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BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

Held on February 9, 2016

King Kamehameha Kona Beach Hotel

Ballroom #4, 75-5660 Palani Road, Kailua-Kona,

Hawai'i 96738

Commencing at 9:30 a.m.

ADOPTION OF MINUTES

TENTATIVE MEETING SCHEDULE

HEARING AND ACTION SP92-381

WAIKOLOA DEVELOPMENT COMPANY (HAWAI'I)

APPOINTMENT OF LUC LEGISLATIVE COMMITTEE

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chairperson

3 COMMISSIONERS:

4 JONATHAN SCHEUER, Vice Chair

ARNOLD WONG, Vice Chair

5 KENT HIRANAGA

AARON MAHI

6 NANCY CABRAL

LINDA ESTES

7

8 DIANE ERICKSON

Deputy Attorney General

9

STAFF:

10

DAN ORODENKER, Executive Director

11 RILEY K. HAKODA, Planner/Chief Clerk

SCOTT A.K. DERRICKSON, AICP-Planner

12

13 JENNIFER LIM, ESQ.

JASON MACY, JR.

14

For Petitioner

15

DANNY PATEL, Deputy Corporation Counsel

16

DARYN ARAI, County of Hawaii

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BRYAN YEE, ESQ.

Office of Planning

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1 CHAIRPERSON ACZON: Good morning. This is
2 the February 9th, 2016 Land Use Commission meeting.

3 The first item of the agenda is the
4 adoption of the January 27th, 2016 minutes. Are
5 there any corrections or comments on them?

6 If not, is there a motion to adopt the
7 January 27, 2016 minutes?

8 VICE CHAIR WONG: So moved.

9 VICE CHAIR SCHEUER: Second.

10 CHAIRPERSON ACZON: A motion has been made
11 by Commissioner Wong and seconded by Commissioner
12 Scheuer. All in favor say "aye". Any opposed?

13 The minutes for January 27, 2016 are
14 unanimously adopted.

15 The next agenda item is the tentative
16 meeting schedule. Mr. Orodener.

17
18 EXECUTIVE OFFICER: Thank you, Mr. Chair,
19 tomorrow we are at the LUC conference room 405 to
20 hear the Ko Olina Motion for Reconsideration.

21 Our next meeting is scheduled for
22 February 24th on Maui, Pu'unoa HOA and site visit for
23 Ma'alaea Plantation. I understand that may not
24 happen.

25 March 8th is still open.

1 March 24th we're back here in Kona.

2 March 26th, back here in Kona as well.

3 April 13 and 14 currently being held off
4 for Ma'alaea project.

5 And on April 14th an update on my Oahu
6 Waimanalo Gulch. The agenda from there on is open.

7 CHAIRPERSON ACZON: Any questions?

8 COMMISSIONER SCHEUER: Yes. I was just
9 wondering whether with the pending Waimanalo Gulch is
10 there any -- make sure all the parties are aware of
11 the discussions that were supposed to be going on,
12 because our concern last time some of the parties
13 weren't aware of what was going on, and it hindered
14 our deliberations.

15 EXECUTIVE OFFICER: We can check back with
16 them.

17 COMMISSIONER SCHEUER: Thank you.

18 CHAIRPERSON ACZON: Any other questions?
19 Thank you, Mr. Orodenker.

20 This is an action meeting on Docket No.
21 SP92-381 Waikoloa Development Company (Hawai'i)'s
22 Request for Amendment to Special Permit No. 833
23 (Sp92-381) to Allow a Time Extension to Condition No.
24 12 (Life of Permit), Allow Greenwaste Composting, and
25 Allow the Processing and Recycling of Portland Cement

1 Concrete and Asphalt Concrete Pavement Tax Map Key:
2 6-8-001: Portion of 066 (formerly 6-8-001: Portion
3 of 005.)

4 Will the parties please identify themselves
5 for the record.

6 MS. LIM: Good morning. This is Jennifer
7 Lim, and I'm representing the Applicant, WHC, LPP,
8 doing business as West Hawaii Concrete. To my right
9 is Mr. Jason Macy. He's the vice president and
10 general manager of West Hawaii Concrete. He actually
11 runs the quarry operation that we're here to talk
12 about today.

