sure is that farmers have places  
16  to farm. It's not just land, it's water, it's  
17  infrastructure, it's choices they have to make on the  
18  land, the labor. There all these issues.

19                  So I want to make sure you understand with  
20  this motion before you. D.R. Horton has done  
21  everything they should be doing to make sure farmers  
22  have a place to farm, and we are working with the  
23  state to make sure we can put farmers on the great  
24  land up in the Galbraith land they just purchased.  
25  Make sure -- and by the way, the water there is

1     plentiful.

2                   Right now on the west side we're using  
3     150-year old Waiahole Ditch to bring over water from  
4     the Windward side. So when you talk about long-term  
5     sustainability, we have issues. That ditch is old.  
6     It has a lot of repairs.

7                   CHAIRPERSON ACZON: Slow down for the  
8     reporter.

9                   THE WITNESS: Yes, thank you. Sorry.

10                  I want to make sure you understand that  
11     today one percent are farming and feeding us, one  
12     percent. And 80 percent of all the agricultural  
13     product in the state is grown on the Big Island.

14                  So we unfortunately here on Oahu, we are  
15     growing people, and for those of us who are here  
16     today, we want homes for our children. We have  
17     children and grandchildren. We need homes for those  
18     of us on the west side. This is the project.

19                  I have not seen anything today, or for the  
20     last three, four years, that tells us we should not  
21     move forward with the project. D.R. Horton has been  
22     commendable.

23                  So I would ask you to think twice about  
24     some of the arguments that continue to show cause for  
25     why this project shouldn't go forward, and to

1     remember that the people who really care about the  
2     farmers, we are going to be there every day for them.  
3     If I could get one percent of the people here to come  
4     down and testify on drought mitigation and funding  
5     for the farmers to make sure we get more farmers out  
6     on the land. We would love to see them.

7                 There are going to constantly be issues  
8     with food security, no doubt, but the number one  
9     reason I hear from my family when they leave Hawaii  
10    is not that I couldn't afford the food, it's because  
11    I got no place to live.

12                So for those of us who want places  
13    affordable, I mean no offense, 700 and \$800,000 down  
14    in Ocean Pointe, we can't afford that. The key to  
15    housing affordability is inventory, and this is going  
16    to give us inventory.

17                We have places for our farmers and they  
18    need more than land. They need support from not just  
19    Land Use Commission, but our state legislatures and  
20    city. And we are getting that support. We fight  
21    every day for these farmers.

22                CHAIRPERSON ACZON: Any questions?

23                DR. DUDLEY: No questions.

24                MR. SEITZ: No questions.

25                MR. KUDO: No questions.

1 MR. LEWALLEN: No questions.

2 MR. YEE: No questions.

3 CHAIRPERSON ACZON: Commissioners? Next,  
4 please.

5 EXECUTIVE DIRECTOR: Ricky Cassidy followed  
6 by Stuart Scott.

7 CHAIRPERSON ACZON: Do you swear or affirm  
8 that the testimony you are about to give is the  
9 truth?

10 THE WITNESS: Yes, I do.

11 RICKY CASSIDY

12 Was called as a public witness, was sworn to tell the  
13 truth, was examined and testified as follows:

14 DIRECT EXAMINATION

15 CHAIRPERSON ACZON: Thank you.

16 Please state your name and address for the  
17 record.

18 THE WITNESS: Paul Richard Cassidy. I have  
19 a house on Oahu. I have some family land on Kauai.  
20 The family's ahupua'a is Niu Valley. My great great  
21 great grandfather had the three fishponds in Kalihi,  
22 thanks to his service to the crown which included  
23 kicking the Russians off of Kauai.

24 I have a wife, Hawaiian. I have a cousin  
25 who I would like to sit with, Nana Thompson, simply



1     because as Hawaiian he does not use the capital H,  
2     uses a small H. In disclosure -- further disclosure,  
3     I've been hired and performed duties both for the  
4     city and the state, in fact, all the counties.

5             Earlier this year I produced the 2014  
6     Affordable Rental Housing Study, in which I showed  
7     statewide one in four people in our state -- no, one  
8     in five people have a hard time even getting public  
9     housing. They make less than 30 percent of median  
10    income.

11            So when we talk about who's not here, there  
12    are a lot of people who are not here simply because  
13    they're working. And there's even a lot of people  
14    who are not here today because they do not have  
15    houses, period.

16            In between having a house and not having a  
17    house, there are a number of different manifestations  
18    of housing, such as a tent in the backyard, or  
19    somebody living in the garage, that I think need to  
20    be acknowledged.

21            If you took a quarter of this room, those  
22    are the people that are really struggling. And the  
23    homeless who have to make a decision whether to rent  
24    or groceries, usually making the groceries decision.  
25    I'm here in strong memory of what is before you

1     today, and that is whether or not the developer cut a  
2     corner in doing the traffic study.

3                 I would like to acknowledge that the  
4     developer, this development, has not been five years  
5     in the making or ten years in the making, not even  
6     15 years in the making, this has been going on for a  
7     long time.

8                 Housing is one of the most regulated  
9     industries with hearings such as this ad infinitum.  
10    But they're not going to blow it. They go, they read  
11    the law and they follow it.

12                So from the little that I know, and I am  
13    not the lawyer, I'm a Hawaiian, and I'm a farmer.  
14    The little that I do know is that they wouldn't cut a  
15    corner now. The little I do know about the public  
16    agencies' response for this is that the state  
17    wouldn't allow it, the city wouldn't allow it.

18                So I think you're well down the road. I  
19    think you have to acknowledge where you are and I'm  
20    acknowledging you for sitting for a long time.

21                Thank you.

22                CHAIRPERSON ACZON: Just for the record, do  
23    you support or oppose the motion?

24                THE WITNESS: I don't even know. I'm here  
25    in favor of more housing, so anything that gets in

1 the way, especially the last minute, they didn't do  
2 the right study, I have no trunk with that, and I do  
3 have a lot of disclosures if you guys want to go into  
4 them.

5 CHAIRPERSON ACZON: Questions?

6 DR. DUDLEY: No questions.

7 MR. SEITZ: No questions.

8 MR. KUDO: No questions.

9 MR. LEWALLEN: No questions.

10 MR. YEE: No questions.

11 CHAIRPERSON ACZON: Commissioners?

12 EXECUTIVE DIRECTOR: Stuart Scott followed  
13 by Michele Matsuo.

14 CHAIRPERSON ACZON: Do you swear or affirm  
15 that the testimony you are about to give is the  
16 truth?

17 THE WITNESS: I do absolutely.

18 STUART SCOTT

19 Was called as a public witness, was sworn to tell the  
20 truth, was examined and testified as follows:

21 DIRECT EXAMINATION

22 CHAIRPERSON ACZON: State your name and  
23 address.

24 THE WITNESS: My name is Stuart Scott and I  
25 live at 2801-N2 Lai Road, Honolulu, Hawaii 96816.

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1                   Ladies and gentlemen, Land Use Commission.

2                   To clarify, up-front I support the Motion  
3   to Show Cause. I have read the motion and know the  
4   omissions and conditions on which it is based. I  
5   find them with merit.

6                   I lecture internationally on climate  
7   changes, causes and effects, as well as the human  
8   response and lack of response. And I work at and  
9   around the United Nations' climate negotiations.

10                  Climate change is a scientifically proven  
11   fact, despite the minions of well-paid lobbyist and  
12   think-tanks, P.R. firms, and deny these tactics in  
13   the U.S. congress and main-stream media outlets.

14                  Please do not confirm an unwise decision  
15   made before we knew the stakes when the urban growth  
16   boundary was drawn on a paper map and all flat land  
17   on Oahu looked the same, prime real estate for  
18   housing development.

19                  More than most of the United States Hawaii  
20   citizens understand climate change. More than any  
21   other state, Hawaii lies in harm's way by isolation  
22   and dependence upon importation of 95 percent of our  
23   needs.

24                  Climate change is projected to create  
25   drought patterns that will devastate agriculture on

1 the mainland 48 states within the next few decades.  
2 The drought maps attached to my written testimony  
3 derive from research published in the 2012 University  
4 Corporation for Atmospheric Research, and they  
5 amplify this point.

6 Food security is not a clever catch phrase.  
7 It names a real concern, the peril we and our  
8 children face. Within the next few decades of  
9 climate change, the world will become unable to  
10 produce anywhere near enough food to feed the  
11 expected population.

12 The U.S. is not immune. We are rich and  
13 powerful, but our domestic agriculture project will  
14 wither, as it is now doing in California's historic  
15 drought and spread across the American heartland as  
16 the drought maps show.

17 Hawaii is a net agricultural client of the  
18 U.S. mainland and other countries, most of which will  
19 be struggling to feed their own people. We also need  
20 to consider acts of God, like earthquakes on the West  
21 Coast, strikes, civil unrest and warfare. These are  
22 all concerns that are taken into account in the U.S.  
23 Military Assessment and Planning for what we can  
24 expect from climate change in coming decades.  
25 Shouldn't they be ours too?

1           At the same time, the world is waking up  
2   with the scientific consensus that 60 to 80 percent  
3   of all remaining oil reserves must be left in the  
4   ground to avoid runaway climate change and the dire  
5   inescapable consequences.

6           As nations move to limit the burning of  
7   fossil fuels, transportation costs will rise. Flying  
8   perishable food in will not be an option.

9           Do not take for granted that COSTCO will  
10   always be there. I hope you will have the wisdom and  
11   foresight to reverse past ill-advised decisions. Do  
12   not allow this travesty against all current and  
13   future generations on Oahu. The people of Oahu, our  
14   children, our children's children are relying upon  
15   your wisdom and independent judgment and resistance  
16   to the pressures.

17           CHAIRPERSON ACZON: Please summarize.

18           THE WITNESS: D.R. Horton has influenced  
19   everyone of our elected officials with overall new  
20   levels of campaign contributions to every single  
21   member of the City Council. Money is a powerful  
22   drug. It can buy all sorts of propaganda commonly  
23   known as advertising. And there is someone always  
24   willing to tailor expert opinion to help their  
25   clients --

1                   CHAIRPERSON ACZON: Mr. Scott, we have your  
2 testimony.

3                   THE WITNESS: I understand, thank you.

4                   CHAIRPERSON ACZON: Any questions?

5                   DR. DUDLEY: No questions.

6                   MR. SEITZ: No questions.

7                   MR. KUDO: No questions.

8                   MR. LEWALLEN: No questions.

9                   MR. YEE: No questions.

10                  CHAIRPERSON ACZON: Commissioners?

11                  EXECUTIVE DIRECTOR: Next, Michele Matsuo  
12 followed by Kaakaohu Wahilani.

13                  CHAIRPERSON ACZON: Do you swear or affirm  
14 that the testimony you are about to give is the  
15 truth?

16                  THE WITNESS: Yes.

17                                   MICHELE MATSUO

18 Was called as a public witness, was sworn to tell the  
19 truth, was examined and testified as follows:

20                                   DIRECT EXAMINATION

21                  CHAIRPERSON ACZON: Please state your name  
22 and address.

23                  THE WITNESS: My name is Michele Matsuo,  
24 700 Richard Street, Suite 709, Honolulu 96813.

25                  I'm a former real estate and land use

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1 attorney and raised since birth to malama our people  
2 and our Hawaii. Some of you and I have stood  
3 shoulder to shoulder trying to make our Hawaii a  
4 better place for all, not only for the present but  
5 for the future generations.

6 However, we now find ourselves in an  
7 outraged community appalled by the grease lightening  
8 developer efforts of the Abercrombie administration,  
9 which took Hawaii charging in the wrong directions.

10 Our community is absolutely furious with  
11 what is perceived as a bought and paid for  
12 government.

13 There's been no adequate mitigation plan  
14 for the water runoff in this area. Navy, which I  
15 spoke to, has refused to allow the dumping of the  
16 water, the runoff, into Pearl Harbor. They're  
17 concerned about their endangered species in the area.  
18 They have a lot of endangered water fowl.

19 Among the most egregious development  
20 decisions, which prompted the many people to vote out  
21 Abercrombie, was Land Use Commission decision to  
22 grant Urban reclassification for the development  
23 known as Ho'opili.

24 The lands of Kalo'i, now called Ho'opili,  
25 the name applies was once used for taro which



1 requires abundant moving water.

2 In building UH West Oahu there was an  
3 attempt to fill in and redirect the surface flow of  
4 the waters of Kalo'i, but the underground water  
5 through the karst caverns, we believe, brings a huge  
6 volume of rain from Central and West Oahu down to the  
7 ocean.

8 And now we know, we know now that at UH  
9 West Oahu that effort to redirect did not work.  
10 There are flooding on a regular basis. There are  
11 sandbagging. It's in the paper. It's not a matter  
12 of speculation.

13 Recently at the State Bar Convention we  
14 were briefed by the UH law school about the liability  
15 to government for tort liability resulting -- as a  
16 result of government approvals given for development.

17 Climate change, climate crisis is no longer  
18 a speculative long-distance-nexus type of thing.

19 CHAIRPERSON ACZON: Three minutes.

20 THE WITNESS: This land is so special, so  
21 irreplaceable, it's like bordeaux, and this is what  
22 we're giving up.

23 I know that this Land Use Commission is not  
24 the same as the one that granted the  
25 reclassification. Every time I see Governor Ariyoshi

1 he speaks to me about the need and that we must try  
2 and save this land for agriculture.

3 Our people don't believe in the government  
4 any more. We don't believe that we can do something  
5 right, our government can do something right. We  
6 have no faith any more. Please, please, do the right  
7 thing. Thank you.

8 CHAIRPERSON ACZON: Any questions?

9 DR. DUDLEY: No questions.

10 MR. SEITZ: No questions.

11 MR. KUDO: No questions.

12 MR. LEWALLEN: No questions.

13 MR. YEE: No questions.

14 CHAIRPERSON ACZON: Commissioners? Next,  
15 please.

16 EXECUTIVE DIRECTOR: Kaakaohu Wahilani.

17 CHAIRPERSON ACZON: Do you swear or affirm  
18 that the testimony you are about to give is the  
19 truth?

20 THE WITNESS: Yeah.

21 KAAKAOHU WAHILANI

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

24 DIRECT EXAMINATION

25 CHAIRPERSON ACZON: Thank you.

1                   Please state your name and address for the  
2     record.

3                   THE WITNESS: Aloha kakou, everybody.

4                   Kaakaohu Wahilani, 85-1175 Kumaipo Street,  
5     Waianae Valley.

6                   I'm here to oppose the development of  
7     Honouliuli, which everybody is calling Ho'opili. It  
8     isn't built yet, but everybody still calling it  
9     Ho'opili, but its address is Honouliuli.

10                  I'm opposed to the development and also for  
11     sovereignty. We have to remember, folks, this is  
12     agriculture land. To my understanding, Hawaii  
13     Revised Statute law, you cannot build residential,  
14     commercial, industrial on agriculture land.

15                  As everybody speaking before me, this is a  
16     prime agricultural land. We live on an island,  
17     folks, almost a million people live on this island.  
18     We talking about housing, yes? Talking out of fear  
19     for our kids, no more housing. But if there was a  
20     natural disaster, Young Bros. couldn't bring in food  
21     after the two-week shelf. I bet you go next door,  
22     find one farmer, you get lettuce or anything that is  
23     produced, you take that, and you eat that, because  
24     the day's end, everybody forget we got to eat.

25                  We got to thrive. We got to sustain

1 ourselves, sustainability. Sustainability, folks.

2 And I live out in Waianae Valley and fight that  
3 traffic every day.

4 And I feel for my brothers and sisters in  
5 the construction industry, because I was there  
6 20 years, but I going to stand -- everybody forget --  
7 who standing for the aina? I'm going to stand for  
8 the aina. The aina is the chief. We stewards. The  
9 aina no produce, no matter how much job going to get  
10 paid, if you cannot feed yourself, the money we  
11 already know paper value, losing.

12 Who here, whenever going plant food with  
13 kalo ka aina, who in this room going plant and  
14 produce your own food for eat? Who?

15 There you go. How you going to feel you  
16 produce your own food and you feed your keiki? I'm  
17 here for sustainability. I stand for the aina. And  
18 no forget our natives here before all of us, they was  
19 here for all of us, was not Pueo, but then I hear  
20 people talking about our kids, yeah, generations next  
21 to come, but I standing now and for kupuna and for my  
22 grandchildren coming after me.

23 We got to think sustainability, folks. And  
24 what happens after five years or after the so-called  
25 development of Honouliuli where everybody calling

1 Ho'opili, and I find that very unnerving for me as a  
2 kanaka maoli.

3 So say Ho'opili, you guys know what  
4 Ho'opili means? Anybody here knows what it means?  
5 Anybody tell me what it means? It mean to come  
6 together, to pili, to stuck together pili pa'a.

7 I see division in this room. We all live  
8 on this island. We all seeing red. We all belong to  
9 the same human race. But we got to think  
10 sustainability, folks.

11 Like I said, I feel for brothers and  
12 sisters in construction but I was there.

13 I summarize. I oppose the development.  
14 And if I can, I like swear all you guys in too as  
15 Land Use Commissioners. Can I swear you folks in to  
16 do what is pono? Can I swear you folks in?

17 CHAIRPERSON ACZON: Please summarize.

18 THE WITNESS: That's my summarize.

19 CHAIRPERSON ACZON: Any questions for the  
20 witness?

21 DR. DUDLEY: No questions.

22 MR. SEITZ: No.

23 MR. KUDO: No.

24 MR. LEWALLEN: No.

25 MR. YEE: No questions.

1                   CHAIRPERSON ACZON: Commissioners?

2                   EXECUTIVE OFFICER: Choon James followed by  
3 Noni Carmon.

4                   CHAIRPERSON ACZON: Do you swear or affirm  
5 that the testimony you are about to give is the  
6 truth?

7                   THE WITNESS: Yes.

8                                 CHOON JAMES

9 Was called as a public witness, was sworn to tell the  
10 truth, was examined and testified as follows:

11                                 DIRECT EXAMINATION

12                   CHAIRPERSON ACZON: Please state your name  
13 and address for the record and proceed.

14                   THE WITNESS: Choon James, Kahuku.

15                   I'm here today again in support of due  
16 process. And I understand that this has been going  
17 on for very long time, and that there have been  
18 checklist going through, and yet today we have a  
19 group of very concerned citizens who has filed a  
20 lawsuit in the Supreme Court that has not been  
21 rendered a decision yet.

22                   And, again, in my opinion, that there is a  
23 failure to perform throughout the whole process.  
24 There is a failure to even just simply, as a  
25 foundation, adhere to the state constitutional --

1 state constitution.

2 Section 3, it states that the state shall  
3 conserve and protect agricultural land, promote  
4 diversified agriculture, increase agricultural  
5 self-sufficiency, and assure the availability of  
6 agriculturally suitable lands.

7 In the Constitution of Hawaii, it says the  
8 state shall conserve. It did not say that they  
9 should. The state maybe or perhaps, or whenever, or  
10 whatever the developer say. It states very clearly  
11 that the state shall conserve.

12 And certainly just on the basis of that,  
13 that there is failure to perform.

14 May I just share with you a story? My  
15 husband had come home from Tonga and got a little  
16 book in the airline, I think it was Hawaiian  
17 Airlines. And there was an article about a woman who  
18 sends -- who mined sand in her island, and that  
19 island was already sinking. And someone asked her  
20 why do you mine the sand? Why do you mine the sand  
21 when you are seeing the beach disappearing before  
22 your eyes? And her answer to that question was  
23 because it's my livelihood.

24 So today, again, I think we're all in the  
25 same situation. We know that we an island. We know

1     that we do have very deep concerns about being able  
2     to sustain ourselves, our island being the most  
3     remote in the whole world. And yet are we really  
4     just thinking that because it is our livelihood, that  
5     we will continue to mine the diminishing sand on our  
6     beach?

7                 So that I think is a bigger question that  
8     we are all asking. Development is a wonderful thing,  
9     but can we sustain? Can we duplicate subdivision  
10    over and over again in this small island?

11                I submit to you that we cannot. And I  
12    submit to you that throughout the whole process there  
13    was a foundational failure to perform by just simply  
14    adhering to the state constitution.

15                CHAIRPERSON ACZON: Please summarize.

16                THE WITNESS: The state shall conserve and  
17    protect agricultural land. It does not state the  
18    state may perhaps, maybe or so. Say the state shall  
19    conserve and protect agriculture.

20                CHAIRPERSON ACZON: Any questions?

21                DR. DUDLEY: No questions.

22                MR. SEITZ: No questions.

23                MR. KUDO: No questions.

24                MR. LEWALLEN: No questions.

25                MR. YEE: No questions



1 CHAIRPERSON ACZON: Commissioners? Next.

2 EXECUTIVE OFFICER: Noni Carmona is the  
3 final witness we have signed up to testify.

4 CHAIRPERSON ACZON: Remind everybody that  
5 we're going to take a recess for lunch after this  
6 testifier.

7 Do you swear or affirm that the testimony  
8 you are about to give is the truth?

9 THE WITNESS: Yes.

10 NONI CARMONA

11 Was called as a public witness, was sworn to tell the  
12 truth, was examined and testified as follows:

13 DIRECT EXAMINATION

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

16 THE WITNESS: My name is Noni Carmona. My  
17 address is P.O. Box 11897, Honolulu 96828.

18 I'm testifying in support of the motion to  
19 overturn the zoning decision. I just want to remind  
20 you, September 2000, LUC declaratory ruling that  
21 actually found that Kealakekua was an illegal use of  
22 agricultural land, because the State of Hawaii has  
23 not designated important agricultural lands as  
24 required, in addition, required by new revised  
25 statute that still have not been completed.

1           We import 85 percent of our food and suffer  
2   the consequences of the Jones Act which greatly  
3   affects our cost of living. In 2011 county funded  
4   report that said that we have plenty of farmland.  
5   That was done by D.R. Horton's consultant. So I find  
6   that a conflict of interest.

7           The reality is that 70 percent of our  
8   productive agriculture land is currently tied up in  
9   genetically engineered crop experiments and seed  
10  experts. 70 percent of our land. Many of our small  
11  farmers, have a difficult time finding productive  
12  farmland, especially when competing with giant  
13  agri-chemical companies which need thousands of  
14  acres, and large developers, such as D.R. Horton, who  
15  spend hundreds of thousands of dollars through their  
16  partners, I should say the construction community, to  
17  our elected officials voting on these matters, which  
18  I find a conflict of interest.

19           I'll never forget the first time I saw  
20  young farmers testify in support of Ho'opili. The  
21  only time I had seen that until today. It broke my  
22  heart. She had so much talent and ambition, but is  
23  willing to sacrifice fellow farmers and the aina so  
24  she could have a slice of the most prime agricultural  
25  land in the state, despite taking out nearly

1 1300 acres.

2 And it kind of reminds me of the woman who  
3 was willing to split the baby so she could have a  
4 piece.

5 I've never seen another young farmer  
6 support it until today. I would like to think global  
7 and act global. So I love to see successful local  
8 farmers, but find it disturbing that any project  
9 elevates a few of our farmers at the expense of  
10 others. What about the small farmers who aren't  
11 lucky enough to get a piece of that farmland? Who  
12 don't have access to 50 acres somewhere else? I'll  
13 wrap it up.

14 I ask you to review the testifiers in view  
15 of the motion. I can think of one that's already  
16 being saved by the profiting of this project. This  
17 is -- let me say she lobbied -- only one person is  
18 farming, and she is right, the one person is like  
19 Shin Ho farming. You can get access to the best land  
20 we have. As far as the other 99 percent, maybe they  
21 can get a piece of the baby.

22 CHAIRPERSON ACZON: Any questions?

23 DR. DUDLEY: No questions.

24 MR. SEITZ: No.

25 MR. KUDO: No.

1 MR. LEWALLEN: No.

2 MR. YEE: No.

3 CHAIRPERSON ACZON: Commissioners? We are  
4 in recess --

5 THE WITNESS: Excuse me. I wonder if you  
6 can take one more?

7 CHAIRPERSON ACZON: Anybody else wants to  
8 testify?

9 THE WITNESS: Thank you very much.

10 MR. SEITZ: I was not aware that you were  
11 going to take a lunch break, given the location.  
12 There is no place for us to get food here, so I'm  
13 wondering if you would reconsider that and let us go  
14 through lunch. It is much more efficient than to  
15 take a lunch break at this point.

16 CHAIRPERSON ACZON: Let me take this  
17 witness first.

18 Do you affirm that the testimony you are  
19 about to give is the truth?

20 THE WITNESS: I do.

21 ANTHONY AALTO

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

24 DIRECT EXAMINATION

25 CHAIRPERSON ACZON: Please you state your

1 name and address for the record and proceed.

2 THE WITNESS: My name is Anthony Aalto. I  
3 live in Kaimuki. I'm the volunteer chairman of the  
4 Sierra Club on Oahu.

5 As you know, the Sierra Club believes that  
6 the Land Use Commission has failed its constitutional  
7 duty to protect farmland and increase agricultural  
8 self-sufficiency, and that's why we sued in the  
9 Supreme Court to overturn this body's decision on  
10 this matter. But most of you Commissioners weren't  
11 members at the time that decision was made, so I'm  
12 hoping you won't take that personally.

13 I understand this hearing is solely to  
14 consider the failure of D.R. Horton to produce a  
15 credible plan to mitigate the traffic impacts. You  
16 will hear detailed testimony on that issue from our  
17 attorney Eric Seitz and from Kioni Dudley. I won't  
18 repeat what they will say, but I will speak to one  
19 specific aspect of the traffic concerns.

20 First let me say that I'm, as a film maker,  
21 I've been commissioned by Hawaii News Now to make a  
22 documentary about the homeless crisis. And over the  
23 last year I dare say I spent more time in the company  
24 of the homeless population than anybody else in this  
25 room.

1                   And I know all too well how desperate the  
2     need is for more affordable rental housing.   Indeed  
3     the Sierra Club supports the construction of more  
4     housing and some of the denser high-rise type housing  
5     that D.R. Horton proposes at Ho'opili.   We just think  
6     that it belongs elsewhere, in downtown Kapolei or  
7     King Street/Beretania Corridor, or Iwilei or Kalihi  
8     or Waipahu, not on the best farmland in the state.

9                   At the City Zoning and Planning Committee  
10    we even went so as far as to say that if Ho'opili is  
11    not blocked by the Supreme Court, we could  
12    reluctantly accept it if the project was built more  
13    densely as a true transit-oriented development.

14                  And this touches on the issue of traffic.  
15    The developer intends to cover half of the built area  
16    of the project, some 500 acres, with 2,300  
17    traditional single-family homes that will be more  
18    than a half mile away from the train station.

19                  So these are going to be your typical  
20    two-car homes and their residents will commute by  
21    car.   So we are talking about some 4,600 cars right  
22    there.   And these are the houses that will be built  
23    first.   So they will be pumping those cars onto H-1  
24    long before the rail project is completed.

25                  I think you'll have an opportunity to ask

1 the developer about that later on today.

2 My point is the developer has had an  
3 opportunity to mitigate the worst of the traffic  
4 impacts, and has chosen not to do so. So for those  
5 reasons, the developer has failed to meet the  
6 requirements of the Decision and Order of this  
7 Commission with regard to traffic, and I believe you  
8 must proceed to an evidentiary hearing on this  
9 matter.

10 And for that reason I support Mr. Dudley's  
11 motion.

12 CHAIRPERSON ACZON: Thank you. Any  
13 questions for the witness?

14 DR. DUDLEY: No questions.

15 MR. SEITZ: No.

16 MR. KUDO: No.

17 MR. LEWALLEN: No.

18 MR. YEE: No.

19 CHAIRPERSON ACZON: Commissioners?

20 Mr. Seitz, your comments are duly noted.

21 We need to give the reporter and Commissioners some  
22 breaks, so we will reconvene at --

23 THE WITNESS: Thanks for the opportunity to  
24 testify.

25 CHAIRPERSON ACZON: Do we have any more?

1 Go ahead.

2 Do you swear or affirm that the testimony  
3 you are about to give is the truth?

4 THE WITNESS: Yes.

5 ELAINE KAM

6 Was called as a public witness, was sworn to tell the  
7 truth, was examined and testified as follows:

8 DIRECT EXAMINATION

9 CHAIRPERSON ACZON: Please state your name  
10 and address for the record.

11 THE WITNESS: I'm Elaine Kam, P.O.  
12 Box 161209, Honolulu 96816, East Oahu.

13 CHAIRPERSON ACZON: Please proceed.

14 THE WITNESS: I am in favor of the Friends  
15 of Makakilo. Certainly we should protect our ag  
16 lands and conserve it. And I find it very, very  
17 difficult to think that you folks could all live on  
18 this island and go through the traffic situation that  
19 we will be going through. I can't even go shopping  
20 there any more, and you've heard this all before, I'm  
21 sure.

22 But I did want very much for you to  
23 consider that this four-crop place is so special that  
24 not even a cloud gathers there to have an overcast,  
25 and that is a miracle. I think it's a blessing, if



1     you don't mind my saying. And I do think we should  
2     preserve that for our family and ourselves, and it  
3     would be a crime to give it up.

4             And for us, we subjecting our people, not  
5     only Ewa people, but all of our people to grow  
6     substandard of living by adding more houses and  
7     creating more traffic. Thank you everybody.

8             CHAIRPERSON ACZON: Any questions?

9             DR. DUDLEY: No questions.

10            MR. SEITZ: No.

11            MR. KUDO: No questions.

12            MR. LEWALLEN: No.

13            MR. YEE: No questions.

14            CHAIRPERSON ACZON: Commissioners? We'll  
15     take a recess. Reconvene at 12:30.

16            (Noon recess taken.)

17            CHAIRPERSON ACZON: We're back on the  
18     record.

19            Dr. Dudley, before you proceed with your  
20     argument, I note that you filed some documents with  
21     the Land Use Commission last Tuesday. Were you  
22     intending to amend your motion?

23            DR. DUDLEY: Yes.

24            CHAIRPERSON ACZON: I would like to  
25     reemphasize that this is not an evidentiary hearing

1 and not a contested case hearing where evidence is  
2 submitted. You may argue from your pleadings,  
3 including the attached documents. We will not  
4 separately and formally admit exhibits into the  
5 record.

6 Exhibits to your motion are part of the  
7 record, but by virtue of being attached to the  
8 motion, Section 15-15-70(e) provides seven days for  
9 parties to respond to motions.

10 Dr. Dudley, have you given copies of the  
11 documents you submitted on Wednesday to the other  
12 parties?

13 DR. DUDLEY: Yes, I have.

14 CHAIRPERSON ACZON: Mr. Kudo, County, OP,  
15 have you had time to review the documents?

16 MR. KUDO: Yes.

17 MR. LEWALLEN: Yes, as well.

18 MR. YEE: Office of Planning has received  
19 the documents.

20 CHAIRPERSON ACZON: Do you need additional  
21 time to review the documents?

22 MR. YEE: Office of Planning is prepared to  
23 proceed.

24 MR. LEWALLEN: We are prepared to proceed.

25 MR. KUDO: We're prepared to proceed.

1                   CHAIRPERSON ACZON: Since the parties have  
2 indicated they don't need additional time to review  
3 these additional documents, we will proceed with  
4 arguments. We will allow each party 30 minutes to  
5 argue their positions.

6                   Dr. Dudley please proceed with your  
7 argument.

8                   MR. KUDO: Mr. Chair, insofar as the motion  
9 is addressed to the Petitioner, and we feel that the  
10 motion addresses some important allegations with  
11 regard to our compliance with conditions,  
12 representations and commitments that we made to this  
13 Commission during the contested case hearing in 2012,  
14 I would like additional time to respond to the  
15 different counts that Dr. Dudley has set forth in his  
16 motion.

17                   I've talked with counsel for Office of  
18 Planning as well as counsel for the City and County  
19 of Honolulu and they have agreed to yield 15 minutes  
20 each to my time which makes an hour. And I will try  
21 to be as brief as I can, realizing the time is very  
22 valuable for this Commission, but with your  
23 permission, I would like to have the ability to use  
24 their time.

25                   CHAIRPERSON ACZON: County, OP, are you

1 agreeable?

2 MR. LEWALLEN: We are, in fact, agreeable.

3 MR. YEE: OP is agreeable.

4 CHAIRPERSON ACZON: Dr. Dudley?

5 DR. DUDLEY: When I met you this morning  
6 was the first time I had heard about the 20 minutes  
7 that you mentioned.

8 CHAIRPERSON ACZON: 30 minutes.

9 DR. DUDLEY: I had talked with the staff at  
10 the Land Use Commission before I started to prepare  
11 my testimony, and I was told -- and I told him I'll  
12 take at least an hour, and I got no kind of negative  
13 response at all. So my material is prepared here for  
14 a little over an hour. This is the first I've heard  
15 of the half hour.

16 CHAIRPERSON ACZON: Dr. Dudley, I believe  
17 all the parties, including the Commissioners,  
18 received all your exhibits and was reviewed. And  
19 I'll -- if I gave you an hour, we are going to give  
20 everybody an hour, we will be here all night. So  
21 let's stick to the 30 minutes and let's see what  
22 happens in the questioning.

23 DR. DUDLEY: Didn't we just have my  
24 opposition get an hour?

25 MR. LEWALLEN: We gave Petitioner some of

1     our time as opposed to the Commission granting him  
2     additional time. I think --

3             MR. SEITZ: May I propose -- I assume I get  
4     to argue also, so let me propose a partial  
5     compromise. We have 30 minutes, you said. I will  
6     take ten minutes, and I will give 20 minutes to him.  
7     I'm suggesting that I go first because I'm basically  
8     just going to make general argument. So if we can do  
9     that, then he will get almost his hour.

10            CHAIRPERSON ACZON: Are parties agreeable?

11            MR. KUDO: That's fine with me.

12            DR. DUDLEY: No. The opposition is going  
13     to get a full hour or an hour and a half. I don't  
14     understand exactly what's going on.

15            So he gets a full hour and I get 50 minutes  
16     and yet I'm presenting the basic material and he is  
17     in opposition and he comes back in kind of --

18            CHAIRPERSON ACZON: Dr. Dudley, everybody  
19     is allotted 30 minutes each. And they're giving up  
20     their minutes.

21            DR. DUDLEY: Mr. Chair, I really consider  
22     this unfair, sir. Obviously, I am the novice here.  
23     I'm an old man, but I am a novice. I don't have my  
24     own attorney with me. I've been preparing entirely  
25     on my own.

1                   CHAIRPERSON ACZON: Dr. Dudley, you chose  
2     to represent yourself.

3                   DR. DUDLEY: Thank you. I think it's  
4     extremely unfair that somebody that has had years of  
5     experience in a law field and working with this Land  
6     Use Commission goes outside -- makes a deal with the  
7     city and the state in order for them to give him  
8     their time, so that I get stuck. It's almost  
9     comical.

10                  VICE CHAIR WONG: Chair, could I make a  
11     move for Executive Session with legal counsel?

12                  CHAIRPERSON ACZON: Is there a second?

13                  COMMISSIONER McDONALD: Second.

14                  CHAIRPERSON ACZON: It was moved by  
15     Vice-Chair Wong and seconded by Commissioner McDonald  
16     to go into Executive Session. Those in favor say  
17     "aye".

18                  VICE CHAIR SCHEUER: Could we have a little  
19     bit of discussion on the motion?

20                  You know, in the interest of giving all the  
21     parties reasonable time and moving this  
22     expeditiously, Dr. Dudley, you're getting 50 minutes  
23     Mr. Kudo is getting 60 minutes. We might have had  
24     more time if we didn't have three hours of testimony  
25     this morning, including many people who are

1 supporting you.

2 I can assure you that we have all read your  
3 motion very carefully and given it great thought, so  
4 I would encourage you to -- this is done in interest  
5 of fairness, each of the parties were, either the  
6 Movant, the Petitioner, the Intervenors the City or  
7 the Office of Planning, all were given 30 minutes.  
8 It's how they have chosen to allocate among  
9 themselves.

10 If you are not okay with it, then I will  
11 agree to go into Executive Session to discuss it  
12 more.

13 DR. DUDLEY: I'll go along.

14 VICE CHAIR WONG: I'll retract my motion.

15 CHAIRPERSON ACZON: Thank you. Mr. Dudley.  
16 Please proceed with your argument.

17 MR. SEITZ: I'm going to go first and take  
18 ten minutes hopefully or maybe less.

19 SIERRA CLUB ARGUMENT

20 First of all, I want to say that I concur  
21 that this is a very limited issue here. We're not  
22 here for a Motion for Reconsideration of what the LUC  
23 decided when it reclassified the land, that's not the  
24 issue here.

25 We're not talking about food sufficiency;

1 not talking about uses of agricultural land; not  
2 talking about the merits of weighing decisions with  
3 regard to housing versus agriculture. That's not  
4 before you today.

5 But when the Commission granted the  
6 application in this case, the Petition in this case,  
7 over our strenuous objections at the time, there were  
8 certain conditions on which it was granted. And this  
9 Commission historically has a very checkered history  
10 in enforcing conditions.

11 But there were at least two significant  
12 conditions which were required of Horton. The first  
13 was that the horrible traffic situation that already  
14 exists and will only be aggravated -- remember the  
15 highway system in this area is rated F on a scale of  
16 A to F -- that they would produce an amended TIAR  
17 that was acceptable to the traffic experts in the  
18 state and the city.

19 Have you seen an amended TIAR? Any of you?  
20 I haven't seen it.

21 And we know that they don't have solutions  
22 to those problems. What they say in their brief most  
23 of all is that they think that with the remedies they  
24 are proposing that it will go from F to E.

25 Tell that to all the people who live out



1     there. Tell that to your previous Commissioners who  
2     required a good faith effort to come up with a  
3     traffic solution. They simply have not done it.

4             The second concern that came up was the  
5     concern over groundwater. And originally the plan  
6     was to allow the groundwater to drain out over into  
7     Pearl Harbor over Navy territory.

8             The Navy said no. Have you seen a revised  
9     proposal to deal with that runoff? We know that  
10    runoff could cause dramatic impacts, ecological  
11    impacts, and environmental impacts, but they haven't  
12    addressed that to my knowledge. I've seen no  
13    documentation.

14            So basically I think that there is no  
15    question that Dr. Dudley has met his burden of proof,  
16    at least to require an evidentiary hearing to  
17    determine whether those issues can be and have been  
18    addressed.

19            However, I want to go further. I don't  
20    propose to hold an evidentiary hearing now. We have  
21    argued before the Supreme Court. The case was  
22    submitted, and the Supreme Court is going to rule on  
23    that case sometime soon. We don't have a time table  
24    for that.

25            But for me it makes no sense to go ahead

1 with an evidentiary hearing unless Ho'opili is going  
2 to go ahead and build. If they're going to start to  
3 build, then I believe that you should stop them until  
4 we resolve these matters.

5 But if they're in agreement that they're  
6 not going to start to build until the Supreme Court  
7 decides the case, and you have an opportunity to  
8 decide this motion, then really we don't have to go  
9 much farther today.

10 My suggestion is, if the Supreme Court  
11 rules in our favor, the case is going to be remanded  
12 to you for a more thorough and what we think should  
13 be better a consideration of the issues that are  
14 raised by the constitutional arguments that are  
15 before the Supreme Court, namely, the meaning and  
16 extent and application of that portion of the state  
17 constitution and what it requires of the Land Use  
18 Commission before you allow a redesignation of  
19 productive agricultural lands.

20 That's the issue before the Hawaii Supreme  
21 Court, and that was submitted to them in June. And  
22 they will rule on that issue. And if they rule in  
23 our favor, the case is going to come back here  
24 anyway.

25 At that point in many of the same issues

1     that people spoke to this morning, which are very  
2     passionately argued by people on both sides, are  
3     going to be back before you squarely.

4             There is no point, at this point in time,  
5     in holding an evidentiary hearing, and I don't  
6     believe it would be appropriate for you to simply  
7     deny Dr. Dudley's motion because we haven't seen the  
8     documentation that this has been fixed.

9             So my recommendation to you is you take the  
10    motion under submission. You get concurrence from  
11    Horton that they are not going to start construction  
12    until the Supreme Court rules, and until you have an  
13    opportunity to rule on the motion.

14            If the Supreme Court rules against us, and  
15    if you then deny Dr. Dudley's motion, there is no  
16    impediment to Ho'opili going forward, and I don't  
17    believe there is going to be any basis at that point  
18    for raising any objections. And we certainly, on  
19    behalf Sierra Club and Senator Hee, don't intend to  
20    do so.

21            But to go ahead at this point with those  
22    issues still pending, in my mind, would be simply  
23    outrageous.

24            So, again, my solution is very simple. My  
25    solution is that you wait. You take this under

1 submission. You obtain concurrence from Horton not  
2 to start construction on the project because these  
3 issues are unresolved. And then we see after the  
4 Supreme Court decides whether or not you believe that  
5 you have to hold an evidentiary hearing on his  
6 motion, either on the motion itself or in conjunction  
7 with whatever else may come back from the Supreme  
8 Court, if anything. That's our position.

9 CHAIRPERSON ACZON: Thank you. Any  
10 questions, Commissioners? Commissioner Estes.

11 COMMISSIONER ESTES: What makes you think  
12 that the Supreme Court is going to come down with a  
13 decision soon?

14 MR. SEITZ: First of all, the Supreme Court  
15 does not sit on cases, especially environmental  
16 cases, for a long time. They recently decided a case  
17 regarding hotel construction in Waikiki. It was  
18 argued the same day as ours.

19 So my belief is they're going to decide  
20 within a matter of months. They understand the  
21 issues and the urgency of issues on both side.  
22 Although we can't predict specifically, it has been  
23 my experience, and I've argued maybe five cases in  
24 the last two years, that none of those cases has been  
25 delayed unduly and they've all been decided very

1 quickly. So that's their practice.

2 CHAIRPERSON ACZON: Vice Chair Scheuer.

3 VICE CHAIR SCHEUER: If I understood you  
4 correctly, you were suggesting that both the Supreme  
5 Court has to rule on and have to take up Dr. Dudley's  
6 motion. But wouldn't it be true that if the Supreme  
7 Court ruled in your favor and remanded these  
8 proceedings, that Dr. Dudley's motion would be moot?

9 MR. SEITZ: No, because he would still  
10 raise the same questions as would we as to whether or  
11 not the traffic issue and the groundwater issue have  
12 been suitably addressed in the interim. Those issues  
13 would still have to be raised at some point.

14 VICE CHAIR SCHEUER: They would have to be  
15 raised, but they would not be raised in the form that  
16 they are now, because the form that they are now is  
17 regarding a decision and order that the Supreme Court  
18 might be tossing out.

19 MR. SEITZ: That's correct. That's why I  
20 was suggesting you wait, because frankly I think he's  
21 correct in his motion, because we haven't seen the  
22 evidence that they have done what this Commission  
23 required of them.

24 But there's no reason really to reach that  
25 at this juncture. I think it would waste time and

1 resources to proceed on the merits of that at this  
2 juncture when you really don't have to.

3 VICE CHAIR SCHEUER: But the question I'm  
4 asking you is: If the Supreme Court ruled in favor,  
5 how you've argued the case, the case would be  
6 remanded to LUC, therefore, while the issues that  
7 Dr. Dudley is raising may come up during that  
8 proceeding, his motion would actually be moot.

9 MR. SEITZ: It may be, yes. I can't tell  
10 you that one way or another, but it may be. Depends  
11 on what the Supreme Court decides and the scope of  
12 any remand. And I can't predict that.