13 MR. PATEL: Good morning, Deputy
14 Corporation Counsel representing the County of
15 Hawai'i Leeward Planning Commission.

16 To my left is Daryn Arai, who is the
17 Planning Program Manager for the Planning Department,
18 County of Hawai'i. He also oversees the
19 administrative staff supporting the Leeward Planning
20 Commission.

21 MR. YEE: Bryan Yee on behalf of Office of
22 Planning.

23 CHAIRPERSON ACZON: Thank you.

24 I will now call for those individuals
25 desiring to provide public testimony on Docket

1 SP92-381 yo identify themselves. All such
2 individuals will be called in turn to our witness box
3 where they will be sworn in prior to their testimony.

4 The Chair would like to note from time to
5 time I'll be calling for short breaks.

6 After the completion of the public
7 testimony portion of the proceedings, we will
8 commence with hearing the case in chief - Agenda item
9 #V.

10 Are there any individuals who want to
11 provide public testimony on this docket?

12 EXECUTIVE OFFICER: We don't have anyone
13 signed up, Mr. Chair.

14 CHAIRPERSON ACZON: Thank you.

15 Let me update record from this matter.

16 On January 11, 2016, the Commission
17 received the complete record of the County of Hawai'i
18 Leeward Planning Commission's proceedings
19 recommending approval of Applicant's application for
20 amendments to the Special Permit.

21 On January 26, 2016, the Commission
22 received \$1000 filing fee from Petitioner's
23 Representative.

24 On February 1, 2016, the Commission mailed
25 the February 9-10, 2016 LUC meeting agenda notice to

1 the parties and the statewide, Oahu and Hawai'i
2 mailing lists.

3 On February 8, 2016, the Commission
4 received Applicant leeward Plan's Proposed Order
5 adopting the County of Hawai'i Leeward Planning
6 Commission's Findings of Fact, Conclusions of Law,
7 and Decision & Order.

8 Let me briefly describe our procedure for
9 today on this docket.

10 First, I will give opportunity for the
11 Applicant to comment on the Commission's Policy
12 governing reimbursement of hearing expenses.

13 The Applicant will then make its
14 presentation.

15 After the completion of the Applicant's
16 presentation, we will receive any public comments
17 from the Hawai'i County Department of Planning.

18 After the completion of the County's
19 presentation, we will receive any public comments
20 from the State Office of Planning.

21 After we receive public comments from the
22 State Office of Planning, the Commission will conduct
23 its deliberations.

24 Are there any questions on our procedure
25 for today?

1 MS. LIM: No questions.

2 CHAIRPERSON ACZON: Has our staff informed
3 you of the Commission's policy regarding the
4 reimbursement of hearing expenses?

5 MS. LIM: Yes, Chair, and the Applicant
6 accepts the policy.

7 CHAIRPERSON ACZON: Thank you, Ms. Lim.
8 Please proceed with your presentation.

9 MS. LIM: So what we are here to do today
10 is to ask this Commission to consider extending the
11 time, the life of the existing Special Permit, and
12 also expand a couple of the uses that are currently
13 permitted.

14 But what I would like to do before
15 launching right into the request is to give the
16 Commission a little bit of background about this
17 project, and particularly because I've got Mr. Macy
18 here and he actually runs the quarry and has for
19 several years, make him available for questions if
20 the Commission has some questions.

21 I'm not going to belabor and keep everyone
22 here too long. I'm very appreciative that the
23 Commission could meet today in Kona.

24 So you know that we filed an application.
25 Mr. Arai kindly pointed out to me that unlike what we

1 wrote in the proposed D and O that we filed
2 yesterday, our application was actually filed
3 September 15th, 2015, not 2016 -- sorry for the
4 typo -- an application with the County Planning
5 Department.

6 This was an application, as I said, to
7 amend the existing Special Permit. The first Special
8 Permit was issued back in 1993, and it was for quarry
9 operation that is going on now and going on since
10 that time.

11 The quarrying didn't immediately start in
12 1993. It took some time to take care of a few of the
13 conditions that were imposed, and just basically get
14 their business up and running.

15 But they have been running the quarry for
16 some 20-odd years there.

17 So I'll give you a bit of an orientation on
18 where the property is located. And I refer to the
19 exhibits as well that the county file to make it
20 easier.