13 VICE CHAIR SCHEUER: Thank you very much.

14 CHAIRPERSON ACZON: Any other questions,  
15 Commissioners?

16 Mr. Dudley, Mr. Seitz just gave you a  
17 bonus. He only took five minutes, so I'll give you  
18 55 minutes.

19 DR. DUDLEY: I'm not sure I understand  
20 exactly what is going on here though. So we're going  
21 to move ahead with the hearing today?

22 CHAIRPERSON ACZON: Yes.

23 DR. DUDLEY: Then you're going to vote  
24 today? And then we are not -- then you're going to  
25 withhold your action though following your vote, is

1     that correct?

2                   CHAIRPERSON ACZON:   Just go ahead.

3                   DR. DUDLEY:   For my 55 minutes I'm going to  
4     try to cut this thing down.

5                   FRIENDS OF MAKAKILO

6     I think that as far as traffic is concerned, the most  
7     important thing about traffic is the point about the  
8     bogus TIAR.   And I do want to tell you the material  
9     that you got this morning, this pack of material, is  
10    not an extra set of evidence.

11                  What this is, is we don't have the ability  
12    to use an overhead projector, and so I brought this  
13    so that you could look at it as we go through, rather  
14    than me stand up at an overhead projector and point  
15    out things.

16                  So I would like to then begin my section  
17    about the TIAR, and you folks who are new on the  
18    panel, perhaps the TIAR doesn't mean to much to you,  
19    but it's a Traffic Impact Analysis Report, basically  
20    that's just a traffic study.   So every time you hear  
21    TIAR, think traffic study.

22                  Condition 10 has wording that the TIAR must  
23    include the most current updated traffic data.  
24    That's the important thing that you got to know.   The  
25    condition itself says:

1           The TIAR must have the most current updated  
2    traffic data, and shall provide and validate all  
3    recommended mitigation measures for potential  
4    project-related traffic impacts on state and city  
5    facilities.

6           The point here is that I'm going to go  
7    through now and show you that the data they give us  
8    is baloney, and is not the current updated traffic  
9    data, okay.

10           Now, if they do not provide us with the  
11   most current updated traffic data that is the real  
12   stuff, then they have broken the conditions.

13           Do we understand that?

14           So they need to give us the right stuff, or  
15   they are noncompliant with condition No. 10.b which  
16   says they must include the most current updated  
17   traffic data. Thank you.

18           While Horton's TIAR is replete with new  
19   traffic data and does contain certain recommendations  
20   for mitigation, the numbers used in all that data do  
21   not at all correspond with the visual count and site  
22   sources, and this necessarily results in claimed  
23   outcomes that are purposely misleading and are  
24   actually meaningless fabrication.

25           Now, let's look at the problem. Could you



1 look at that first page, please, up at the top? This  
2 is taken from their TIAR, this is Horton's TIAR.

3 At the top of the first page I've given  
4 you, this is taken from page 23 of the TIAR, and the  
5 line listing "households", you notice that? They  
6 give 22,048 houses as the number existing in the  
7 Ewa-Kapolei region for base year 2007.

8 Notice right under the box it says -- this  
9 is from the ORTP. See what it says there, okay? The  
10 Oahu Regional Transportation Plan -- that's what ORTP  
11 is from 2035. Let's look at the ORTP and see what it  
12 says.

13 Now, if you go down to the bottom of the  
14 page, this is the ORTP page, it comes right out of  
15 the OMPO, this is the stuff.

16 At the bottom of the page, look at the  
17 Leeward section there, that's between numbers 11 and  
18 13. Adding those numbers together, the ORTP lists  
19 25,800 houses as opposed to 22,048 houses in the  
20 Ewa-Kapolei region for 2007. Horton's TIAR up above  
21 only has 22,048, almost 4,000 less.

22 Now, this is also 15 percent lower than the  
23 source numbers that it's taken from. What are we  
24 saying? The sources are the sources. And what they  
25 have got is not matching it at all.

1           Let's go up now and look at Table 4.1 of  
2     the TIAR at top of the page. In the middle box  
3     Horton's TIAR lists 39,669 houses in the area by 2035  
4     without Ho'opili. Looking down at the ORTP it lists  
5     57,100. There is a huge 31 percent under count, more  
6     than 17,000 houses less than there are.

7           What we're finding, they're starting with  
8     low numbers, huh. It's low numbers all the way  
9     through.

10          The next section, the growth over the  
11     period is also badly miscalculated. At the top, try  
12     to subtract the first number from the second number,  
13     we arrive at 17,621. That's the growth. We go down  
14     below almost double that, 31,300.

15          What are we finding? We're finding that it  
16     just doesn't match up. Let's turn that page now, and  
17     take a look at the next page which is the Ewa  
18     Development Plan.

19          Now, the source, the TIAR says that the Ewa  
20     Development Plan is its other source. Look down  
21     there and see, again -- look down at the yellow. Do  
22     you see where it says: Total zoned or exempt,  
23     34,805? That's their new growth, 34,000. What do we  
24     have on the TIAR? 17,000. What have we got? It's  
25     not matching the TIAR. It's not matching the ORTP.

1 And it's not matching the Ewa Development Plan. We  
2 have got a bogus TIAR.

3 Let's go on and continue looking here. I'm  
4 going to get away from my notes. Let's notice,  
5 before we leave this page, what this is the listing  
6 of. Let's just run down the list of things that are  
7 on there. Kalaeloa, Barbers Point Harbor and  
8 vicinity, City of Kapolei, Ewa by Gentry, Ocean  
9 Pointe, Ewa Villages, just on and on right down the  
10 page.

11 Let's go to the next page now and take a  
12 look at it.

13 Now, just by putting them side by side you  
14 can see that the Ewa Development Plan has a whole lot  
15 of developments on it, making up 34,000. But these  
16 guys on the TIAR, they don't want to count all of  
17 those. So they're going to count about half of them.

18 So let's look at what they have got on that  
19 page. They're going to count the University of  
20 Hawaii. They're going to count Ka Makana Ali'i, the  
21 shopping center, East Kapolei, that's the Department  
22 of Hawaiian Home Lands, the Kroc Center, that's not  
23 anything. Makaiwa Hills, they're going to count  
24 that. Kapolei West, Kapolei Harbor side, that's just  
25 industrial. Hoakalei and that development.

1                   Now, I put the numbers over there on the  
2 side that we get from the Ewa Development Plan and  
3 that adds up to 17,455. What have we got? They're  
4 only counting half and telling us what they're  
5 counting.

6                   If we look up at the top of the page, what  
7 does it not include from the Ewa Development Plan?  
8 It doesn't include all those other guys, Mehana,  
9 that's one of their own developments. Leihano, Ewa  
10 by Gentry, Ewa by Gentry, Ewa Villages, Ko'olina,  
11 Makakilo, Villages at Kapolei, Downtown Kapolei. And  
12 then they're undercounting some by thousands. UH  
13 West Oahu, DHHL, Kalaeloa, Maka -- I can't read my  
14 writing for the last one.

15                   What do they all add up to? That's the  
16 17,000 they're not counting.

17                   So this is a TIAR that is counting one half  
18 of the houses to start with, and one half of the  
19 houses for growth.

20                   Let's go to the next page. This is a map.  
21 Let's try to figure out the reason that they're  
22 counting those and not counting them. If you look at  
23 the map on the next page, you'll see that those that  
24 are counted are in green.

25                   Well, they're just all over the place,

1     aren't they? You've got something green way out  
2     there on the left, that's Makaiwa Hills, and the  
3     Kapolei West. If you come on in, they take those  
4     other developments, and they're scattered.

5             CHAIRPERSON ACZON: Can you lower your  
6     volume, because it's kind of too loud in here.

7             DR. DUDLEY: Loud mouth, sorry. Okay.

8             And so what we find then is that the red  
9     ones are the ones that are excluded. The yellow ones  
10    are the ones that they're undercounting, and they're  
11    all mixed in with the green ones and red ones.  
12    They're all over the line out there.

13            Why are they counting some and not counting  
14    the others? I don't know. It's just to get the  
15    numbers down as far as I can see.

16            Now, after we find that, and then we really  
17    understand that, you know, these numbers aren't  
18    jiving. Then, you aren't ready for this, but go to  
19    the next page. It's going to be a little surprise.

20            There we find a box, a rectangular box.  
21    What on earth is that? Well, all the numbers we just  
22    gave you about their starting numbers and growth  
23    numbers and all that stuff, that's from the first  
24    part of the study. That's in that easy reading  
25    section called the Traffic Impact Analysis Report.

1                   But this little box addresses Appendix F.  
2       And Appendix F only has a couple of pages, but what  
3       is it? It's another starting basis. See that box?  
4       If you go to the next page, turn your map sideways  
5       and you'll see that that up and down map is the same  
6       map that you see there in the box.

7                   What is that map? By golly, that's a TAZ  
8       map. TAZ is the traffic -- it will come to me in a  
9       half hour here, don't worry about it. TAZ and it  
10      means -- and it's -- everyone of those little zones,  
11      little things there where the numbers are, those are  
12      all zones, and those are called TAZ zones.

13                  And these are the traffic analysis zones.  
14      That's what I think they call it. And these zones  
15      tell you how many people are going to live in how  
16      many houses in those sections in years to come.

17                  Now, this is taken from the ORTP, just like  
18      the other numbers were. And what we have got is,  
19      this in no way corresponds with the other one. Let's  
20      go back and look at the map that had the box on it.  
21      Okay?

22                  Do you notice that the first section of the  
23      TIAR, the written part, the easy reading part, it has  
24      those colored boxes all over the place. And then we  
25      get this square, which has a totally different

1 starting base. So it's got two starting bases.

2 They have got two sets of things of how  
3 many numbers we're going have in 2007. They've got  
4 two sets of how many houses we are going to have in  
5 2035. And they've got two sets of growth, and  
6 believe it or not, none of them corresponds with the  
7 sources that they say. These guys just make up  
8 number.

9 Let's go to the next page. If you put the  
10 map next to that next page, you'll see that the  
11 little box, the TAZ zones. They're numbered and  
12 those numbers are on this next page.

13 Now, this comes right out of the TIAR.  
14 They're good enough to give us the numbers. Let's  
15 move over there to the column that says "household"  
16 and let's look at those numbers that they give us.

17 Well, by golly, the numbers in the ORTP,  
18 which are the ones in red and black, those are  
19 different. Just a little different? No, a whole lot  
20 different.

21 26 -- 26 to 23, 322 to 254, 19 to 0, 59 to  
22 55. There's a whole lot of difference. How much  
23 overall? 15 percent difference.

24 Now, they might say, well, we put this into  
25 our machine, you see, and so the numbers all

1     correspond, and they're all consistent with each  
2     other except they're higher. Wrong. Because we've  
3     got some black things here that are higher, and we  
4     have got some red things here that are -- the red  
5     things are the higher, and black things that are  
6     lower, and they don't correspond.

7             I mean, if you were going to have  
8     consistency with the ORTP, then every number would be  
9     a percentage higher, but they aren't. These numbers  
10    are all over the lot. How do they make them up?

11            What I'm trying to tell you is, this TIAR  
12    doesn't jive. Now, I hired a guy in California,  
13    because nobody here would touch it, because they want  
14    to work in the future. So I hired a guy in  
15    California, and you saw that in my report.

16            He said, you know, this doesn't have an  
17    awful lot of basic things that you're supposed to  
18    have in a TIAR. He said if we go with this TIAR,  
19    it's going to be catastrophic for the future.

20            What kinds of things are they saying? Give  
21    me one second.

22            They're saying that if we add one lane to  
23    the freeway along with the rail, everything is going  
24    to be solved. Well, that might be right if we were  
25    to live in a vacuum, and the only thing that's



1     happening is Ho'opili with this 12,000 houses.  
2     Because sure enough, you could put those 12,000 cars  
3     in that one lane and it would be bad, but at least it  
4     would be about the same. But that's not the reality  
5     we live in.

6             The reality we live in is there are 58,000  
7     houses already zoned without Ho'opili. And there's  
8     no way to stop those houses. They're going to be  
9     built. And they're all going to be on the outside  
10    part of the H-1/H-2 merge, and that's what the  
11    problem is. Okay?

12            The H-1/H-2 merge is five lanes wide.  
13    Let's take a look at the picture on the next page.  
14    You see this picture? You see the poles on the  
15    right? Not going to move those poles. See those  
16    poles on the left? Not going to move those poles.  
17    Those poles are going to be there 100 years from now.  
18    And the area that you can go to town on is between  
19    those poles. That's 70 feet.

20            Now, the rules say that the lanes must be  
21    12 feet wide, five times 12 is 60, and that leaves a  
22    ten foot thing on the side here.

23            The rules also say that you can squeeze in  
24    one foot, but only for a short distance. And you can  
25    make six lanes go through there. And that's what

1 we're banking on. We're going to add a lane, right?

2 But the problem, is you will never, ever, ever be  
3 able to add another lane.

4 Now, looking where we go here, after you  
5 get down a half mile, you go off the ground for about  
6 a mile and a half. And there is no way that you're  
7 going to get more than one lane added to it, and the  
8 DOT right-of-way only leaves room for one more lane  
9 anyway.

10 So forever and ever H-1 will never be  
11 bigger than six lanes. What is it now? Five lanes.

12 They get one more lane. How many houses do  
13 we have coming up? 58,000 plus the 12,000 that you  
14 want to approve. What is that? That's 70,000  
15 houses.

16 Now, let's take a look at today. Today we  
17 have got 95,000 houses out there already built. And  
18 those 95,000 houses are filling the freeway to where  
19 on a good day it's only backed up four-and-a-half  
20 miles. It takes you an average of 28 minutes to go  
21 that four-and-a-half miles. An average of 28 minutes  
22 to go back up four-and-a-half miles today.

23 We got 95,000 houses out there. Five  
24 lanes, four-and-a-half miles. We're going to add one  
25 lane. We're going to add 70,000 houses, almost twice

1 the number of houses we've got out there now, we've  
2 got 95, we're going to add 70. And so we're going to  
3 have 70,000 houses out there with Ho'opili and one  
4 more lane.

5 Tell me, is this TIAR real? No, it is  
6 baloney, baloney, baloney, baloney. It can't be  
7 real. No way you're going to explain how we're going  
8 to get 70,000 houses, the traffic from that into that  
9 one lane.

10 Oh, well, it's going to be rail. Okay? No  
11 it's not going to be rail. Rail can take 7,800  
12 people an hour. That's less than 25,000 in the  
13 morning. We're talking about 70,000 houses of  
14 people.

15 My friends, the TIAR is bogus, it's bogus,  
16 it's bogus.

17 I think that's enough of that. Let's move  
18 on to the next topic.

19 Next topic is farmland issues. When the  
20 Land Use Commission was hearing the Ho'opili thing in  
21 the Ho'opili case in 2011 and 2012 -- I want to go  
22 back and wrap up this other thing.

23 What condition were they breaking with the  
24 traffic thing again by giving us a bogus TIAR? They  
25 are not giving us the real numbers, which are

1 required in Condition 10. Did they break Condition  
2 10? Yes, they broke Condition 10.

3 There is no way they're ever going to get  
4 around that because they can't. The way they will  
5 get around it is when they provide a miracle that is  
6 going to allow 70,000 houses of traffic to get into  
7 one lane.

8 Let's get onto farmland issues. When they  
9 were talking about the farmland case, they gave us  
10 assurance after assurance after assurance, we're  
11 going to take that farm and we're going to put it up  
12 at Galbraith Estates and it's going to be wonderful.

13 And we had some crazy lady here today  
14 saying we are going up to Galbraith. That was a  
15 hope. They were going up to Galbraith and everything  
16 was going to be wonderful. It's a disaster.  
17 Galbraith Estates was abandoned by the sugar company  
18 for the last years of its history.

19 Why was it abandoned? Because they  
20 couldn't grow sugar on it, that's why. Why? Because  
21 it's too wet. It's too wet. And that's what they're  
22 finding right now. It's not Galbraith Estates  
23 because it has been such a disaster, nobody has a  
24 lease, and nothing is growing on it.

25 But right around it in that rainy area,

1     they're turning under the crops.  What crops are  
2     those?  The ones from Ho'opili.  The Ho'opili crops  
3     will not grow in that rainy area, that's all there is  
4     to it.

5                 But we had people tell us it would.  And  
6     those are the protestations, those are the  
7     representations that they did not comply with, see?

8                 They told us one thing.  They knew it was a  
9     lie, and they knew it wouldn't grow.  The crazy man  
10    who says this, Mr. Plasch, he's not a farmer.

11                And it was wrong, wrong, wrong of them ever  
12    to say that.  But now it's all coming home to roost.  
13    You can't grow Ho'opili there.  What is the reason?  
14    Crops have DNA, did you know that?  And crops, the  
15    DNA in crops, it's set so that it needs so much  
16    sunshine, it needs so much rain.  It can't take  
17    overcast.  Oh, it loves overcast.  It can take shade.  
18    When you go to Lowes to buy plants, you find they  
19    have got shady plants and sunny plants.  Why?  
20    Because the DNA in the plant is what makes them grow  
21    or not grow.

22                So the things that have the DNA down for  
23    Ho'opili, those things will grow in Ho'opili and  
24    Ho'opili alone.  They're not going to grow up above  
25    because their DNA is not set to do that.

1                   When Aloun Farms started off farming after  
2   sugar went out, they would go places and plant stuff  
3   and turn it under. Why? Because they were just  
4   learning, and they told me it was a learning process,  
5   so slow. Planting and finding, no, these plants  
6   don't grow there. Why? Because they were just  
7   starting. First time we had crops like that since  
8   before sugar started.

9                   Now, what we know then is that certain  
10   crops need sunshine. And I want to go with you  
11   around this island and take a look at the sunshine  
12   areas. Start with Ho'opili with all that sunshine  
13   and then come this way. The first thing we hit is  
14   Waipahu. Waipahu is a city. And then we come to  
15   Pearl City, Aiea. Then we come to Mapunapuna, then  
16   downtown Honolulu, and then we come to Waikiki. And  
17   we're in the city. You can't grow crops there.

18                  So let's keep on going on out to Hawaii  
19   Kai. Now, way back in the valleys there, there are  
20   some sunny places and they do grow some things there,  
21   but they're already taken.

22                  Let's go around the end of the island.  
23   It's desert at the end of the island right there by  
24   Hawaii Kai, and get right around the island and we  
25   run into rain. Will these crops grow in the rain?

1 No.

2 So we come to Waimanalo. You can grow two  
3 crops of corn a year in Waimanalo because of the  
4 rain, and they grow in the summer. And you can grow  
5 four out there at Ho'opili. That's why Ho'opili is  
6 so important.

7 Let's come up from Waimanalo. You've got a  
8 city again. Here we are in Kailua. Here we are in  
9 Kaneohe. Here we are in Punalu'u. It's all rainy.  
10 It's all rainy now. We're out in the country again,  
11 but it's rainy country. That stuff won't grow there.

12 Go around the North Shore, rain, rain,  
13 rain. North slopes, rain. Let's come on all around  
14 the North Shore out to Mokuleia, might even get up to  
15 Ka'ena Point. And if we get around the point and we  
16 get sunshine. Hey, hey, hey, what we got? The first  
17 valley you come to at Makua, filled with all kinds of  
18 bombs and things like that. So you can't get in  
19 there and farm.

20 Then we come on down to Nanakuli, Waianae.  
21 Back in the hills you got some farmland, and you've  
22 an awful lot of military, and there's not much more  
23 room for anything.

24 We finally come back down to Ko' Olina,  
25 Kapolei, Ho'opili. Where have we been? We've been

1 around the whole island. Do we have anyplace around  
2 the island where this can grow? No. No, we don't.

3 Now, we have got to realize that what  
4 people were saying this morning is really important.  
5 The guy on climate change, and all those people who  
6 were talking about war coming, what happens when we  
7 need to be self-sufficient?

8 Let's talk about self-sufficiency for a  
9 minute.

10 Self-sufficiency means that we have all the  
11 crops we need. Self-sufficiency means that we have a  
12 complete diet. Now, will the day come when we're  
13 going to have to have a complete diet on this island?  
14 My friend, I'm going to tell you, climate change is  
15 real. And what that man was saying this morning  
16 about, you know, we are going to get to a point where  
17 we are going to put caps on oil. Those oils caps or  
18 carbon caps are going to limit the amount of oil that  
19 we use, and that's going to happen this year  
20 probably.

21 And when we get those limits, what's going  
22 to happen to gasoline prices and oil prices and jet  
23 fuel prices? They're going to skyrocket, because now  
24 we have got limited amounts. What happened the last  
25 time that we had skyrocketing oil prices? We found



1 we couldn't afford to bring our food in.

2 Our problem here is if we're going to be  
3 self-sufficient on this island, we've got to be able  
4 to have our own food. We have a million people to  
5 feed. We have a million people to feed. We can't  
6 feed them -- we have got to have a rounded diet.  
7 That's the basic thing. We've got to have the things  
8 that you can grow in Ho'opili.

9 The thing is, once we give up that Ho'opili  
10 land, we no longer have the ability to be  
11 self-sustaining from now until the end of history.

12 Let's take a look at what they do out there  
13 at Ho'opili. That land is all clay. Were you aware  
14 of that? That land is going to break up when it gets  
15 wet -- when it dries rather. When it gets wet, the  
16 clay all comes together. When it dries, you've seen  
17 clay with little marks all around it. Houses don't  
18 sit well on clay. And so what they're going to do is  
19 they're going to take that precious clay, they're  
20 going to dig down three feet of it, because this is  
21 what they do. They're going to dig down three feet  
22 and haul it away, and bring three feet of coral in  
23 and lay it down. Then bring one foot of that dirt  
24 back and put it on top.

25 And your grass will grow down one foot, but

1 the important things that we raise out there, they go  
2 down farther. So that land will never be usable  
3 again because it's got the coral right under the  
4 dirt.

5 So you've got to realize we're destroying  
6 it forever if we let it go. Number one.

7 Number two: We absolutely need it if we're  
8 ever going to have a self-sufficiency, complete  
9 self-sufficiency and food.

10 And, number three: Let me just lay it on  
11 you again. We've got a million people to feed.

12 Number four: Disasters are going to come  
13 as the years go on. The prices of oil will get so  
14 high that we can't bring in food. The bread basket  
15 in California since the beginning, as they showed on  
16 the maps -- the maps are -- the country is going to  
17 turn into a desert. We're not going to be able to  
18 have America to depend upon for food. Within decades  
19 they predict that we're going to have starvation,  
20 mass starvation in the world.

21 Now, we need to be careful what we do when  
22 we're giving up our best farmland. And when they  
23 come with representations to us that, oh, no, we can  
24 grow these crops up there. We have got to be able to  
25 stand and say, that is a misrepresentation and that

1 is a lie.

2 So we have come across a condition that  
3 they broke and a major misrepresentation. Let's move  
4 onto the next point here.

5 If I was reading this, we would be on page  
6 six now.

7 The third topic I want to talk about is  
8 storm water runoff. At the current time there is  
9 little worry about storm water runoff because  
10 Ho'opili is still 1500 acres of open fields that have  
11 all been plowed recently enough that even the rain  
12 from 100-year storm sinks in and stays on that  
13 property.

14 This will not be so though when it's  
15 covered over with impervious houses and impervious  
16 concrete streets. There will be a huge runoff, and  
17 it has to have someplace to go. It is true that a  
18 series of detention dams has been created in golf  
19 courses below the Ho'opili property, and between that  
20 property and the sea.

21 You can go out there and you can see  
22 there's this huge dam and it's surrounded by a golf  
23 course. It's actually part of a golf course. You go  
24 on down, there's another golf course and huge dams  
25 and it's wonderful. And you go on down, there's

1 another one and another one, and finally you come to  
2 the sea.

3 Why are all those golf courses arranged  
4 that way? So that when you get the 100-year storm,  
5 they fill up the dams and that water doesn't go into  
6 the sea and kill everything.

7 Now, Mike Lee was sitting here this morning  
8 talking to you. He gets his limu just below those  
9 dams. There's not much limu there any more. Us  
10 older folks know that 40 years ago, you used to go to  
11 Ewa Beach and the limu was so high on the shore, two  
12 or three feet high and two feet wide. You could  
13 hardly get into the ocean because of the limu. Not  
14 there anymore at all. Nothing on the shore and very  
15 little growing in the water.

16 Now, these detention dams that we're  
17 talking about though, they were made for Kalo'i  
18 Gulch. Kalo'i Gulch goes down on the side of the  
19 property. But it's never been the intention that  
20 they would take the water from the property and put  
21 it into that set of dams.

22 And the set of dams is not big enough to  
23 accept that. And so that's why, when we first  
24 started this thing back in 2009, Haseko was the other  
25 Intervenor, along with me, because they wanted to

1     make sure that that runoff water from Ho'opili didn't  
2     come rushing down into their area and into the  
3     detention dams.

4             Now, if we take a look at the next page  
5     that I gave you, I think there should be another  
6     picture there of a -- a blue picture with blue and  
7     also pink area. You have it at the very end? Yes,  
8     okay.

9             Now, in this picture the pink area is --  
10    that water goes down another gulch entirely and off  
11    into West Loch. But the blue area, the blue area is  
12    the real area of concern. They have planned that the  
13    blue area -- you see down at the bottom there, how it  
14    kind of goes? That is a cane road. And then they  
15    had it going on down to another part, another piece  
16    of property that's kind of a strange little  
17    triangulation down at the bottom. That was another  
18    little retention area that they were going to have  
19    all of that water from the blue area go into. Then  
20    if it overflowed, it would run down into West Loch  
21    but over Navy property.

22            Now, the Navy has never given them  
23    permission to run it over their property. And they  
24    have asked and asked and the Navy has said, no, and  
25    no. And the Navy told me, we're never going to do

1     that because we're picturing things for that area and  
2     we will not allow that to happen.

3             So what is going to happen with the blue  
4     area? Well, they're saying we're going to build  
5     detention dams up in the area itself. Fat chance.  
6     They're building homes. They need that area for  
7     houses. What we are going to find is -- and they're  
8     saying we anticipate this, and we anticipate that.  
9     What does "anticipate" mean? That means let's get  
10    through this set of hearings and let's get this all  
11    settled down again. And once everything is settled,  
12    then we will let the water run where it runs. Where  
13    is it going to run? Down that Kalo'i Ditch, that set  
14    of detention dams that goes with the golf courses.

15            So what we're trying to say then is this is  
16    the time when they ought to be doing that. We have a  
17    condition that says that during the period before  
18    they get some kind of zoning here, that they need to  
19    either get a letter from the Navy, which they can't  
20    get, or they need to present plans to Department of  
21    Planning and Permitting and Department of Health.

22            Well, this is the time when they ought to  
23    be doing it. They ought to be showing you the plans  
24    for their runoff. And I beg you, don't, don't vote  
25    that we're not going to move onto this Order to Show

1 Cause, because you got to have the Order to Show  
2 Cause to get them to come back and show you that  
3 stuff. You've got to have the Order to Show Cause in  
4 order to have them come back and show you what  
5 they're going to do about the farm crops in order to  
6 get total self-sufficiency.

7           You have got to have the Order to Show  
8 Cause in order to have them come back and show you a  
9 TIAR that makes some sense and that's going to prove  
10 to you that, hey, we can get 70,000 cars in this one  
11 lane.

12           So there's a reason for that. There is a  
13 condition about this, and that is Condition No. 28.  
14 And that one I think we need to insist. That  
15 Condition 28 says you got to get a plan and you got  
16 to show us what you're going to do with that storm  
17 water runoff. And this is the time. Let's see what  
18 you're going to do.

19           That brings me to the last thing. I'm  
20 running a little bit ahead of schedule. Comes to  
21 Condition 22.

22           Condition 22 is notice of change of  
23 ownership. Notice there that Condition 22 requires  
24 D.R. Horton to give notice to the Commission of any  
25 intent, of any intent to sell, lease, assign, place

1 in trust or otherwise voluntarily alter the ownership  
2 interest of the petition area any time prior to the  
3 completion of the development of the petition area.

4 So what they're saying here in the  
5 condition is, any time from approval day, which was  
6 in 2012, until you finish the project in 2035, you  
7 got to come back to you guys, the LUC, and let you  
8 know every time they're going to turn over a major  
9 piece of property.

10 What's the reason for this? The reason is  
11 because you don't want them flipping property, for  
12 one. But we will get around to that.

13 Now, in an article in the Pacific Business  
14 News September 23rd, 2014, reported Horton was in  
15 negotiations already to sell the Ho'opili Gateway,  
16 which is a noncontiguous piece of Ho'opili property  
17 between Farrington Highway and the freeway. They're  
18 in negotiations to sell this for 33 million.

19 Did they notify the LUC? No.

20 In February an article 2015 the Pacific  
21 Business News told that the McNaughton Group and  
22 partners were buying the property. Had they told  
23 LUC? No.

24 March 31st, 2015, article in the Pacific  
25 Business News. Horton's going to give five acres of



1 the property to the Humane Society. Wait a minute,  
2 folks. What is this saying? It said intent to sell,  
3 lease, assign, place in trust or otherwise  
4 voluntarily alter ownership. I think they're  
5 voluntarily altering the ownership, don't you, by  
6 giving away? Yeah? They didn't notify you of the  
7 intent though.

8 May 31, 2015, Pacific Business News told  
9 that they're giving an acre to the Waianae Coast  
10 Comprehensive Health Center. They didn't bother to  
11 notify you of any of those things. They are out of  
12 compliance with Condition 22.

13 Can they do anything about it now? No,  
14 it's long past the time they did these things. They  
15 no longer have the intent to sell or intent to  
16 voluntarily alter, that passed months ago.

17 They're just clearly out of compliance with  
18 Condition 22.

19 I'm going to skip over that part.

20 Finally, I just want to come down to the  
21 reasons why it's so important. Why is it so  
22 important? Because the LUC needs a time to judge  
23 whether such transfer of property is consistent with  
24 the representations made to the Commission way back  
25 in 2012.

1                   And in the case of the Gateway property to  
2     the McNaughton Group, it's not consistent with what  
3     was supposed to happen. The sale of the Gateway  
4     property -- I just want to give you an idea.

5                   You get off of the freeway, you turn down  
6     towards Ho'opili. Everything on your left for a mile  
7     is the Gateway property. It's just after the freeway  
8     as you head down. It's noncontiguous. Everything  
9     else is on your left, and you've got this gorgeous  
10    piece of property on your right.

11                  Now, the sale of the Gateway property would  
12    be an instance of flipping. Flipping of property  
13    occurs when one buys it cheap and gets development  
14    approvals and then sells the property to another at  
15    great profit. Great profit.

16                  How great? It gets great, believe me.  
17    Horton bought the 1,552 acres for \$73 million. They  
18    were in negotiations with McNaughton Group to sell 38  
19    acres for 33 million. Bought it for 73, selling a  
20    tiny piece of land for 33, almost half the price.

21                  They would be selling -- get this --  
22    two-and-a-half percent of the property for almost  
23    half of what they bought it for. Is that flipping?  
24    I call that flipping.

25                  Now, Horton has made very firm

1       representations to the Land Use Commission that it  
2       would not flip property, but rather it would develop  
3       commercial space before selling it. The possibility  
4       of flipping it was a major part of the problem in  
5       2009 when the Land Use Commission declared the  
6       petition to be deficient.

7               The Commission and others at that time  
8       feared that Horton was doing as little as possible.  
9       They were refusing to map out the phases by which  
10      they were going to develop the property. And because  
11      they really planned to get the Urban designation and  
12      then to sell it for a great profit for others to  
13      develop.

14             Robert Harris of the Sierra Club, infamous  
15      Sierra Club, he says: We can speculate on the reason  
16      why they are so slow to bring forth information.  
17      Perhaps they wanted to be able to flip the land and  
18      sell it to others before actually commencing  
19      development.

20             Well, our attorney, Benjamin Kudo here,  
21      addressed this noting that there are developers and  
22      landowners that come before the Commission simply to  
23      get approvals and then sell the property. People  
24      have no serious intent to actually develop it and go  
25      forward with the property and the development of that

1 project.

2 He went onto say: But we are going to  
3 develop this property. That is a statement that we  
4 are making before this Commission. I want to quote  
5 that again. This is what Benjamin Kudo said: But we  
6 are going to develop this property. That is a  
7 statement we are making before this Commission.

8 I thought they were in negotiations to flip  
9 it with McNaughton for \$33 million.

10 At any rate, Kudo's team attorney, Ms.  
11 Naomi Kuwaye, addressed, specifically addressed the  
12 commercial area saying: The record clearly reflects  
13 the Petitioner's intention to develop and sell off  
14 commercial and light industrial use property.  
15 Develop and sell off. Notice they're telling us  
16 we're going to develop it and sell it off. We're not  
17 going to flip it.

18 Horton clearly then is flipping it.  
19 Selling two-and-a-half percent of the property for  
20 half the price of the 100 percent. Clearly, they  
21 made representations to the LUC that they would not  
22 do this. Clearly they have not complied with the  
23 representations they made to the Commission in order  
24 to get approval for the property.

25 And as we pointed out, they have also

1     violated Condition 22 by not informing the Commission  
2     of their intent to sell or give away the property.

3             Both of these are major infractions. And  
4     when added with all the other major infractions that  
5     we've talked about, there is plenty enough reason why  
6     the LUC should revert the Ho'opili land to the  
7     Agriculture classification. And there is plenty  
8     enough reason why you should order Horton to show  
9     cause why you're not going to do that.

10            Okay. So just to wrap up. Again, we've  
11     talked about traffic. We've talked about the TIAR,  
12     the bogus TIAR. We've talked about agriculture, the  
13     fact that the crops were represented as able to grow  
14     anywhere, but they actually cannot. And there's just  
15     no question about that.

16            We've talked about storm water. The fact  
17     that they are required to, at this point, show the  
18     Department of Health, Department of Planning and  
19     Permitting what they're going to do with this storm  
20     water. Well, we all know what that's all about.

21            And then finally, this matter of they  
22     needed to let the Commission know before they did any  
23     kind of selling or giving away of any property, and  
24     they did not do that. And the reason that they were  
25     concerned about that, the Commission was concerned

1     about that, was because of the flipping possibility.

2     And it looks like there's flipping going on.

3             Commission members, with all great respect,  
4     I do note how hard it is. I know the pressures that  
5     the people come under. I know the amount of huge  
6     amounts of money there is out there. This is  
7     billions of dollars in project, but it's billions of  
8     dollars of life for our people too, you know.

9             Our people need that land. Our people need  
10    to not suffer on the freeway. You have no idea of  
11    the trials that people go through on the freeway. I  
12    live up on top of the mountain. I look down, I can  
13    see Ho'opili, I can see the traffic all the way out  
14    to Makakilo, I can see it passing Ho'opili, I can see  
15    it going into town.

16            This last week I got up 6:00 o'clock in the  
17    morning. On three mornings there was traffic down  
18    there already. On one morning those cars were still  
19    sitting there at 9:00 o'clock.

20            Last night my wife and I came and stayed at  
21    the Pacific Marine Inn. I didn't even know there was  
22    such a thing. But all the other little hotels at the  
23    airport were already filled, and so we went to the  
24    Pacific Marine Inn. Now, Riley was there in the  
25    1940's. (Laughter) Riley knows about the Pacific

1 Marine Inn.

2           Why were they down there with their little  
3 tiny room built in the '30's? It was during the time  
4 that the clippers came in and the lagoon was where  
5 they landed, so you had this little hotel there. Why  
6 were we there? We were there because I was afraid  
7 that if I slept in my own bed in Makakilo, I wouldn't  
8 be here by 8:30. So we took a hotel.

9           Now, that's what people are doing. If you  
10 got to be in town early, you get a hotel. If it's  
11 important that you be there, you get a hotel in town.  
12 You don't stay out there because you can't depend on  
13 the traffic. You can't tell will I be there at -- I  
14 can make it from my house to downtown Honolulu in  
15 20 minutes at 10:00 o'clock in the morning on a good  
16 morning. But I tell you, I've made it from my house  
17 to Honolulu in four hours too.

18           Thank you for the time.

19           CHAIRPERSON ACZON: Thank you, Mr. Dudley.  
20 Any questions for Mr. Dudley?

21           Commissioner Estes.

22           COMMISSIONER ESTES: I want to make sure I  
23 have this right.

24           You stated that they can grow four crops of  
25 corn a year in Ho'opili?

1 DR. DUDLEY: Yes, ma'am. That was  
2 Dr. James Brewbaker -- Paul Brewbaker is our famous  
3 economist, his dad was at the University of Hawaii.  
4 He spent his whole life on corn, and he's the expert  
5 on corn in the world. He had a little farm at  
6 Waimanalo, and he could grow only two crops a year.  
7 Then he got involved with Ho'opili and began to raise  
8 corn out there and found he could get four.

9 COMMISSIONER ESTES: So they are presently  
10 doing that now, four crops a year?

11 DR. DUDLEY: Yes.

12 COMMISSIONER ESTES: Thank you.

13 CHAIRPERSON ACZON: Commissioner McDonald.

14 COMMISSIONER McDONALD: Dr. Dudley, if you  
15 don't know the answer, I'm going to be asking the  
16 county or the state.

17 With regards to Condition No. 10, has the  
18 TIAR been accepted by DOT and DPP?

19 DR. DUDLEY: The TIAR has been accepted by  
20 DOT, yes. And let me tell you at that time though  
21 Melvin Takeshita was the head of Highways. You  
22 remember Melvin from the hearings from back in 2012.

23 Melvin, after that, as you know, left the  
24 Department of Transportation. And he also paid a  
25 fine with the Ethics Commission for taking bribes.



1 The bribes that he took were from companies that  
2 directly were affected on Ho'opili.

3 So, yes, the DOT did accept it. DPP also  
4 did accept it, yes, but DTS was the one -- I skipped  
5 that part because I didn't think I could get through  
6 the whole hearing.

7 COMMISSIONER McDONALD: That was Condition  
8 10. All accepted the TIAR, DOT and DPP?

9 DR. DUDLEY: And DTS.

10 COMMISSIONER McDONALD: With regards to  
11 Condition No. 11 as it relates to storm water, has D.  
12 R. Horton obtained any subdivision approval?

13 DR. DUDLEY: No. And that is the condition  
14 that before obtaining the storm water -- or the  
15 subdivision approval, they must do it. So we're in  
16 that period right now when they should be actively  
17 doing it, but no one has any idea what they're doing.

18 COMMISSIONER McDONALD: But no subdivision  
19 has been granted?

20 DR. DUDLEY: No.

21 CHAIRPERSON ACZON: Commissioner Scheuer.

22 VICE CHAIR SCHEUER: Thank you for your  
23 time, Dr. Dudley.

24 Partially following up on some of the  
25 questions from Commissioner McDonald. Let's start

1 off with TIAR.

2 Did your group -- you pointed out a number  
3 of numbers that you believe are inconsistent, and I'm  
4 sure we will hear from the other parties on that.  
5 But did you point out these inconsistencies to the  
6 approving bodies when they were accepting the TIAR as  
7 part of the zoning change?

8 DR. DUDLEY: No, I wasn't aware of anything  
9 going on at that time. I don't even know if I had a  
10 copy of the TIAR. It was only later when I began to  
11 realize that D.R. Horton had submitted their zoning  
12 application that I decided I would check up on that.

13 And so I looked up the letters of  
14 acceptance on the LUC site, and found that one of the  
15 letters was not a letter of acceptance at all. So at  
16 that time I then asked for a copy of the TIAR and  
17 began to look into it. This was long after DPP and  
18 DOT had accepted it, however.

19 VICE CHAIR SCHEUER: Thank you.

20 Regarding drainage, do you anticipate that  
21 your group will be commenting during the subdivision  
22 approval process on potential effects on the  
23 traditional and customary practices of Native  
24 Hawaiians that may be affected from this?

25 DR. DUDLEY: Yes.

1                   VICE CHAIR SCHEUER: Do you believe, that  
2     should the Hawaii Supreme Court rule -- and I  
3     understand you are not a party to that Hawaii Supreme  
4     Court case -- but should the Supreme Court rule in  
5     favor of Mr. Seitz' party and remand this case before  
6     the Land Use Commission, do you believe your motion  
7     today would then become moot?

8                   DR. DUDLEY: No. I think at that time it  
9     gives you the real problem areas that need to be  
10    looked at, and I think that at that time that if you  
11    haven't already given an Order to Show Cause, that  
12    it's time then to go back to this.

13                  Let me point out that this is seven month's  
14    of work and there's a awful lot of really valuable  
15    stuff here.

16                  And I want to say one more thing too. I  
17    learned years and years ago when I first started  
18    writing about sovereignty that I was going to be  
19    creamed if I wasn't positive about everything I put  
20    down on paper.

21                  So when I wrote the book: "A Call For  
22    Hawaiian Sovereignty" 25 years ago, everything was  
23    absolutely checked and nobody, nobody could ever take  
24    me apart. And nobody ever did for this 25 years.

25                  So I learned early on, you don't mess with

1 facts. You put facts down. You let the facts speak  
2 for themselves. This is facts.

3 And so I commend it to you as something to  
4 read at that time. I know you've read it already,  
5 I'm sorry.

6 VICE CHAIR SCHEUER: I believe this will be  
7 my final question.

8 I was trying to understand what your  
9 argument was regarding agricultural crops and lands  
10 was that you're alleging that the representations  
11 made, factual representations made by the Petitioner  
12 during the previous hearing and approval were  
13 incorrect?

14 DR. DUDLEY: Yes.

15 VICE CHAIR SCHEUER: Are you alleging that  
16 there is some how a violation of any of the  
17 conditions imposed in that Decision and Order  
18 regarding agriculture?

19 DR. DUDLEY: No.

20 VICE CHAIR SCHEUER: And the point there is  
21 that in the motion there are two reasons for a motion  
22 to show cause, violation of conditions and violation  
23 of representations made to the Commission. And so --

24 DR. DUDLEY: No, I don't have a condition  
25 there.

1                   VICE CHAIR SCHEUER: Thank you, very much,  
2     Dr. Dudley.

3                   CHAIRPERSON ACZON: Vice chair Wong.

4                   VICE CHAIR WONG: No, no questions any  
5     more.

6                   CHAIRPERSON ACZON: Anybody else?  
7     Chair would call a five-minute recess.

8                   (Recess taken.)

9                   CHAIRPERSON ACZON: We're back on the  
10    record. Mr. Yee, I believe you have a request.

11                  MR. YEE: I do. Thank you very much,  
12    Chair.

13                  With respect to the remaining order, we  
14    would ask to change the order of presentation as  
15    follows: The Office of Planning would go next with  
16    15 minutes; city would go next with 15 minutes; and  
17    then wrap up with Petitioner's presentation with up  
18    to an hour, that would be our request.

19                  CHAIRPERSON ACZON: Okay. I will allow  
20    that. Office of Planning is intending to go next?

21                               OFFICE OF PLANNING

22    MR. YEE: The Office of Planning has recommended that  
23    the Motion for Order to Show Cause be denied. And  
24    there's nothing that has been said here today which  
25    has caused us to change our mind. We have submitted

1     our written response on this issue, I'm not going to  
2     go over it, what we said specifically.

3             Instead I think what I would like to spend  
4     most of my time in is responding to some of the  
5     things that were said today.

6             First, I did note that Mr. Seitz indicated  
7     that he thought that you should grant the motion  
8     because you have not seen evidence of compliance, you  
9     haven't seen the revised TIAR or revised storm water  
10    plans. But that's not the standard.

11            The standard isn't whether or not you've  
12    seen the evidence of compliance, the question is  
13    whether you've seen evidence of noncompliance. The  
14    burden of proof is upon the Movant to show there's a  
15    violation, not on the Petitioner to show, yes, I have  
16    complied to every single one of the conditions.