21 Our application was filed, Exhibit 1, by
22 the county. And to give you some perspective on
23 where the property is, if you were to turn to
24 Exhibit 9, which is the zoning map of the property,
25 and I don't know if anybody's got that handy, but you

1 can see that the property is a good bit mauka, about
2 four miles mauka of Queen Ka'ahumanu Highway. It's
3 off Waikoloa Road. And there's actually a private
4 road from Waikoloa Road into the quarry site, and
5 that's a private road that this Applicant had
6 constructed. This was one of the conditions that had
7 to be satisfied before the quarry could start
8 operating initially.

9 So it's in the area of Waikoloa. It's
10 completely surrounded by vacant Agricultural District
11 land.

12 Moving on from there, the property of the
13 Special Permit is 290 acres -- I'm sorry --
14 219.990 acres. The property, when initially was
15 presented to the State Land Use Commission it was a
16 much larger parcel. And the request was for only
17 that 219-acre portion of that parcel. So while
18 there's been some changes in numbers, that's just a
19 matter of subdivision, no expansion on the land area
20 that was the subject to the Special Permit.

21 The land was subdivided. There's a
22 subdivision map included as Exhibit 2, but in any
23 event, the current lot is 3-B2, and it's 243-acres
24 .794, but again, the only the portion of the property
25 that is subject to the Special Permit, the only

1 portion of the property that Mr. Macy can operate is
2 his quarry on is 219.990 acres. We're not seeking to
3 change that whatsoever.

4 The property is not owned by West Hawaii
5 Concrete. The property is owned by -- forgive me,
6 this is an awkward name -- Wqj2008 Investment, and
7 Ukemehame Quarry Company, limited partnership. So
8 they have been leasing it or letting West Hawaii
9 Concrete operate it under a license as for several
10 years.

11 They acquired the property in 2008. And
12 before that, under the prior owners, the quarry had
13 been operating then for several years.

14 Rather than walking you through the entire
15 application, which you no doubt read, when the
16 Special Permit was initially approved by the Planning
17 Commission, it was subject to several conditions of
18 approval. And we have filed as, I believe, it's
19 Applicant's Exhibit 4, so that's within the County
20 Exhibit 1. Applicant's Exhibit 4 is the annual
21 status report, and that's updating the Commission on
22 the status of compliance with the various conditions
23 of approval.

24 There were a total of 16 conditions of
25 approval that were imposed by the Land Use

1 Commission, they were initially proposed by the
2 Planning Commission, but because this is a Special
3 Permit of 219.990 acres, of course, the State Land
4 Use Commission has the final say on the final
5 approval on what the conditions on the permit should
6 be.

7 So if you care to look at that, you'll see
8 the Applicant has complied with all of the permit
9 conditions. There has been a couple of amendments.
10 I'm happy to talk about them, but I also don't want
11 to bore you with excessive details.

12 There were a couple of amendments to extend
13 the time frame, so this is not first time that we're
14 asking for a time extension. The initial term of the
15 Special Permit was very short. The current term --
16 we're still within the current term. It doesn't
17 expire until 2018, New Year's Eve 2018. But this is
18 a very important part of West Hawaii Concrete's
19 business. They've been doing this for a couple of
20 decades.

21 This isn't their only quarry site. I
22 believe there are seven other sites, so this is an
23 important part of their business, and it's what they
24 do. So knowing that a deadline was coming up, they
25 wanted to come in, in a reasonable enough time, and

1 that included first having preliminary informal
2 meetings with State Land Use Commission director and
3 staff to solicit feedback and any ideas, also similar
4 kinds of meetings with the Office of State Planning
5 and also with the Planning Department of the County
6 of Hawaii, because it had been quite awhile since
7 this permit had been before the Commission.

8 Going back to that list of conditions, all
9 conditions have been complied with. The Applicant
10 continues to comply with the conditions, and there is
11 no request for relief from those conditions, with the
12 exception of -- as I said -- a Request to Extend the
13 Permit term from the current New Year's Eve of 2018
14 to New Year's Eve of 2043.

15 And then another request, and this wasn't
16 to change the conditions that were imposed, but
17 another request that the Applicant is making is to be
18 allowed to expand the uses on the property. Again,
19 we're not looking to expand the amount of property
20 that is the subject of the Special Permit, but by
21 expanding the uses of some very complimentary uses.