17            I would further note that Office of  
18    Planning, Exhibit 1, Department of Transportation  
19    letter indicated that there was a revised TIAR. So  
20    you do have that in the record as well as the fact  
21    that the Storm Water Drainage Plan is not yet due or  
22    required until the approval of the subdivision  
23    approval which has not yet happened. And I'll go  
24    over that again as well.

25            Mr. Seitz also proposed that you delay your

1 ruling until the Supreme Court makes a decision. I  
2 know Vice Chair Scheuer asked questions about: Will  
3 this be moot if the Supreme Court came down with a  
4 decision.

5 Two responses, whether or not it's moot  
6 depends on what the Supreme Court decision is. If it  
7 is a narrow decision, it might not moot out the  
8 particular issues that are cited today. A narrow  
9 decision in favor of Sierra Club could be just decide  
10 this one issue and that's all you have to do.

11 But probably more importantly, we really  
12 have no idea how long the Supreme Court is going to  
13 take to issue its decisions, Mr. Seitz' experience  
14 notwithstanding.

15 I know there is a great temptation to apply  
16 it differently. No matter what you do, no matter  
17 what you decide, there is going to be a bunch of  
18 people who are going to be unhappy. That's just the  
19 nature of the game.

20 And if you weren't volunteers giving your  
21 time freely, I would say that's why they pay you the  
22 big bucks. It's just part of what we have to do to  
23 face these hard issues and make decisions. And while  
24 if you needed more time to think about this, if you  
25 needed more time to do something, I would say take as

1 much time as you need to do it.

2 But the Office of Planning does not  
3 recommend simply waiting until the Supreme Court  
4 makes a decision for however long that indefinite  
5 period might be.

6 We also noted it's somewhat unfair,  
7 frankly, for the Petitioner to make them wait,  
8 because delays are costly. And if there isn't some  
9 other reason why you need to delay this matter, we  
10 think it's better to move forward.

11 Now, moving onto Dr. Dudley's presentation.  
12 He started with the issue of the TIAR and quoted to  
13 you Condition 10. I want to make sure you understand  
14 the full sentence of Condition 10, because the issue  
15 before you, of course, is was Condition 10 violated.  
16 That's at least the first question.

17 And the condition itself, Mr. Dudley  
18 emphasizes this issue of the most current updated  
19 traffic data. And that sentence says: The updated  
20 TIAR shall include the most current updated traffic  
21 data, and shall provide and accommodate all  
22 recommended mitigation measures for potential  
23 project-related traffic impacts on the state and city  
24 facilities to the satisfaction of the DOT, the DPP  
25 and the DTS.



1           So as we read that condition, what it means  
2   is that the Petitioner is required to provide an  
3   updated TIAR. It must get the acceptance of DOT, DPP  
4   and DTS. And sets forth the criteria by which DOT,  
5   DTS, DPP would accept or not accept the TIAR, namely  
6   does it have the most updated traffic data, and are  
7   you accepting the recommended mitigation measures.

8           So it simply sets out a requirement to get  
9   approval. It is not a basis by which the Friends of  
10   Makakilo can come to you and say I disagree with the  
11   updated TIAR, and I want to litigate that issue  
12   before you again. The issue is not whether the  
13   updated TIAR is acceptable to you.

14           The issue, in other words, the only issue  
15   in the condition is whether the acceptance was  
16   received from DOT, DPP and DTS. That's the only  
17   requirement.

18           You already saw the initial -- well, not  
19   you personally, but the LUC has already seen the  
20   initial traffic analysis, and they deemed it  
21   sufficient in order to reclassify the land, subject,  
22   of course, to these conditions.

23           Consequently, the rest of the information  
24   submitted BY DR. DUDLEY is in his issue of traffic.  
25   His analysis of the updated TIAR, we think is not

1 relevant to your consideration today.

2           The next one went on to the issue of  
3 farmland. And he emphasized -- what I believe is  
4 what he argued was representation that the crops of  
5 Ho'opili can be grown somewhere else. He said, no,  
6 it cannot. That is he believes a violation of the  
7 representations, and with respect, that is not what  
8 is meant as the basis for a reversion of the  
9 classification.

10           A representation would be something like I  
11 represent that I will build so many units. I  
12 represent that we will have 20 percent affordable  
13 housing. I represent that I will put in public  
14 parking for beach access.

15           These are representations that if they  
16 failed to comply with these representations, might be  
17 a basis for an Order to Show Cause. It is not a  
18 representation, however, if you simply disagree about  
19 a factual assertion.

20           So if the Petitioner comes in and says, I  
21 believe, or it is my factual assertion that crops can  
22 be grown in other places. And Friends of Makakilo  
23 did, as they did, and disputes that fact, and says  
24 no, I disagree, they cannot be grown anywhere else.  
25 They can't then, after a decision is reached, come

1 back and say they made a representation, and I want  
2 to challenge that factual assertion and get this land  
3 reclassified. That is not what is meant by  
4 "representation" under the statute.

5 So whether crops can or cannot be grown  
6 somewhere else, whether it can be grown as well, you  
7 know, is not a basis by which an Order to Show Cause  
8 should be issued.

9 I also note that the LUC specifically found  
10 that the reclassification with little or no adverse  
11 affect on agricultural production, this is simply a  
12 factual finding LUC made in its evaluation of the  
13 facts. And it's not our purpose here to relitigate  
14 that question. It's not our purpose to revisit that  
15 question. It's not our purpose to allow people to  
16 challenge that assertion in this forum under a Motion  
17 for Order to Show Cause.

18 So, consequently, we don't find that  
19 Friends of Makakilo's argument regarding the adequacy  
20 of other farmlands is an adequate basis as well.

21 Mr. Dudley also briefly mentioned issues of  
22 the Galbraith Estate. We have set out some of the  
23 facts in our memorandum on this. We note that  
24 Ho'opili did provide half a million dollars for the  
25 purchase of the Galbraith Estates. This was not a

1 condition of this D and O.

2 In return, the Department of Agriculture  
3 agreed to give priority for a certain amount of land  
4 to the Ho'opili agricultural tenants.

5 We also set aside some additional land for  
6 small farmers, because that was a priority of the  
7 city, which also contributed greatly to the Galbraith  
8 Estates purchase.

9 So some of the concerns by witnesses, for  
10 example, about lack of provisions for small farmers,  
11 is at least partially considered in the Department of  
12 Agriculture's efforts on the Galbraith Estate.

13 Dr. Kioni Dudley also references storm  
14 water runoff as indicated, I think, by some of the  
15 questions.

16 That condition is dependent upon, or has to  
17 be approved prior to the subdivision approval.  
18 Subdivision approval hasn't occurred yet. Therefore,  
19 there is no violation. I don't think we can get much  
20 clearer than that.

21 Condition 22 he argued regarding notice of  
22 intent for sale. From the Office of Planning's  
23 viewpoint, it's true that the standard conditions  
24 have, in every single one of these, it's not clear to  
25 me that this is an anti-flipping condition, because

1     it's only a notice. There's nothing you can do from  
2     stopping people from selling under this condition.

3             So as we looked at this condition where it  
4     says, any notice of sale or lease or assignment or  
5     intent to sell or any of this, it is implied in our  
6     minds within this term to mean something more than  
7     just a thought or a negotiation for.

8             It is, in our minds, intended to cover the  
9     loopholes where a developer might say, I entered into  
10    a conditional sales agreement, but I haven't yet sold  
11    it, so I don't have to tell you.

12            Well, no, that's true. You enter into a  
13    conditional sales agreement, you know, subject to A,  
14    B, and C, you're going to sell that property, and so  
15    you need to let LUC know that that's what has  
16    happened.

17            The purpose for this is really more along  
18    the lines -- it's not quite so, I think, high minded,  
19    as the concern about flipping. It's really more  
20    along the lines of if something happens with a piece  
21    of property, if there is a dispute, if there is some  
22    matter that comes along, we need to know who to  
23    contact; we need to know who the responsible party or  
24    parties are.

25            So if there is some sale of land, some

1     portion of the land, LUC does need to know. But  
2     there's nothing that we have seen in the record  
3     before us that leads the Office of Planning to  
4     conclude that this violation has been violated.

5             There's clearly been no sale. And it is  
6     not at all clear that the level of certainty has  
7     reached anything close to the point where it would be  
8     a violation. And, quite frankly, if you fail to send  
9     the notice to the LUC, it's really not a basis for  
10    reversion. It's not a basis by which we would say we  
11    should take the property back into Agricultural.

12            If you really thought it happened, then the  
13    simple solution would be tell the Petitioner, well,  
14    send the notice now. But, like I said, we don't  
15    think a violation has occurred at all. And even if  
16    it did, then, of course, our position would be that's  
17    not a basis for reversion.

18            Finally, we note, as Commissioner Scheuer  
19    pointed out briefly, that the purpose for why we're  
20    here is not to relitigate the case. We're here to  
21    determine whether there's a sufficient reason to  
22    believe that Petitioner has violated a condition of  
23    the D and O, or that there has been a violation of  
24    their representation which may justify reversion of  
25    the petition area.

1           I certainly understand the sincerity, good  
2   faith and even the passion of some of the public  
3   testifiers today about a variety of issues involving  
4   endangered species, traffic, jobs, water quality,  
5   agriculture, homes and the like, but this all really  
6   gets to the question whether it was a good or bad  
7   decision made back in 2011 or 2012 -- sorry, 2012.

8           It doesn't get to the issue of whether or  
9   not there has been a violation of a condition or  
10  violation of a representation.

11           So with respect to -- I just want to be  
12  clear that it's not that we aren't listening to what  
13  people are saying, but we have a limited purpose for  
14  this hearing, and that's what we need to follow.

15           And finally, with respect to that, because  
16  that is our purpose, the Office of Planning noted  
17  that there is a two-stage process to this. This is  
18  the first stage at which you simply determine whether  
19  or not we're here for an Order to Show Cause, this is  
20  not a contested case hearing. This is not an  
21  evidentiary, full-blown evidentiary hearing as you  
22  would find if we move to the next step.

23           Office of Planning simply noted, for your  
24  information, there are impacts to holding that next  
25  step. There are -- you know, it's more than just

1 another hearing. It's more than just using an  
2 attorney's time. There are impacts to projects when  
3 you put this kind of cloud on entitlement. And so,  
4 while we certainly think that this is an important  
5 process, you need to hold onto this enforcement power  
6 that you have. We also think that it should be  
7 exercised with prudence and discretion.

8 Based upon all of these things, the Office  
9 of Planning recommends that the Motion to Show Cause  
10 should be denied.

11 CHAIRPERSON ACZON: Thank you, Mr. Yee.  
12 Commissioners, any questions?

13 COMMISSIONER ESTES: I think this is what I  
14 heard you say.

15 In terms of they must give notice to the  
16 LUC if they're changing ownership of the property.  
17 But that's pretty casual. Is that basically what I  
18 heard you say?

19 MR. YEE: That is what I said, and I did  
20 say it fairly casually, you're right.

21 COMMISSIONER ESTES: So why do we even have  
22 that in there?

23 MR. YEE: Because, as I said, if something  
24 happens on a piece of property, if there has been a  
25 violation, if there is a concern about the rate of



1 development, the LUC does need to know who owns the  
2 property, so -- and sometimes properties change  
3 ownership, or pieces of property change ownership.

4 So we need to know who's there, who to hold  
5 accountable to, or give notice to.

6 COMMISSIONER ESTES: But the reporting of  
7 it from the other people, it's pretty casual?

8 MR. YEE: I guess I'm not sure what you  
9 mean. Is it that the method is through a letter?  
10 I'm not sure.

11 COMMISSIONER ESTES: I thought you said if  
12 they didn't do it, tell them and have them do it.

13 MR. YEE: I did. What I mean by that is  
14 not all conditions are created equal, some are more  
15 important than others. And violations are not the  
16 same either. So a violation of the failure -- like  
17 if they failed to give notice of their sell; if they  
18 fail to submit an annual report. I don't think your  
19 first go-to process is an order to show cause. I  
20 think your first process is hold a hearing and say I  
21 think you violated it, correct it.

22 CHAIRPERSON ACZON: Vice Chair Scheuer.

23 VICE CHAIR SCHEUER: Mr. Yee, what is the  
24 basis for that level of discretion in deciding in how  
25 to enforce some provisions differently than others,

1 in your opinion?

2 MR. YEE: I think the basis for it is that  
3 the LUC, I think, does have -- I think all regulatory  
4 agencies have certain amount of prosecutory  
5 discretion. The issue really in this case would be  
6 if there has been a violation, could reversion be an  
7 appropriate recommendation. And I just don't see  
8 that.

9 I mean, I suppose you could come up with  
10 some fantastic scenario which might be, but I just  
11 don't see it here.

12 VICE CHAIR SCHEUER: Just stepping ahead  
13 right now, we're only not asking about whether  
14 consequences would be if there was a violation, but  
15 might there be a violation to determine whether  
16 reversion would be appropriate?

17 MR. YEE: Right, but I think the reason  
18 you're looking at whether or not there might be a  
19 violation to determine whether or not a reversion  
20 would be appropriate, if you already know that a  
21 reversion would not be appropriate for a violation,  
22 there's no reason to hold the next hearing.

23 VICE CHAIR SCHEUER: One other question for  
24 you, has to do with your reading of the first full  
25 sentence on page 173 of the D and O that you read to

1 us regarding the updated TIAR. And you're saying  
2 essentially you have to read that sentence in its  
3 entirety. And so long as the updated TIAR is  
4 accepted by those three parties, that the standard  
5 needs to be met.

6 So just arguing for a second, say that a  
7 TIAR was submitted that somehow showed that Ho'opili  
8 was improving traffic from West Oahu, but somehow  
9 those three parties said, yeah, its acceptable to us.  
10 And then information was provided to the LUC that  
11 said, no, actually traffic is going to get worse, not  
12 better. You're saying, however, the phrasing of this  
13 is such that we couldn't take any action?

14 MR. YEE: Yes. I mean I think that  
15 decision of the reclassification got made in 2012.  
16 You then said, I understand the concerns of everyone  
17 else, that you want more information, go ahead and  
18 get it and make yourself satisfied about it. But  
19 from the LUC's standpoint, for purposes of  
20 reclassification, the properties were classified and  
21 we're satisfied with the TIAR.

22 VICE CHAIR SCHEUER: Thank you.

23 CHAIRPERSON ACZON: Thank you, Vice Chair  
24 Scheuer. I just have one question, Mr. Yee.

25 Who has the authority to determine that

1       there was a violation?

2               MR. YEE:   The LUC.   Well, city also has.

3               CHAIRPERSON ACZON:   Condition of 22.

4               MR. YEE:   I'm sorry, you want to know who  
5       has the authority to determine whether Condition 22  
6       is violated?

7               CHAIRPERSON ACZON:   Who has the authority  
8       to determine that?

9               MR. YEE:   First would be LUC, since it's  
10       their order.

11               The second, potentially, could be the city  
12       who is empowered to enforce LUC conditions.

13               CHAIRPERSON ACZON:   If there was a  
14       violation, what happens?

15               MR. YEE:   That's up to the entity before  
16       whom the question is presented.   It's up to you in  
17       this case.

18               CHAIRPERSON ACZON:   Are they required to  
19       correct the violation?   This is the city's question,  
20       I believe.   So, okay, I'll talk to the city later.

21               Mr. Lewallen, please proceed.

22               MR. LEWALLEN:   Thank you, Chair,  
23       Commissioners.

24               CITY AND COUNTY OF HONOLULU

25               MR. LEWALLEN:   I reserved 15 minutes, but

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1     because of the way things have developed, I will take  
2     questions. I don't want to restate what we already  
3     heard.

4             There is a few allegations that the Motion  
5     or Order to Show Cause here that touched upon the  
6     city's conduct. THE first one IS about the traffic  
7     impact analysis report.

8             I think we have heard, as developed today,  
9     that that report was in fact received by the  
10    Department of Transportation Services of the city.  
11    It was presented to the Department of Planning and  
12    Permitting. It doesn't really accept it, but they  
13    put it in part of the overall compliance with the  
14    elements that have to be met with the permit.

15            So we know, contrary to what was raised,  
16    that's no longer the case in the motion.

17            Also there is no argument or testimony  
18    regarding today, but nonetheless, it was in the  
19    written motion that the zoning ordinance wasn't  
20    passed. But I think if you look at the Movant's own  
21    papers and the opposition submitted by Mr. Kitaoka,  
22    that the council did in fact pass the zoning  
23    ordinance, and there is the signature of the mayor.

24            So that's another allegation made in  
25    support of the motion which turned out not to be

1 true.

2 That leaves one other allegation made  
3 against the city officials here, but there is no  
4 testimony we heard today. And the allegation of a  
5 city official alleging receiving money is totally  
6 unsupported. But I submit even if these were  
7 supported allegations, this isn't warranted. The  
8 city has an Ethics Commission and we can address  
9 that.

10 Also, just submit they shouldn't make such  
11 allegation, and I hope the LUC would in fact  
12 summarily dismiss these allegations.

13 We concur with Mr. Yee's statement that  
14 there has not been cause demonstrated to grant the  
15 petition. And we concur with his submission with the  
16 LUC to not grant petition to show cause. I'll take  
17 questions at this time.

18 CHAIRPERSON ACZON: Thank you.  
19 Commissioners? Commissioner Wong.

20 VICE CHAIR WONG: I have a question, sir.

21 You know, Dr. Dudley gave us his TIAR and  
22 the county received the TIAR from D.R. Horton.  
23 Dr. Dudley stated their numbers are totally off.  
24 That's his statement.

25 Where does this land with the county?

1                   MR. LEWALLEN: My experience with the  
2     county, when people submit applications for permit or  
3     permitting conditions, the city does not serve as the  
4     final arbiter of what is true. People have an  
5     obligation to come forward, and you give good  
6     information, the city is not necessarily going to go  
7     out and challenge everything, who you are, your  
8     conclusion. They're going to fill in certain amount  
9     of that need for information to complete all the  
10    requisites.

11                  So somebody submitting that information  
12    being provided in a permit or as conditions upon a  
13    permit, it might be good to inform the body that's  
14    processing the permit, because it certainly seems  
15    unfair to say that a public official has erred in the  
16    performance of his or her duties, if one is not  
17    pointed out supposed knowledge of facts.

18                  So that would be my take on it.

19                  VICE CHAIR WONG: So I have a question for  
20    you because the TIAR was the condition, correct?

21                  MR. LEWALLEN: Yes, sir.

22                  VICE CHAIR WONG: So just receiving a TIAR,  
23    that just says zero traffic increase, would suffice  
24    then for the city?

25                  MR. LEWALLEN: Well, that's a hypothetical

1     that I would hate to speak on behalf of the  
2     Transportation Department, or when I haven't run that  
3     passed them. So I might have to seek out an answer  
4     for you, sir, and get back to you, if that's  
5     acceptable.

6             VICE CHAIR WONG: It's just that this past  
7     week or couple weeks was just horrible traffic for  
8     everyone. It was just nuts. My secretary was late  
9     for work, and I said just stay home until traffic got  
10    better.

11            But it's just the concern because one of  
12    the allegations is the TIAR was faulty, even those  
13    conditions just says you have to just submit the  
14    TIAR. So it just doesn't make sense that a faulty  
15    TIAR will be accepted. That's my only take on this.

16            MR. KUDO: I think I will be able to  
17    address that, Commissioner Wong, in my presentation.

18            VICE CHAIR WONG: Thank you.

19            CHAIRPERSON ACZON: Vice Chair Scheuer.

20            VICE CHAIR SCHEUER: Mr. Lewallen, I'm  
21    interested in Condition 11 of the Decision and Order  
22    regarding storm water which requires the plan to be  
23    submitted prior to subdivision approval.

24            Is the subdivision approval process  
25    administerial in the county?



1                   MR. LEWALLEN: I believe so, yes, sir.

2                   VICE CHAIR SCHEUER: So the Movant has  
3 argued that there is a potential of impact,  
4 speculated impact on traditional and customary  
5 practices that requires a few things. One is that  
6 the Navy denies the ability for storm water to move  
7 over their property.

8                   Secondly, that that storm water would  
9 somehow move to the coast and affect these culturally  
10 protected and important limu beds. How, in the way  
11 this is written, does -- we all, I think, seem to be  
12 at the point of understanding the subdivision  
13 approval process has not been triggered yet, so this  
14 condition has not yet come up.

15                  But when it comes up, how does the Movant  
16 and the traditional and customary practitioners who  
17 rely on this, that they believe something is a  
18 concern, how do they then take up a consideration by  
19 the city subdivision approval of the potential  
20 affects on their constitutionally protected  
21 traditional and customary practices?

22                  MR. LEWALLEN: Once again, I'm getting a  
23 hypothetical here. I take it it may occur if the  
24 permitting is triggered here. There always seem to  
25 be that the public has a right to address that. It's

1 governmental representatives seeking to have input on  
2 that. So I don't see anything that would foreclose  
3 that.

4 VICE CHAIR SCHEUER: But the parties who  
5 are actually approving the subdivision process, is  
6 there at least the ability for them, when they  
7 consider this drainage plan, as is required prior to  
8 subdivision approval, for them to take a look at  
9 their derivative duties as a public entity on the  
10 potential affects on the constitutionally protected  
11 traditional and customary practices of Native  
12 Hawaiians?

13 MR. LEWALLEN: I don't believe I have the  
14 answer for that at this time. I would be happy to  
15 try to get that answer for you. My regrets, I'm  
16 sorry.

17 CHAIRPERSON ACZON: Any other questions?  
18 Commissioner Hiranaga.

19 COMMISSIONER HIRANAGA: Just a followup to  
20 that question.

21 So any type of proposed drainage plan would  
22 require a Special Management Area Permit?

23 MR. LEWALLEN: I don't believe so. I  
24 thought -- I was thinking in NPDES permits for that,  
25 but I'm not positive, no.

1                   COMMISSIONER HIRANAGA: My understanding it  
2 needs to cross Navy property to reach the ocean. So  
3 you wouldn't need a NPDES.

4                   MR. KUDO: I think I can address these  
5 issues during my presentation, or answer it now.

6                   COMMISSIONER HIRANAGA: I'll defer.

7                   CHAIRPERSON ACZON: Any others?

8                   Mr. Kudo, please present your argument.

9                   H.R. HORTON-SCHULER HOMES

10                  MR. KUDO: The reclassification of land  
11 before this State Land Use Commission is a very  
12 lengthy and very expensive proposition for most  
13 developers. The proceedings are quasi-judicial in  
14 nature and require expert and lay witnesses to  
15 testify regarding statutory criteria that are used by  
16 this Commission to make its decision as to whether a  
17 particular parcel of land is worthy of  
18 reclassification.

19                  Numerous studies, documents, maps, data and  
20 other written evidence are also submitted to this  
21 Commission for its review and analysis.

22                  Petitioners who receive a favorable  
23 decision from this Commission to reclassify its lands  
24 will not intentionally jeopardize the very important  
25 approval and risk having its lands reverted back to

1 its original land use designation.

2 This would be an extremely detrimental  
3 consequence, and generally only occurs when a  
4 petitioner has a egregiously failed to comply with  
5 the Commission's Decision and Order. Generally an  
6 Order to Show Cause motion is brought years after a  
7 petition has been approved. That's been the  
8 experience that at least I have seen.

9 Although there are few exceptions, most  
10 cases are brought 15 to 20 years after a petition has  
11 been approved. And this makes sense, because  
12 conditions need to be approved during the development  
13 phase of a particular project, which may take ten,  
14 15, 20, 30 years to full build-out.

15 Albeit the counties have the primary duty  
16 to enforce this Commission's decisions and order. An  
17 Order to Show Cause under Section 15-15-93 of your  
18 rules, gives this Commission the enforcement  
19 capability against the petitioner who has not lived  
20 up to the requirements set by this Commission.

21 Commissioner Scheuer is correct, this  
22 morning's preliminary hearing on this FOM's Motion  
23 asks this Commission to determine whether there is  
24 any basis to believe that the Petitioner, D.R.  
25 Horton-Schuler Homes, has failed to comply with

1     certain specified conditions of your Decision and  
2     Order, or not lived up to certain representations and  
3     commitments made by it during the reclassification  
4     proceedings upon which this Commission relied as a  
5     statutory criteria.

6             We should keep in mind that under Section  
7     91-10(5) of the state law, the Friends of Makakilo  
8     has the legal burden of proof to demonstrate by the  
9     preponderance of evidence that such a breach has, in  
10    fact, occurred by the Petitioner in this case. Not a  
11    speculation that a breach has occurred. Not a guess  
12    that a breach has occurred, but an in fact  
13    determination that the Petitioner has actually  
14    breached one of the conditions.

15            Before I begin my arguments on the motion,  
16    I would like to tell you a little bit about the  
17    Petitioner themselves, because it is highly relevant  
18    to whether you believe that this Petitioner would  
19    risk losing its land use entitlement by intentionally  
20    not complying with conditions of approval.

21            It is also relevant to show that this  
22    Petitioner is not a short-term, profit-oriented (here  
23    today, gone tomorrow) land speculator as FOM seems to  
24    infer in its motion.

25            The Petitioner, D.R. Horton-Schuler Homes,

1     had its beginnings in Hawaii during the early 1970's,  
2     through its efforts of Schuler, a well-known  
3     developer in the state. The Petitioner began its  
4     first development in Hawaii in 1973, and to date has  
5     developed 61 projects on Oahu, 13 projects on Maui,  
6     11 projects on the Big Island and nine projects on  
7     Kauai.

8             They are responsible for providing a total  
9     12,633 homes built or underway throughout our state.  
10    Their main forte is building for first-time buyers,  
11    affordable, gap group and market homes.

12            This number of 12,633 homes built to date  
13    does not include the approximately 12,000 homes that  
14    are expected from the Ho'opili project. It does not  
15    make sense that a seasoned long-time developer, with  
16    very solid reputation throughout the state, would  
17    jeopardize an important entitlement that it received  
18    only three years ago from this Commission at  
19    significant expense.

20            Ho'opili is probably the most important  
21    project of D.R. Horton in Hawaii to date, and it  
22    would be absolutely absurd to think that Horton would  
23    jeopardize your approval in any way.

24            My arguments today will reveal that many of  
25    the allegations waged by FOM in its motion are simply

1 untrue, inaccurate, premature and speculative in  
2 nature. The facts will show that the Petitioner has  
3 been very responsible, and has exercised a great  
4 amount of diligence, care and openness in its  
5 compliance and satisfaction of the relevant  
6 conditions imposed by this Commission.

7 D.R. Horton received its reclassification  
8 in June of 2012. Bear in mind that we filed the  
9 application before this Commission in 2007, and that  
10 the contested case went on from 2008 to 2012. Yes, I  
11 have been with Dr. Dudley for about five years of  
12 that time.

13 Immediately after receiving your approval,  
14 D.R. Horton attempted to fulfill and satisfy  
15 Condition 10.b of this Commission's Decision and  
16 Order, which established, as a prerequisite for  
17 filing for rezoning, that the Petitioner first obtain  
18 the acceptances from the State Department of  
19 Transportation, the Department of Planning and  
20 Permitting and Department of Transportation Services.

21 After many meetings and revisions to its  
22 draft TIAR, and working with the State Department of  
23 Transportation for close to two years after the  
24 approval that you had given it, Petitioner finally  
25 received an acceptance of its TIAR from the state on

1 July 1st, 2014, and this is evidenced by letter from  
2 the State Department of Transportation dated  
3 July 1st, 2014. That letter is an exhibit in FOM's  
4 Motion Exhibits 1, 2, 3 and 4.

5 Over this period at least three iterations  
6 of Petitioners TIAR were received and reviewed by the  
7 traffic engineering branch and the planning branch of  
8 the State Department of Transportation that  
9 scrutinized your assumptions, your data, your  
10 analysis, your mitigation measures, and the model  
11 that you are using to generate the impacts.

12 The TIAR was submitted in addition to the  
13 two city departments, the Department of  
14 Transportation Service, and the Department of  
15 Planning and Permitting. And we received their  
16 approvals on April 2nd, 2014, which is, again,  
17 evidenced by a letter of that same date from the  
18 Department of Planning and Permitting, and is  
19 included as part of FOM's Exhibits 1, 2, 3 and 4.

20 After receiving approval of its TIAR from  
21 State Department of Transportation, Department of  
22 Planning and Permitting, DTS, Petitioner submitted a  
23 letter to this Commission dated July 16, 2014,  
24 informing this Commission that Condition 10.b had  
25 been satisfied and that it intended to file for



1 rezoning.

2 In fact, a rezoning application was filed  
3 two days later on July 18th, and accepted by the  
4 Department of Planning and Permitting of the city on  
5 August 1st, 2014.

6 As you can see from this, this Petitioner  
7 is not sitting on its hands. We are moving forward  
8 to fulfill the commitments that we made to this  
9 Commission to develop this property.

10 The application for rezoning was processed,  
11 and the Department of Planning and Permitting  
12 submitted, along with its recommendations for  
13 approval, to the City Planning Commission on  
14 October 30th, 2014.

15 The Planning Commission conducted a public  
16 hearing in Kapolei on December 3rd of the same year,  
17 and voted to recommend approval of the rezoning  
18 request to the City Council. At this particular  
19 hearing, Director Michael Formby from the Department  
20 of Transportation Services of the city reiterated  
21 that his department and that of the Department of  
22 Planning and Permitting acceptance of the TIAR for  
23 the Ho'opili project.

24 He also informed the Planning Commission  
25 that the Department of Planning and Permitting served

1 as a formal accepting agency for the city whenever  
2 multiple agencies were involved in TIAR acceptances.

3 FOM's Motion alleges that the Petitioner,  
4 D.R. Horton, did not comply with several conditions  
5 in this Commission's Decision and Order of 2012. In  
6 addition, the Motion alleges that the Petitioner did  
7 not live up to its representations to you and the  
8 commitments made to this Commission during the  
9 contested case hearings from 2007 to 2012.

10 First let us address four specific  
11 conditions that FOM's Motion addresses that we did  
12 not satisfy or have violated.

13 Number one is Condition 10.b, which I just  
14 explained, is the TIAR condition.

15 Number two is Condition No. 11 relating to  
16 Ho'opili's storm water drainage plan, this is prior  
17 to subdivision approval.

18 Number three is Condition 22 relating to  
19 the change or alteration of ownership of the petition  
20 lands. And we heard Bryan Yee of the Office of  
21 Planning speak to that.

22 And number four, was Condition No. 14  
23 relating to Native Hawaiian access rights.

24 The last Section 205-17 of Hawaii Revised  
25 Statutes relating to representations and commitments

1     made by Petitioner and deemed as a criteria for  
2     reclassification by the Commission.

3             I will address these specific conditions in  
4     order.

5             In regard to 10.b, FOM challenges the  
6     accurateness and veracity of the May 2014 TIAR which  
7     was prepaid by Austin Tsutsumi & Associates on behalf  
8     of the Petitioner. Austin Tsutsumi is a very  
9     reputable traffic engineering firm in Honolulu. I  
10    have put before this Commission since the 1970's  
11    experts from that firm who have testified before this  
12    Commission on traffic, and have issued reports that  
13    have been accepted by this Commission and Department  
14    of Transportation Services as well as the state for  
15    purposes of TIAR.

16            Austin Tsutsumi & Associates placed a team  
17    of traffic engineers to do the various TIAR  
18    iterations that these agencies reviewed over the  
19    two-and-a-half year period.

20            The FOM Motion states on page eight,  
21    paragraph 15, quote:

22            "It appears that D.R. Horton knowingly and  
23    intentionally submitted false evidence to this  
24    Commission. Not suspecting that they had been  
25    hoodwinked, the LUC office did not carefully read the

1     submissions. D.R. Horton then moved ahead with their  
2     application for zone change. In doing so, and in all  
3     its subsequent actions, D.R. Horton and all working  
4     with them, acted in direct contradiction of Condition  
5     10.b."

6             The FOM Motion provides further in the next  
7     paragraph 16, that:

8             "These actions of noncompliance with  
9     Condition 10.b, in themselves, provide grounds for  
10    this Motion to Show Cause, requiring the Land Use  
11    Commission to reopen the Ho'opili case."

12            The Motion goes onto challenge in detail  
13    the accuracy and veracity of the May 2014 TIAR, in  
14    particular, Table 4.1, which Dr. Dudley went over,  
15    and Appendix F of that TIAR.

16            We assume that FOM's reference to false  
17    evidence that we had submitted to you was the letter  
18    dated July 16, 2014, where we informed you that 10.b  
19    had been satisfied based on the letters that we had  
20    received from the various governmental agencies that  
21    our TIAR had been accepted.

22            Let me take this opportunity to first  
23    explain to you what a TIAR is and how it's involved  
24    in an entitlement process like Ho'opili.

25            As part of this entitlement process,

1 developers are typically required to prepare a  
2 traffic impact analysis report. Now, since  
3 developments, especially large ones like Ho'opili  
4 which may span a period of 20 to 30 years to build  
5 out, developers are normally required by the various  
6 governmental agencies to update and revise their TIAR  
7 every year or longer, usually one to three years.  
8 And this occurs during the entire build-out of the  
9 project.

10 This makes sense if you think about it.  
11 The TIAR analyzes traffic flows and impacts to date.  
12 That's number one.

13 And number two, it makes forecasts about  
14 traffic patterns and impacts going into the future,  
15 five, ten, 15, 20 years out.

16 TIARs are done by experienced licensed  
17 traffic engineers, like Austin Tsutsumi & Associates,  
18 Petitioner's traffic consultant, as a forecast  
19 document. Like forecasts given to you by economists,  
20 their projections may not necessarily square with the  
21 actual conditions that we meet in the future.  
22 Traffic engineers, however, use the best available  
23 data and also use forecast figures generated by  
24 government agencies like Oahu Metropolitan Planning  
25 Organization to base their predictions on what may

1     happen in the future.

2                   The Oahu Metropolitan Planning Organization  
3     develops the Oahu Regional Transportation Plan based  
4     on a mathematical and statistical model. This  
5     organization is a state agency. Most traffic  
6     engineers like Austin Tsutsumi & Associates use the  
7     numbers generated by the Metropolitan Planning  
8     Organization and the ORTP to forecast the future,  
9     because why should they do it if the state is doing  
10    it? They're going to use their numbers, of course.

11                  However, like any forecasting models,  
12    projections may differ from the actual conditions  
13    experienced five, ten, 15 years down the road. This  
14    discrepancy is anticipated by the governmental  
15    agencies, which explains why several updates of a  
16    project's TIAR are often required over the life of  
17    the project.

18                  The agencies which review a Petitioner's  
19    TIAR scrutinize the assumptions, figures, data, trip  
20    generation numbers, and impacts as well as the  
21    recommended mitigation numbers. And in their review,  
22    their periodic review, they will update the historic  
23    numbers, present numbers and future forecast based on  
24    information that is gathered from the city and from  
25    the state.

1                   If we look at Condition 10, you can break  
2     it down into basic three actions that must be  
3     satisfied.

4                   One is that an updated TIAR be submitted to  
5     the three state agencies. That was done.

6                   Two, that the State Department of  
7     Transportation accept it. That was done.

8                   Three, that the Department of  
9     Transportation Services and the Department of  
10    Planning and Permitting of the city and county accept  
11    the TIAR. That was done. They're all evidenced by  
12    letters saying the same.

13                  All three separate actions required of the  
14    Petitioner under Condition 10.b was satisfied.  
15    Whether you disagree with the TIAR or not, it's a  
16    fact that they were accepted. I don't think anybody  
17    is going to dispute that.

18                  FOM's argument is based on the premise that  
19    because they did not agree with the contents, they  
20    did not agree, the FOM, on the TIAR, that somehow  
21    this nullified the acceptance of the three  
22    governmental agencies.

23                  First of all, this argument is not legally  
24    rational or logical.

25                  Condition 10.b does not require that the

1     Petitioner's TIAR must first be acceptable by Friends  
2     of Makakilo before it can be submitted to the  
3     government agencies.

4             Second, in order to agree with the  
5     rationale of the FOM, we must conclude that the State  
6     Department of Transportation's two-year review and  
7     scrutinization of the TIAR was flawed and based on  
8     traffic engineering and planning incompetence, or as  
9     FOM infers, corruption.

10            Third, that this technical incompetence was  
11     shared by the traffic engineers at the City  
12     Department of Transportation Services and Department  
13     of Planning and Permitting.

14            We find this rationale and conclusion to be  
15     absolutely absurd.

16            The accepted TIAR was the collaborative  
17     work of Austin Tsutsumi & Associates with much input  
18     from the State Department of Transportation during  
19     two years of review. The State Department of  
20     Transportation painstakingly went through all of the  
21     information contained therein.

22            Appendix F, which was attacked by FOM  
23     extensively in this Motion was, in fact, added to the  
24     May 2014 TIAR at the request of the State Department  
25     of Transportation. It was not included by ATA, it



1     was included by the State Department of  
2     Transportation. This is the chart that FOM is  
3     challenging.

4             Now, when we looked at that chart, we tried  
5     to figure out where Dr. Dudley got his numbers. If  
6     you look at Appendix F, the column he's challenging  
7     says "households", you'll notice that it says  
8     "households".

9             Well, we found out that Dr. Dudley and the  
10    professional engineers at ATA used the same chart  
11    issued by OMPO, the same table to get this data. But  
12    we used different columns.

13            Our engineers used the column entitled  
14    "Households". Dr. Dudley used the column entitled  
15    "Housing Units".

16            Now, why the difference? Let me explain to  
17    you. Household includes only occupied residences  
18    that are projected by the city into the future. In  
19    other words, at 2035 they projected these many homes  
20    will actually have occupants.

21            Housing units, the larger number which  
22    Dr. Dudley used, has unoccupied and occupied units  
23    that are projected by the city to exist in 2035.

24            Now, why would ATA only use the household  
25    number? Well, because unoccupied units do not

1 generate traffic trips. They only increase the  
2 household number, but they're not probative in terms  
3 of calculating the number of trips generated from a  
4 particular development in 2035, and that's the  
5 discrepancy.

6 Let's turn to Table 4.1. Table 4.1 was  
7 included in the TIAR in a section that was meant to  
8 describe the general conditions of growth in the  
9 Ewa-Kapolei region. The Ewa-Kapolei region.

10 In particular, Table 4.1 was to demonstrate  
11 or illustrate the growth in employment in the Ewa  
12 region. For some of you who might not know this, the  
13 whole principle behind the Second City, and the  
14 city's decision to create a Second City in Ewa was to  
15 create contra flow of traffic to relieve the traffic  
16 going from Ewa to Honolulu every morning and every  
17 afternoon going back.

18 So if you create jobs in a city that's  
19 located in Ewa, the traffic is going to stay there.  
20 It's not going to add traffic to H-1. So part of the  
21 underpinnings behind the Ewa Development Plan or the  
22 city's plans to create the Second City was the  
23 creation of a job center.

24 Well, Table 4.1 was to demonstrate that.  
25 So what the ATA engineers did, was they included Ewa

1 and Kapolei employment and household numbers. Why?

2 Because Ewa and Kapolei are employment centers.

3 Dr. Dudley added Makakilo in there.

4 Makakilo is not an employment center, it's a  
5 residential subdivision. It doesn't generate very  
6 many jobs at all. So it's irrelevant being included  
7 in 4.1 which is to demonstrate the growth in jobs.  
8 That's why the discrepancy in the number of  
9 households.

10 Added to this is that the numbers in  
11 Appendix F and 4.1 have nothing to do with the output  
12 model that we use to generate traffic impacts.  
13 That's the OMPO model, and the OMPO model uses  
14 hundreds of pages of data that they produce to  
15 generate the traffic impacts that ATA uses.

16 So those numbers that are in Appendix F  
17 that was added by the State Department of  
18 Transportation, and 4.1 which was to illustrate the  
19 growth in employment in the Ewa-Kapolei region is not  
20 included in the OMPO model. They included many more  
21 numbers that comprised that model and the predictive  
22 values of that particular model.

23 I read from the letter, just so that I can  
24 move on here quickly. The Department of  
25 Transportation's letter is July 1st, 2014. It says:

1                   "Pursuant to the aforementioned LUC Docket  
2   No" -- this particular docket -- "the  
3   above-referenced Revised Draft Final TIAR is  
4   acceptable to the Department of Transportation for  
5   processing and inclusion in the zone change  
6   application."

7                   In the letter from Department of Planning  
8   and Permitting dated April 2nd, 2014, the Department  
9   and Planning and Permitting:

10                  "Based on our review, we find the draft  
11   TIAR acceptable for processing and inclusion in the  
12   zone change application."

13                  FOM challenged the letter from the  
14   Department of Planning and Permitting as not  
15   signifying the acceptance of the TIAR by DTS. And  
16   this was again rebutted by the testimony of the  
17   Director Formby at the Planning Commission who stated  
18   otherwise.

19                  Based on the foregoing, it is clear by the  
20   written evidence from the State Department of  
21   Transportation, the DPP and DTS and the  
22   representations made by Director Michael Formby at  
23   the City Planning Commission that 10.b had been  
24   satisfied.

25                  In fact, the Petitioner notified this

1 Commission by letter dated July 16, 2014 about this  
2 approval.

3 Secondly, I will move to the issue of storm  
4 water drainage. The condition reads:

5 "Prior to any subdivision approvals for  
6 lands that may drain onto the adjacent Navy lands,  
7 the Petitioner shall provide a master drainage plan  
8 for review by the State Department of Health, the  
9 State Office of Planning, and DPP, that either  
10 includes a letter of consent from the Navy allowing  
11 drainage onto its properties or a specific  
12 explanation of strategies to be employed so that  
13 drainage onto Navy lands is not necessary."

14 Well, we do not intend to drain water onto  
15 the Navy land, because we're building retention and  
16 detention basins with significant retention and  
17 detention basins on the project site.

18 But notwithstanding that, we haven't  
19 received any subdivision approvals, and we don't  
20 anticipate receiving any subdivision approvals within  
21 the immediate future.

22 So we are still working with the various  
23 agencies on our drainage plan and will continue to  
24 work on them to the satisfaction of those agencies.

25 In regard to Commissioner Scheuer's concern

1 with regard to Native Hawaiian issues, if we reach  
2 waters, that is, if our drainage reaches the water,  
3 we will be required, under the Federal Clean Water  
4 Act, to apply for certain NPDES permits and  
5 approvals.

6 In addition, Condition No. 14 of the D and  
7 O requires that we protect Native Hawaiian rights and  
8 the traditional and customary practices as well. So  
9 we are very cognizant of that particular issue.

10 In our drainage plan, we do not anticipate  
11 the water ever reaching Oneula Beach, which is  
12 actually several miles away. And I will address some  
13 of the other issues relative to that.

14 In regard to No. 3, Condition No. 22, this  
15 is the condition relating to change or alteration in  
16 ownership.

17 Well, FOM says that they first got wind of  
18 this through articles in the Pacific Business News.  
19 There were three articles on each land transaction.

20 The first land transaction is to the  
21 Hawaiian Humane Society for one of their facilities  
22 in West Oahu. It's a donation of land to the  
23 Hawaiian Humane Society.

24 The second PBR article was relating to the  
25 Waianae Coast Comprehensive Health Center to build a

1     medical center -- because there's a lot of Native  
2     Hawaiians in that area -- on our property. Again,  
3     that involves a donation of land to that particular  
4     non-profit public service organization.

5             So two of them relate to non-profit public  
6     service associations and involve donations.

7             To date, the conveyances have not occurred.  
8     They require subdivision. We haven't gotten  
9     subdivision approval. We are still in tentative  
10    talks with -- actually the Waianae Coast people with  
11    regard to where they want the site located within our  
12    property. So they are nowhere near conveyance of the  
13    land and title changing.