22 Go they're looking to add Greenwaste
23 Composting to a three-acre portion of the property.
24 And if you're interesting in seeing the area
25 specifically -- trying to find the site plan --

1 Exhibit 6 that was filed with the Application, if you
2 care to turn to that, shows you not only the outline
3 of Special Permit area, but the proposed three-acre
4 area for Greenwaste Composting.

5 And then there's a ten-acre area, again,
6 within this 220 -- I'll just call it 220 -- ten-acre
7 area that the Applicant has identified for recycling
8 of asphalt concrete pavement and Portland cement
9 concrete.

10 So those are recycling activities of
11 construction or ex-construction materials which is
12 very complimentary to the existing quarry.

13 The Greenwaste Composting is already taking
14 place on the property and has been taking place for
15 some time. And we did file a copy of the State
16 Department of Health Permit that the Applicant
17 received to allow the Greenwaste Composting.

18 It's allowed within the Agricultural
19 District. However, certainly we wanted to be
20 up-front with the Commission, and also that's an
21 important part of your business, so we wanted to make
22 sure that we're coming before the Commission to
23 formally request to be allowed to do the Greenwaste
24 Composting.

25 So, again, the quarrying activities will

1 remain as they have been for several years, that's 20
2 plus years without any complaints from neighbors,
3 without any complaints from any agencies. No
4 violations. All as stated in the Application, I
5 believe also repeated in the Planning Director's
6 background report.

7 And then the Applicant would like to
8 continue with the current Greenwaste Composting
9 that's been going on problem free for the past three
10 years, around three years.

11 And then the concrete recycling, Portland
12 cement concrete and asphalt, concrete pavement,
13 estimated at about, at the most, 1000 tons per year
14 of each material that would be brought to the site in
15 that ten-acre area identified on the site plan. When
16 enough that material was accumulated -- and by
17 enough, we mean pursuant to the State Department of
18 Health Solid Waste Permit, that will limit how many
19 material they can have on the site when enough
20 material has accumulated, that material will be
21 recycled and will then be used for construction, will
22 be used in roads.

23 Do you want to speak for a minute or so
24 about what?

25 CHAIRPERSON ACZON: I'll have to swear him

1 in.

2 JASON MACY

3 Was called as a witness by and on behalf of the
4 Applicant, was sworn to tell the truth, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 THE WITNESS: We currently operate a
8 concrete recycling operation in our Kona operation.
9 It's been fairly successful. Here on the Big Island
10 we don't see a lot of big buildings being demolished
11 yet, so we don't have huge quantities coming in.
12 Mostly we have a lot of driveways and things like
13 that that people are bringing back to us. It does
14 divert a certain amount -- it's not a lot of waste
15 going to the landfill, so we have to fill that need
16 people have been looking for to be able to dispose of
17 the concrete. And we take it with rebar for wire
18 meshing it. We use a process to separate the
19 concrete from the wire mesh or the rebar.

20 We take the rebar to the steel recyclers.
21 We process the concrete and base course material.
22 Generally, it's been fairly successful for us.

23 MS. LIM: If you like, now I'll describe a
24 little bit more about the property itself.

25 Again, I know you've seen this all in the

1 Application but as a refresher and also to make it
2 easier if the Commission has questions.

3 As I indicated, the property, the petition
4 area is accessed from a private road that connects to
5 Waikoloa Road. So Waikoloa Road is a county road.
6 And the road between Waikoloa Road and the quarry
7 site, is the road that I mentioned the Applicant
8 built several years ago as a condition of the Special
9 Permit approved by the State LUC.

10 The quarry road goes through a small
11 Special Permit area that is Goodfellow Bros. base
12 yard special permit. So that is completely outside
13 of the Special Permit that we're here to talk to you
14 about today, but in case you looked at the map, there
15 could have been a confusion. There two Special
16 Permit areas right next to each other. There is a
17 skinny road -- not that skinny, but concrete paved
18 road that you folks built -- asphalt, sorry -- and
19 then it exits right by a small Special Permit area
20 that is the Goodfellow Bros. base yard.