14            We commit to you that once we get close to  
15    that we will inform this Commission of our intent to  
16    alter ownership by these donations of land to these  
17    public service organizations.

18            Now, the third transaction which FOM brings  
19    to your attention involves the McNaughton Group and  
20    the Kobayashi Group, a 38-acre parcel which is  
21    actually situated across the north-south road from  
22    the main area of Ho'opili, which is kind of a  
23    stand-alone parcel. It was included in the petition  
24    area, by the way.

25            And FOM says that our sale of this is

1     flipping, and basically land speculation. We  
2     disagree. The Petitioner is not a land speculator.  
3     We are not into short-term profits on recently  
4     received entitlements with no intention of developing  
5     the project.

6             As we stated previously, the development  
7     track record over the last 40 years of D.R.  
8     Horton-Schuler Homes speaks for itself. We are not  
9     land speculators, but bona fide developers.

10            During the Commission hearings on this  
11     Petition in June 26, 2009, Mike Jones the then  
12     president of the D.R. Horton-Schuler Homes -- and  
13     he's in the audience today -- testified before this  
14     Commission on its intent to sell early on portions of  
15     the project to third-party sub-developers who have  
16     the experience in developing commercial industrial  
17     projects.

18            Please bear in mind, that's why I went  
19     through the background of who this Petitioner is,  
20     they are the nation's leading home builders. They do  
21     not specialize or build commercial industrial  
22     projects. They do homes, residential homes, that's  
23     their forte. So what they do, is when they have a  
24     multi land use plan, master plan community like this,  
25     which has industrial and commercial pieces, they will



1     sell them off to experienced developers who will do a  
2     good job.

3                 Mr. Jones stated in -- reading from the  
4     transcript of the hearing:

5                 "The other item is these areas" -- and he's  
6     pointing to a land use master plan map with various  
7     colors on the various land uses -- "that are  
8     highlighted, would be meant for commercial use."  
9     He's pointing to some colored areas that were colored  
10    yellow.

11                "These would be one of the first areas that  
12    we want to get developed and either sold to  
13    sub-developers to help finance the project, or else  
14    to get jobs created early on. As you can see, those  
15    are areas that need to get up and running. We are  
16    not hiding the fact that we intended, from very early  
17    on, to sell these commercial-industrial areas to  
18    people that have much more experience, like the  
19    McNaughton-Kobayashi Group, to develop these and to  
20    use that property for the infrastructure cost and  
21    other development cost that we need to front up at  
22    the beginning of the project, and also to get jobs  
23    created, as well, for the area."

24                We submit to you that Condition 22 has not  
25    been violated, since none of the subject properties

1     were conveyed to third parties, and no alteration of  
2     ownership has taken place to date.

3                 2.   The Petitioner has not violated any  
4     notice timeframe under Condition 22 because there are  
5     none.   And;

6                 3.   As soon as the properties are close to  
7     being conveyed, we will give notice to this  
8     Commission of the change in ownership.

9                 We want to bring this to the Commission's  
10    attention.   On August 20th, 2005, we submitted a  
11    letter informing you on August of this year of the  
12    status of the three transactions that I just  
13    described.

14                We ask that this claim by FOM and its  
15    motion be denied as well.

16                No. 4.   Condition No. 14 relating to Native  
17    Hawaiian access rights.

18                FOM alleges that the Petitioner has not  
19    complied with Condition No. 14 which states as  
20    follows:

21                "Pursuant to Article XI, Section 7 of the  
22    Hawaii State Constitution, Petitioner shall preserve  
23    any established access rights of native Hawaiians who  
24    have customarily and traditionally used the Petition  
25    Area to exercise subsistence, cultural, and religious

1 practices or for access to other areas."

2 This particular issue was raised during the  
3 hearing based on the testimony of Mr. Michael Lee on  
4 behalf of the Friends of Makakilo. Mr. Lee was  
5 concerned that drainage from the Ho'opili project  
6 would drain into an alleged karst system.

7 You heard it mentioned a shark karst  
8 system. Karst is a fancy word for cave or aqueduct,  
9 natural geological formation underground that form a  
10 conduit.

11 And during the testimony Mr. Lee said this  
12 particular karst starts on the windward side, goes  
13 under the Koolau Mountains, across Kunia and down  
14 through the Ewa plains and into the ocean at Ewa.

15 This Commission made specific findings and  
16 conclusions of law with regard to Mr. Lee's position  
17 on access rights. The Commission's findings  
18 concluded that the project would not cause any  
19 disturbances in the underground or surface water flow  
20 conditions or negatively impact the nearshore waters  
21 of One'ula Beach.

22 In addition, this can be found in  
23 Conclusions of Law No. 11 of the Decision and Order.

24 In addition, the Commission found in  
25 condition -- in another Conclusion of Law No. 10,

1     that there was no evidence to suggest that any native  
2     Hawaiian traditional and customary rights were being  
3     exercised within the Petition area. See also,  
4     Findings of Fact 413, 415 made by this Commission in  
5     regard to Mr. Lee's testimony.

6             In addition, Petitioner's hydrology expert,  
7     Mr. Tom Nance, disagreed with Mr. Lee's beliefs that  
8     a karst system was running underneath the Petition  
9     area based on his test drilling within the project  
10    site and within the Ewa region, and his understanding  
11    of the underground geology and how karsts are formed.

12            I quote from the official transcript of Mr.  
13    Nance's statement. This is found March 16, 2012,  
14    page 118:

15            "So you don't -- in the area of Ho'opili  
16    which has tens of feet of alluvium sitting on top of  
17    the coral, you don't run into the karsts. In the  
18    real unlikely situation where one actually existed,  
19    it would have been filled with the alluvium that just  
20    blankets it and filled the karsts formation and  
21    therefore eliminated as a possible conduit for water.  
22    So I don't think there is a karst system beneath the  
23    Project site."

24            FOM asserts that Mr. Lee's Native Hawaiian  
25    access rights to One'ula Beach have somehow been

1 blocked or eliminated by Ho'opili.

2 Again, we submit to this Commission that  
3 this project is only starting to begin. We only  
4 obtained zoning a few months ago.

5 The project is at its infancy. We have not  
6 developed the property yet. Therefore, we are not  
7 blocking Mr. Lee's access rights to the Oneula Beach.  
8 And we have no drainage generated from the project  
9 because the project isn't built yet. So we are not  
10 affecting Oneula Beach by this project.

11 We submit to you that FOM's assertions and  
12 claims are anticipatory and speculative.

13 Condition 14 has not been violated, and  
14 there is no legitimate basis to expect that a breach  
15 of this condition would occur. For this reason, we  
16 ask the Commission to deny this claim as well.

17 Now, reaching the last, and I guess most  
18 difficult one that I had to deal with in trying to  
19 figure out exactly what FOM was saying in its motion,  
20 this regards the representation and commitments that  
21 we made in the contested case hearings from 2007 to  
22 2012, and determining which representation he was  
23 referring to.

24 And you have to assume now that there is a  
25 bankers' box of transcripts over these years of

1 various witnesses that we had put forward as well as  
2 the Petitioner making representations to the  
3 Commission.

4 The last allegation of FOM is based on this  
5 section which sets forth the decision-making criteria  
6 of the Commission. In other words, the  
7 representation and commitments made by Petitioner  
8 must be used as criteria for your decision. If it's  
9 immaterial or it's irrelevant, it's not something  
10 that is used as a decision-making criteria,  
11 necessarily.

12 So we would submit that any representation  
13 that we made that is violated must be something  
14 that's material and relevant to your decision to  
15 reclassify these lands.

16 FOM specifically alleges that the  
17 Petitioner has not lived up to its representations  
18 made during the hearing in regard to one specific  
19 area. This involves Petitioner's representations,  
20 which relate to the relocation of farmers who existed  
21 on the property and still exist on our land today.

22 In particular, there was concern expressed  
23 by the relocation of Aloun Farms to other lands,  
24 should it be necessary for them to vacate the land at  
25 Ho'opili.

1                   At the time of the contested case the  
2     Petitioner was renting land to four farmers. These  
3     were some of the largest commercial farms in our  
4     state: Larry Jefts' farm, Sugarland, Alex Sou's  
5     farm, Aloun Farms, Syngenta, which is a huge  
6     corporation and is like a Monsanto. They do seed  
7     corn. And a small farmer Fat Law, who was doing  
8     basal and a subtenant of Aloun Farms, he was  
9     subleasing land that we had leased to Alex Sou.

10                  Three of farms, with the exception of  
11     Aloun, had located to different lands in different  
12     areas of Oahu, Kunia, up in Central Oahu and North  
13     Shore.

14                  What remained was the question about the  
15     relocation of Aloun Farms to continue farming at  
16     Ho'opili, unless its land would be needed for  
17     development, which would be years from -- because we  
18     wouldn't get to this area in a long time.

19                  At this state, Aloun Farms still presides  
20     in Ho'opili doing their farming. They have about  
21     797 acres that they're still farming on Ho'opili.  
22     Aloun Farms had been on Ho'opili land for 15 years  
23     prior to 2012. They were an initial tenant of  
24     Campbell Estate. We bought the property in, I  
25     believe, 2006 and inherited Aloun Farms' lease.

1           Aloun paid way, way below market for his  
2     farm. I think it was something like \$193 per acre  
3     per year, very little. And because of the low rent,  
4     he was able to grow his farm and become the second  
5     largest commercial farmer in the state.

6           The lease also contained conditions, and  
7     warned all of our tenants that the property was  
8     designated for development and that one day they  
9     would be asked to relocate. To date, Aloun Farms  
10    farms on our property 797 acres. Sugarland farms  
11    176; Fat Law, 60 acres; Syngenta, 177 acres. And  
12    with a recent addition of the Whole Farms, you saw  
13    her testimony this morning, of 75 acres and they're  
14    looking at acquiring more property, acreage farming  
15    for their activities, especially organic farming.

16           FOM alleges the Petitioner has not lived up  
17    to its representations regarding Aloun Farms'  
18    relocation. It is not clear from their Motion which  
19    representation he was referring to. So in review of  
20    the transcripts between 2007 - 2012, we picked  
21    several representations that we thought might be  
22    relevant to what he's saying. Here are some of the  
23    official transcripts and the representations I could  
24    locate.

25           One is Mr. Jones' testimony 2009, quote:

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1                   "A few of the farmers that are on there  
2     made provisions to move, move up to the Kunia area."

3                   This is Bruce Plasch, our agricultural  
4     expert testifying in 2009.

5                   "So Aloun Farms, they will be affected by  
6     the development of the lands Ewa by Ho'opili and by  
7     the state. "

8                   Because they also rented state lands near  
9     DHHL and near UH West Oahu.

10                  "They are the ones that really have to find  
11     lands to relocate."

12                  "Now, it's down to 1,850 acres. And it's  
13     just for Aloun Farms."

14                  Mr. Plasch was questioned and  
15     cross-examined vigorously by Mr. Yee here on whether  
16     Ho'opili would find replacement land for Aloun Farms.  
17     Mr. Plasch stated:

18                  "I'm not sure it would be the  
19     responsibility of Ho'opili to -- I don't think it's  
20     their responsibility. I think -- it's very clear  
21     that Aloun Farms entered into a lease with, a short  
22     term-lease of land, short term that lasts decades.

23                  "It's really Aloun Farms' responsibility."

24                  Testimony of Cameron Nekota, vice president  
25     at that time, October 20, 2011:

1                   "There's no -- there's no intent by our  
2     company to displace the agriculture production that  
3     you see there now."

4                   That is true today. The same farms are  
5     there only we have more farmers now.

6                   "And it will likely continue for many more  
7     years to come in the present capacity."

8                   On cross-examination by Mr. Yee:

9                   "Q. Do you know what efforts Ho'opili will  
10    be making to assist in the eventual relocation of the  
11    farmers?"

12                  Response by Mr. Nekota:

13                  "A. You're talking about the three  
14    tenants? Since we bought this property in 2003 we've  
15    always communicated with all of our farming tenants  
16    and we intend to communicate with them as the  
17    Ho'opili development continues. And we're in  
18    discussions with them on various issues now."

19                  Question by Mr. Yee:

20                  "Q. I guess the question arises how does  
21    communication constitute assistance in relocation?

22                  Answer from Mr. Nekota:

23                  "A. There have been no agreements on  
24    assistance with relocation at this time."

25                  "And we will continue to work with them

1 over that period to determine what their needs are at  
2 that time. We are committed to that."

3 That is the extent of the commitment and  
4 representations made by the Petitioner to this  
5 Commission between '07 and '12 regarding Aloun Farms'  
6 relocation. That is, we will continue to work with  
7 them, which we have; and that we will try to help  
8 them in the relocation, but we do not assume the  
9 responsibility for Aloun Farms to find land for them.

10 Now, in regard to the Galbraith lands.  
11 D.R. Horton has already contributed a half million  
12 dollars toward the improvement of the Galbraith lands  
13 located in Central Oahu that is under the  
14 jurisdiction of the Agricultural Development  
15 Corporation, an agency of the State of Hawaii. It is  
16 there for farmers to use. We have committed a  
17 million dollars. We've paid so far a half million  
18 dollars toward the improvement of irrigation in the  
19 fields.

20 Larry Jefts has already relocated there.  
21 Alex Sou is negotiating for a lease there. He has  
22 not yet consummated it yet because he has some  
23 delinquencies that he owes on the Waiahole Ditch  
24 water that he's using for other lands. Until he  
25 resolves that, he will not get a lease. So that's

1 something that we don't control, but we are  
2 monitoring it.

3 We monitor all of our farmers as far as  
4 where they're going to be finding suitable lands.

5 We ask the Commission to also deny this  
6 particular final count.

7 In conclusion, approving FOM's motion would  
8 establish a bad precedent for the Commission's work.  
9 Namely, reopening a docket where evidence and  
10 testimony has already been received, analyzed, cross  
11 examined and decided upon by this Commission to be a  
12 Finding of Fact or Conclusion of Law. The  
13 evidentiary proceeding in this case ended in  
14 June 2012.

15 Through its Motion, Friends of Makakilo  
16 presents a series of non-rationale arguments,  
17 unsubstantiated conspiracy theories, alleged ethical  
18 improprieties, and is not based on pure conjecture  
19 and speculation.

20 If this Commission grants FOM's Motion, it  
21 will be allowing FOM to have a "fourth bite of the  
22 apple". FOM lost before this Commission in 2012.  
23 They then tried to object to our rezoning before the  
24 Planning Commission, then the City Council,  
25 unsuccessfully.

1           They then appealed your decision to the  
2   Circuit Court which was dismissed, and then the  
3   Supreme Court, which was also dismissed.

4           So here we are three years later back to  
5   square one on the fourth bite of the same apple. I  
6   believe that's unfair.

7           Your decision today at this preliminary  
8   stage of the Order to Show Cause is not judicially  
9   appealable. Under the Kaniakapupu case, which states  
10   specifically that this is not a contested case  
11   subject to Chapter 91. In that particular case, the  
12   Plaintiff brought an appeal of a decision like today.  
13   The Commission made a decision today and it was  
14   appealed to the Supreme Court. Supreme Court said  
15   there's no appeal. It's not a contested case.

16           However, if you decide to move forward to a  
17   hearing on the Order to Show Cause, that is  
18   appealable by any party, including ourselves or FOM.  
19   And the question that we have is: When is this all  
20   going to end?

21           We hope that the Commission will exercise  
22   good judgment in determining that.

23           Notwithstanding the foregoing, the Friends  
24   of Makakilo has not met its burden of demonstrating  
25   by the preponderance of the evidence that the

1     Petitioner in this case has egregiously or materially  
2     failed to perform Conditions 10, 11, 14 or 22 as set  
3     forth in your decision; or two, failed to live up to  
4     any representation of commitment regarding Aloun  
5     Farms' relocation, or any of the agricultural issues  
6     at hand.

7             And for these reasons, we respectfully  
8     request that this Commission deny FOM's motion.

9             Thank you very much.

10            CHAIRPERSON ACZON: Thank you, Mr. Kudo.  
11     Before Mr. Kudo takes Commissioners' questions, the  
12     chair calls for a five-minute recess.

13            (Recess taken.)

14            CHAIRPERSON ACZON: Let's go back on the  
15     record.

16            Commissioners, do you have any questions  
17     for Mr. Kudo? Vice Chair Wong.

18            VICE CHAIR WONG: I have a question.

19            In your vast experience and knowledge, we  
20     have a case at the Supreme Court right now, so if we  
21     hear this motion and we make some sort of  
22     recommendation, how does that work with the Supreme  
23     Court issue still hanging?

24            MR. KUDO: Well, the Supreme Court appeal  
25     actually involves a different issue. It involves the

1 important agricultural lands provision of Chapter 205  
2 and the constitution. That is not an issue that's  
3 before this Commission today.

4 And that particular issue relates back to  
5 the 2012 contested case hearings. The Order to Show  
6 Cause before you today is really centered about what  
7 the Petitioner has or hasn't done with regard to your  
8 order that you issued in 2012. So they're really  
9 kind of separate.

10 Now, they can be impacted by the decision  
11 from the standpoint that if the Supreme Court says we  
12 are going to remand the case because we found a  
13 constitutional violation, and we the Petitioner have  
14 to start all over, that is we have to put on the full  
15 case again as if we had never done it before. And a  
16 contested case will be put on before you.

17 In that case, the motion before you is  
18 probably moot, because we're going to cover the same  
19 issues. They will be updated, but they will be the  
20 same issues.

21 However, if the Supreme Court says, well,  
22 we find that there may be a violation, but it's only  
23 on this particular issue and we are going to remand  
24 only that issue back to you, the Commission, to make  
25 a finding on.

1                   That issue may only revolve around  
2     important agricultural lands or something else. It  
3     may not involve any of the issues before us on this  
4     motion of issue to show cause. In that case, the  
5     motion would not be moot.

6                   I hope I didn't confuse you, but that's  
7     kind of -- the problem is, we don't know when and how  
8     the Supreme Court will rule. That's very difficult  
9     to predict.

10                  VICE CHAIR WONG: So the other question I  
11     have, I guess I'm not knowledgeable in this area.  
12     Let's say, we say let's defer this motion, for  
13     example, because we're waiting for the Supreme Court.  
14     Then this motion still is alive until the Supreme  
15     Court makes a decision. And then we have to still  
16     come back and make a decision on this. Correct?

17                  MR. KUDO: Correct. FOM is free to file a  
18     motion at any time that he wishes. So if they want  
19     to bring back the motion, they can do that.

20                  But I think that, you know, I agree with  
21     Mr. Yee's analysis, that you don't want this hanging  
22     over the Petitioner. You know, we're anxiously, and  
23     we are actively pursuing the development of this  
24     property, and to have another cloud over our  
25     tntitlement makes that it much more difficult whether



1 for financing or other things that we need to get out  
2 there to do.

3 So as much as possible we would like this  
4 Commission to make a decision on this motion today.

5 VICE CHAIR WONG: Because I've seen some  
6 Supreme Court decisions that the focus was on this,  
7 but somehow it just expanded to all of it.

8 MR. KUDO: That can occur, and sometimes  
9 occur with regard to justices of the Supreme Court,  
10 they tend to sometimes include other issues in the  
11 decision. That can't be helped. We can't predict  
12 that either. So I don't know what that decision  
13 might be. No way to predict that.

14 VICE CHAIR WONG: Thank you.

15 MR. KUDO: By the way, I wanted to answer  
16 Commissioner Hiranaga's question.

17 Our project is not within the SMA, so that  
18 would not be an issue.

19 CHAIRPERSON ACZON: Vice Chair Scheuer.

20 VICE CHAIR SCHEUER: Mr. Kudo, first of  
21 all, I'll acknowledge that I never thought I would  
22 hear the words from you that you agreed with  
23 Commissioner Scheuer. So thank you for that.

24 MR. KUDO: It's in the transcript.

25 VICE CHAIR SCHEUER: I hope that's recorded

1     verbatim.

2                   Regarding Condition 14 of the Commission's  
3     Decision and Order, I just want to clarify that I  
4     understood from you in your oral presentation that  
5     you believe that actually applies to not just  
6     traditional and customary practices that might be  
7     occurring to the subject property, but it also covers  
8     an obligation that if there's affect from activities  
9     on the property that could affect T and C practices  
10    off the property, that there is an obligation there  
11    by the Petitioner?

12                  MR. KUDO:  I don't think that this  
13    Commission would have the authority to make anyone  
14    responsible for things outside of the petition area,  
15    because as I understand it, this particular -- the  
16    authority of this Commission is to only act with  
17    regard to the petition area, that's your  
18    jurisdiction.

19                  To require or condition things that are  
20    outside of the petition area of the Petitioner with  
21    regard to responsibility for another parcel of land  
22    that we have no control over or beach, et cetera, I'm  
23    not sure it's within the jurisdiction of this  
24    Commission.

25                  We would not have that jurisdiction to

1     affect other people's property or public lands. We  
2     certainly would try to control whatever we can  
3     control within our property, which is the petition  
4     area, of course.

5             VICE CHAIR SCHEUER: I'm referring  
6     specifically as it relates to Condition 11 on  
7     drainage. There is some obligation there.

8             I understood from your previous remarks,  
9     you've looked at drainage issues, findings of fact  
10    made by LUC in that the FOF related to that, that  
11    there was not going to be an affect off-site,  
12    however, you have to control your drainage on-site so  
13    that you are not negatively effecting T and C  
14    practices off-site.

15            MR. KUDO: Correct.

16            CHAIRPERSON ACZON: Commissioner Mahi.

17            COMMISSIONER MAHI: Mr. Kudo, I just wanted  
18    to clarify a couple of things.

19            I know you made reference to Mr. Nance.

20            MR. KUDO: Tom Nance, he's the hydrologist.

21            COMMISSIONER MAHI: What was the reference  
22    to his findings? I think you made a reference. I  
23    just couldn't get the pen in hand in time to write it  
24    down.

25            MR. KUDO: The transcript is March 16,

1     2012, lines 22 to 25, page 118, on lines one and five  
2     page 119.

3             COMMISSIONER MAHI: In his findings, it  
4     wasn't going to affect the karst system? Or no karst  
5     system?

6             MR. KUDO: He didn't believe, in his  
7     experience, because he's drilled, he's worked in the  
8     different areas to do hydrology, he didn't believe  
9     there was a karst, but if there was a karst  
10    underground, that it would probably have been filled  
11    by the alluvium of soil, so wouldn't be able to  
12    conduct water, is what he said.

13            COMMISSIONER MAHI: I just was going  
14    through my mind, because I again had to reference the  
15    area of the expanse of the 1500 acres that Ho'opili  
16    is, of course, the owners of.

17            And then, of course, because I always think  
18    about the names, the old names, ancient names like  
19    today was reference to Honouliuli, and what does  
20    Honouliuli mean? Then there is a name that I would  
21    like to see if you had researched, one is called  
22    Onealuena. Onealuena is the ancestral land of Kane.  
23    And just for our thinking, is onealuena is when the  
24    waters of Kane, which come from my part of my island,  
25    Waikane, Waiahole, Kahalu'u, and that's where I live,

1     those waters move in and through the Koolaus, and  
2     they end up through the karst systems of Ewa.

3             So that's why that name is there. I always  
4     like to just be aware of the names and how they tell  
5     so much truths about our land from our ancients. So  
6     I'm really just interested in reading his findings.

7             MR. KUDO: His testimony also revealed that  
8     because the geology is a little bit different as you  
9     move toward Ko'Oolina side, that there are karsts in  
10    that area. But he believed that in the area that we  
11    are, which is closer to Waipahu, that there wasn't  
12    any karsts there.

13            COMMISSIONER MAHI: Thank you, thank you.

14            CHAIRPERSON ACZON: Any other questions?  
15    Commissioner McDonald.

16            COMMISSIONER McDONALD: Just curious where  
17    in the process you folks are with regard to the  
18    drainage master plan.

19            MR. KUDO: We are in the process of getting  
20    the approval from the Department of Planning and  
21    Permitting, as well as we need to have the drainage  
22    plan routed to the State Department of Health and one  
23    more area, State Department of Health and Department  
24    of Office of Planning.

25            COMMISSIONER McDONALD: Thank you.

1                   CHAIRPERSON ACZON: Anybody else?

2                   Thank you, Mr. Kudo.

3                   Mr. Dudley, it's your lucky day. Since you  
4 only took 45 minutes, I want to give you no more than  
5 ten minutes for rebuttal.

6                   DR. DUDLEY: Thank you.

7                   FRIENDS OF MAKAKILO REBUTTAL

8                   I just like to answer some of the  
9 questions, some of the points that -- getting back to  
10 first of all to the karsts. I don't believe that my  
11 motion mentions karsts at all. What we're concerned  
12 about is entirely different than that.

13                   If you take that map that we have, and we  
14 see down here at the bottom of the blue, what is  
15 going to happen to the water as it flows this way?

16                   Well, if you kind of go over here a little  
17 bit, you see the road, the parkway. Next to that is  
18 the Kalo'i Ditch. And that is the ditch that, as you  
19 go down farther, has all of the dams along the way.  
20 And as you go down there, those dams cannot hold the  
21 water of Ho'opili as well as the water that it was  
22 built for.

23                   So this Ho'opili water, they need to do  
24 something with that. It's very interesting, I don't  
25 know if you thought so, but I'm sitting here saying

1 if you had given it to the DPP already, why can't we  
2 find out what you're doing there.

3 And we find out that they're going to dig  
4 ditches, well, where are those retention ditches that  
5 they're going to have or retention dams or whatever.

6 I think, again, we're at a point where they  
7 should be telling us this. This is really, really  
8 important. And they should be coming forth with what  
9 their plan is for drainage.

10 I would like to go back and talk for just a  
11 second about the farmland issues. What we're  
12 concerned with in farmland is their representation,  
13 their representation that the crops can grow  
14 somewhere else just as well and the ag is going to be  
15 just fine on this island.

16 And we find that in the stuff that I gave  
17 you, Exhibit 58, we find a letter from Bruce Plasch,  
18 and he's -- someone says to him:

19 Isn't it true that the crops, the crops  
20 generally don't need more rain, but rather they grow  
21 best in the warm weather and with abundant sunshine  
22 and irrigation?

23 And he answered: Solar radiation. Yes I'm  
24 aware of that. Aren't there -- up to now there will  
25 be -- his answer is that.

1           There will be different varieties of crops,  
2   but basically the farmer has to adjust with the  
3   particular land he's farming, so there will be  
4   different varieties that will be suitable to various  
5   conditions. That's what we are saying.

6           And that's what we're saying. They're  
7   giving us all this kind of baloney. There aren't any  
8   varieties of plants that can grow in the rain.

9           Also the very Decision and Order which Mr.  
10   Kudo wrote, says:

11           The project will have little or no adverse  
12   impact on Hawaii's agricultural production, as other  
13   farmland is available on the Island of Oahu to  
14   accommodate the relocation of existing Ewa farms, as  
15   well as to accommodate the future growth of  
16   diversified crop farming.

17           So it's a constant thing. They're saying,  
18   oh, yeah, crops can grow anywhere. We can replicate  
19   these things. Those are representations and they're  
20   dead wrong.

21           I want to come back to the term we were  
22   working on with the TIAR.

23           He is saying, oh, we're talking about two  
24   different things. We're talking about households,  
25   and he's talking about -- what was it -- homes or



1 something like that. Housing units. No, no, no, no,  
2 we're all on the same map here.

3 You know, if you take this page where I  
4 have the big discrepancy with them, where did I get  
5 all those numbers? I got them right out of -- it's  
6 also part of the exhibits I gave you, Exhibit No. 68,  
7 the TAZ numbers. What are the TAZ numbers? When we  
8 go over here and take a look, TAZ. This is the TAZ  
9 numbers down here. What does it say? Says  
10 "household". What does it say up here on top?  
11 "Household". What does it say on the TAZ thing,  
12 "household". Everywhere you go, "household". As far  
13 as I know, we're talking about the same stuff.

14 I'm saying that the TIAR is faked. I'm  
15 saying that the numbers are brought in and just made  
16 out of magic. I'm saying that if you have five lanes  
17 and you've got 95,000 houses going to feeding those,  
18 and you got backup for four-and-a-half miles, you  
19 can't have six lanes and add 70 to that makes 165,000  
20 houses, and have free flow of traffic like we are  
21 saying. It's just not going to work. They're lying  
22 to us.

23 Now, how does all of that happen? It  
24 happens this way. When you do a TIAR, you do it for  
25 specific things. You put yourself in a vacuum and

1     you don't have to pay attention to all of the other  
2     stuff.

3             You take a look at your project and say,  
4     oh, yeah, we are going to put additional lane there,  
5     and it's all going to work together. It's because  
6     they get away with this. You might sit there and say  
7     what does he know? I went to the Department of  
8     Transportation and talked with Ed Smithen. And he  
9     said, I won't say this publicly, but this is the  
10    honest to God truth. The truth is, you have anybody  
11    call me and I'll tell them.

12            He said when they do TIAR's, they don't  
13    look at everybody else, and when they bring them to  
14    us, we approve of them based on what's in the stuff.

15            So if they come and bring us something that  
16    doesn't pay attention to anybody else, we can't go  
17    beyond it. We can't go beyond what they give us and  
18    say we don't approve of this.

19            So they bring these numbers and make up all  
20    this kind of stuff and Ed Smithen is sitting there  
21    saying, well, you add this, this, this. We are  
22    saying they started too low. We're saying that their  
23    numbers are too low. He doesn't even pay attention  
24    to that.

25            He just says this all fits, and this is the

1 TIAR and it's okay, but the rest of the world, we're  
2 getting screwed. You can't let it go on. We got to  
3 get them. This is the last chance, you know, the  
4 last chance to say we're going to give an order to  
5 show cause, and we want you to prove that you can get  
6 your additional 70,000 houses into that one lane of  
7 the freeway.

8 That's you, that's your children. That  
9 freeway isn't going to get any wider for generations  
10 and generations. It's your family. Okay?

11 And they're going to have to suffer. And  
12 we're going to be an island that is not food  
13 self-sufficient. And there are going to be times --  
14 we can even starve, you know? This is serious,  
15 serious business.

16 I think I've said enough. Thank you so  
17 much.

18 CHAIRPERSON ACZON: Thank you, Mr. Dudley.  
19 Commissioners --

20 MR. SEITZ: Can I get one minute of  
21 rebuttal, because I joined the motion?

22 SIERRA CLUB REBUTTAL

23 MR. SEITZ: What I really want to say is  
24 that I think you've had arguments with respect to our  
25 concerns about traffic, which say we followed the

1 procedure which we anticipated that the Land Use  
2 Commission directed us to do. You shouldn't look  
3 beyond the fact that we followed the procedure.  
4 Whether we plead evidence that is reliable or not,  
5 whether we get down to the truth of whether we can  
6 address or even make a good faith attempt to address  
7 the traffic problems, which we all acknowledge exist,  
8 that doesn't matter.

9 We went through the steps. We jumped  
10 through the hoops and that's enough. And what we are  
11 saying today with regard to both of the issues on  
12 which we have joined is that it does matter. And  
13 when the LUC last time around rejected our basic  
14 arguments, but acted on conditions, it was a direct  
15 result of very serious concerns that were raised by  
16 the evidence in the extensive hearings that we had  
17 about traffic, about runoff of groundwater.

18 And we don't think they've solved those  
19 problems. Now, one of them may say it's not time to  
20 resolve it yet, but with regard to the TIAR, they say  
21 we have resolved those problems. But they haven't.  
22 They've just gone through hoops. And we have a very  
23 frank admission from the other side that we don't  
24 check their data, if they just present something to  
25 us that looks like it meets the requirements of what

1     they were ordered to do, we will just approve it,  
2     whether its accurate or not. And that's our concern.

3             CHAIRPERSON ACZON: Thank you, Mr. Seitz.

4             Commissioners, further questions to the  
5     parties?

6             VICE CHAIR WONG: Mr. Yee, I have a  
7     question.

8             Going back to my question about Supreme  
9     Court issue. We are a quasi-judicial body.

10            Do you think we have jurisdiction over the  
11     Supreme Court, this hearing right now?

12            MR. YEE: I'll be honest, it's not entirely  
13     clear. I would say you probably do. It deals with  
14     what remains of the case that is currently on appeal,  
15     and because I believe that involves an issue that's  
16     not related to the appeal, I believe you do have  
17     jurisdiction.

18            If you did not have jurisdiction, then the  
19     appropriate remedy would have been to deny the motion  
20     for lack of jurisdiction. We are not recommending  
21     that you deny the motion for lack of jurisdiction.  
22     We are recommending you deny the motion on its  
23     merits.

24            VICE CHAIR WONG: Thank you.

25            CHAIRPERSON ACZON: Commissioners?

1 COMMISSIONER CABRAL: I have a question.

2 CHAIRPERSON ACZON: Go ahead, Commissioner  
3 Cabral.

4 COMMISSIONER CABRAL: Mr. Dudley, you just  
5 now again referenced that to the folks in the various  
6 traffic approval process don't do their job, or they  
7 do a very limited portion of it or something. You've  
8 referenced that or that they told you that.

9 Do you have any written statement to that  
10 effect, or -- you haven't presented any of them as a  
11 witness here.

12 Do you have anything other than in a sense  
13 conversations or something? I mean, I think that's  
14 an important comment or something, because it has a  
15 big ramification here.

16 Do you have anything to hang our hat on  
17 with regards to that?

18 DR. DUDLEY: That's why we need an  
19 evidentiary hearing. But the one thing though is  
20 that I do have, in my motion, the entire statement  
21 from the traffic expert on the mainland, you know. I  
22 think that's really worth looking through and seeing  
23 what he's saying has not been done.

24 Again and again and again things that have  
25 not been done, answer that, answer that.

1 COMMISSIONER CABRAL: Thank you.

2 CHAIRPERSON ACZON: Anybody else?

3 Commissioners, what's your pleasure?

4 Commissioner Wong.

5 VICE CHAIR WONG: I want to make a motion.

6 After hearing all these issues that's before us to  
7 date, I want to move to deny the motion, because the  
8 Commission does not have a reason to believe that  
9 there has been failure to perform according to the  
10 conditions imposed.

11 CHAIRPERSON ACZON: Any second?

12 COMMISSIONER CABRAL: I'll second that.

13 CHAIRPERSON ACZON: Discussions? Any  
14 discussions? Commissioner McDonald.

15 COMMISSIONER McDONALD: Dr. Dudley, I've  
16 always kind of admired your passion and your  
17 commitment to what you believe in, but in this case,  
18 I do believe the motion brought before this body is a  
19 little premature and, therefore, I'm going to support  
20 the motion.

21 CHAIRPERSON ACZON: Anybody else? Vice  
22 Scheuer.

23 VICE CHAIR SCHEUER: I am going to vote in  
24 favor of the motion, but I want to be very clear  
25 about why.

1           I'm going to repeat what I said during the  
2 public testimony. We have a very narrow legal issue  
3 in front of us, which is whether we believe that  
4 there is sufficient indication that a condition has  
5 been violated. This is not about very true and  
6 passionate comments for and against the overall  
7 project, its value in terms of housing and jobs, its  
8 impact on ag lands are not what's before us today.

9           So as a Commissioner, I'm forced to really  
10 look at the specific arguments that you provided to  
11 us, Dr. Dudley. I think sort of in ease of dealing  
12 with them, the drainage issue is not ripe yet.  
13 Because of the phrasing of the condition, that  
14 drainage plan has to be done at the time subdivision  
15 approval is sought from the county. And that  
16 subdivision approval hasn't been sought.

17           So while there is, again, alleged from the  
18 record today that there may be potential ways that  
19 this was going to impact coastal resources and  
20 traditional and customary practices, that's not yet  
21 before us, that has not yet occurred.

22           Regarding the claim that Condition 22 was  
23 violated on ownership. You know, I disagree with Mr.  
24 Yee that some conditions are less important than  
25 others, in this context, because I think actually our



1 administrative rules are clear that if we have reason  
2 to believe that a condition has been violated, we  
3 should issue an order to show cause.

4           What has happened in the intervening time  
5 is we have been informed by either party of their  
6 intention to sell some of the property, and that  
7 would really need remedy, that would sort of be  
8 sought in a hearing for an order to show cause.

9           Regarding the important issues you brought  
10 about the future of agriculture on this island, food  
11 sustainability and suitability of other lands for  
12 these crops, you yourself said that you didn't  
13 believe these actually raised to the level of a  
14 violation of any of the conditions that were  
15 enumerated when I asked you earlier.

16           And, finally, you know, I am troubled by  
17 the different accounts of the numbers used on TIAR.  
18 I think if it so happens that the Hawaii Supreme  
19 Court remands the full case to us, that would be a  
20 very rich area of examination. Only a fool would  
21 suggest traffic is even acceptable now, much less  
22 going forward.

23           With that said, the question is, is there  
24 evidence that that condition has not been fulfilled?  
25 And, in fact, there is a lot of evidence to the

1     contrary, including in your own motion that the  
2     evidence has been provided, that they have satisfied  
3     the condition.

4             So I find myself in an awkward space of  
5     hearing the hard and heavy thoughts of what many  
6     people and you are bringing to us today, but under  
7     the narrow nature of the motion and where we are in  
8     this administrative proceeding, I'm going to have to  
9     vote in favor of the motion made by Commissioner  
10    Wong. But I wanted to be very clear on the record  
11    why I was doing so.

12            CHAIRPERSON ACZON: Commissioner Mahi.

13            COMMISSIONER MAHI: Not to reiterate my  
14    colleague Mr. Scheuer's comments. I find myself in  
15    the same quandary. In Hawaiian the word "kamaha",  
16    which means my head is of extreme weight in trying to  
17    make the best decision here.

18            And only because there is a large part of  
19    me that I just think back at what Ewa means. Ewa in  
20    Hawaiian means uneven, Ewa, Ewa, we use that word.  
21    Honouliuli, that means the phase of rich growth,  
22    uliuli means the dark growth which refers to the  
23    honey bee. I also mentioned Onealuena, ancestral  
24    land of Kane. And so also the ancient name of that  
25    area now called Kalaeloa. We don't use Kalaeloa any

1 more. We don't use Kanehili. Kanehili is the real  
2 name.

3 And so I always -- it pains me to have to  
4 come to this decision, and I was constantly reading  
5 Ho'opili. And Ho'opili, which means the coming  
6 together, pili means to cling, that's what pili  
7 means. And yeah, I know it's tough. So with all  
8 this kamaha, I'm still, as you notice we all didn't  
9 jump to second the motion, because we're all feeling  
10 this. I really believe my colleagues are feeling the  
11 same feelings I'm going through right now.

12 But, again, I will be supporting the motion  
13 due to the fact of the context by which -- the narrow  
14 context for which we have to act. And I just hope  
15 and pray that someday that we can really Ho'opili on  
16 this at one point in time is my hope. Thank you.

17 CHAIRPERSON ACZON: Thank you, Commissioner  
18 Mahi. Commissioner Estes.

19 COMMISSIONER ESTES: I'm going to vote to  
20 support the motion. I was convinced by Mr. Yee who  
21 said, is reversion an appropriate remedy? I don't  
22 think it is. I'm going to support the motion, and  
23 I'm going to have to go catch a plane.

24 CHAIRPERSON ACZON: Commissioner Hiranaga.

25 COMMISSIONER HIRANAGA: Just clarity on the

1 motion. Motion is to deny?

2 CHAIRPERSON ACZON: I'll repeat.

3 COMMISSIONER HIRANAGA: Before I go, I  
4 wanted to ask a substantive question to that  
5 because the motion is no reason --

6 CHAIRPERSON ACZON: For the record, the  
7 motion has been made by Commissioner Wong and  
8 seconded by Commission Cabral to deny the motion  
9 because the Commission does not have reason to  
10 believe that there has been a failure to perform  
11 according to the conditions imposed.

12 COMMISSIONER HIRANAGA: My question is, if  
13 the reason to deny was stated to be the Commission  
14 believes it does not have jurisdiction at this time  
15 because of pending legal action at the Supreme Court,  
16 how would that bias the Petitioner here, the  
17 difference in the reason for the motion to deny?

18 CHAIRPERSON ACZON: Have to go into  
19 executive session.

20 COMMISSIONER MAHI: I believe Jean asked  
21 again who was speaking. Having difficulty hearing  
22 over here.

23 COMMISSIONER HIRANAGA: It's important to  
24 the Petitioner and I have a question. Is it just the  
25 motion, is it motion just to deny, or you have to put

1 a reason for the denial?

2 CHAIRPERSON ACZON: Commissioner Wong.

3 VICE CHAIR WONG: My motion was to deny  
4 because of the way the motion was presented to us, it  
5 was just a very narrow focus. It was not about  
6 jurisdiction, it was more about, you know, was any of  
7 these conditions violated. So that's the only  
8 portion of my motion, not about jurisdiction.

9 COMMISSIONER HIRANAGA: So my question: Is  
10 it required that a reason be given as part of the  
11 motion, or can you just say I move to deny without  
12 justification within the body of the motion? You can  
13 state that during discussion, but state the reasons  
14 within the motion.

15 MS. ERICKSON: You need to give a reason  
16 why you're denying the motion, especially when it's a  
17 motion for order to show cause, because the  
18 Commission has to, if it grants the motion, it has to  
19 find that it has reason to believe that there has  
20 been a violation.

21 If it determines to deny the motion, it has  
22 to say that it does not have reason to believe that  
23 there has been a violation of the conditions.

24 COMMISSIONER HIRANAGA: So I plan to  
25 support the motion, the basic motion to deny, but I

1     may not necessarily agree for the reason for the  
2     denial, I'll just state that.

3             CHAIRPERSON ACZON: Thank you, Commissioner  
4     Hiranaga. Any further discussion? If no further  
5     discussion, Mr. Orodener, please poll the  
6     Commission.

7             EXECUTIVE OFFICER: Thank you, Mr. Chair.

8             The motion is to deny the motion because  
9     the Commission does not have a reason to believe that  
10    there has been a failure to perform according to the  
11    conditions imposed.

12            Commissioner Wong?

13            VICE CHAIR WONG: Aye.

14            EXECUTIVE DIRECTOR: Commissioner Cabral?

15            COMMISSIONER CABRAL: Aye.

16            EXECUTIVE DIRECTOR: Commissioner Scheuer?

17            VICE CHAIR SCHEUER: Aye.

18            EXECUTIVE DIRECTOR: Commissioner Mahi?

19            COMMISSIONER MAHI: Aye.

20            EXECUTIVE DIRECTOR: Commissioner McDonald?

21            COMMISSIONER McDONALD: Aye.

22            EXECUTIVE OFFICER: Commissioner Hiranaga?

23            COMMISSIONER HIRANAGA: Aye.

24            EXECUTIVE OFFICER: Commissioner Estes?

25            COMMISSIONER ESTES: Aye.

1 EXECUTIVE DIRECTOR: Chair Aczon?

2 CHAIRPERSON ACZON: Aye.

3 EXECUTIVE DIRECTOR: Mr. Chair, the motion  
4 passes unanimously.

5 CHAIRPERSON ACZON: Thank you. Any other  
6 business? There being no further business, I declare  
7 this meeting adjourned.

8 (The proceedings ended at 4:01 p.m.)

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## CERTIFICATE

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HONOLULU            )

I, JEAN MARIE McMANUS, do hereby certify:

That on October 3, 2015, at 9:00 a.m., the  
proceedings contained herein was taken down by me in  
machine shorthand and was thereafter reduced to  
typewriting under my supervision; that the foregoing  
represents, to the best of my ability, a true and  
correct copy of the proceedings had in the foregoing  
matter.

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

Dated this 23rd day of October, 2015, in  
Honolulu, Hawaii.

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JEAN MARIE McMANUS, CSR #156