21 Goodfellows Bros., are related to the
22 actual owners of the property that was Hawaii
23 Concrete has the license from. So it's a very
24 collaborative relationship in terms of shared use of
25 the roadway. The two Special Permits are completely

1 separated. There are no shared uses. All parking
2 for West Hawaii Concrete is done on West Hawaii
3 Concrete property. All work done for West Hawaii
4 Concrete is done on West Hawaii Concrete property,
5 but just if you looked at the maps and saw that.
6 That's what you were looking at.

7 So as discussed in the Application, right
8 now, with the current amount of aggregate, again,
9 this is in the report that we filed with the Planning
10 Commission and Land Use Commission earlier this year,
11 the amounts of aggregate had varied from 2008 through
12 2014. The 2014 was just under 33,000 tons of
13 aggregate for the year.

14 So taking that into account -- we're
15 looking at page 15 of the application -- to give you
16 a sense of what kind of traffic this project
17 generates, it generates minimal traffic. But the way
18 that these numbers were brought about is assuming 36,
19 37,000 tons of aggregate per year, and the ability,
20 the capacity of the trucks that actually come and
21 take the material out of the quarry, and those trucks
22 run 12, 24 tons each, so we took a mid point of that,
23 and this is something that Mr. Macy, Senior, so this
24 is Mr. Macy, Junior, so Mr. Macy, Senior who worked
25 at the quarry for years and still works as a

1 consultant, he did these calculations, because he's
2 been living and breathing the quarry application a
3 long time.

4 He took the average of the two trucks
5 between 12 and 24 tons, so he went ahead and assumed
6 18-ton trucks with 36, 37,000 tons of aggregate a
7 year results from 2020 truckloads a year, if you
8 assume 250 business days a year, five times 52, it
9 averages out to about eight truckloads a year. This
10 is not a traffic intensive /SEUF operation.

11 And, again, I don't want to bore the
12 Commission. This is all in the Application, so I
13 won't go on and on about it. But it's not a traffic
14 intensive operation.

15 Even if this Commission approves what the
16 Leeward Planning Commission already approved, which
17 is to allow both the extended term of the permit, and
18 then the few additional uses that we're seeking, the
19 traffic change should be really negligible, because
20 these aren't detailed uses. You and I and Tom, Dick
21 and Harry aren't coming into get aggregate or coming
22 in to drop off greenwaste, and certainly won't be
23 driving in to get rid of spare concrete and asphalt.

24 It's really strictly industrial commercial
25 users.

1 So even at the height of the most intensive
2 use, assuming 2000 tons of concrete and cement is
3 assuming equal amounts of aggregate or even more and
4 assuming the most intensive, I believe the solid
5 State of Hawaii permit for the Greenwaste allows up
6 to 3,000 tons per year.

7 In any event, under the most aggressive
8 numbers that we can through at Mr. Macy, Senior to
9 say what is traffic going to look like there, it was
10 still coming out to between eight, ten, maybe 12, if
11 you want to be very aggressive truckloads back and
12 forth a day.

13 So there is going to be some variation.
14 Certainly times of the year where the business is
15 busier and times of the year where it's less busy,
16 but it's not a traffic intensive kind of project.

17 Nevertheless, you no doubt saw that there
18 was some back and forth with the Department of Public
19 Works and this is all on the record. The Department
20 of Public Works had looked back at the condition that
21 they had requested the Planning Commission impose on
22 this permit initially, and they -- and this go-around
23 kind of reiterated that.

24 I'll just find the wording. So that the
25 permit condition at the Department of Public Works

1 had requested initially, and that's in the permit
2 right now is, access onto Waikoloa Road from the
3 project site, including provision of adequate sight
4 distance shall meet with the approval of the
5 Department of Public Works prior to final plan
6 approval. Should additional infrastructure
7 improvement such as channelization be required by the
8 Department of Public Works during the life of the
9 permit, such improvements will be provided in a
10 timely manner by the Applicant at no cost to the
11 County of Hawaii.

12 So that was the condition that was imposed
13 originally. And I believe the Applicant's sense was
14 that that condition had been satisfied through
15 actually building and paving the road that connects
16 from Waikoloa Road to the quarry.

17 But times change and the permit is back up
18 for renewal, so the Department of Public Works sent a
19 letter to the Planning Department basically
20 reiterating this condition, which was fine.

21 But looking back at this condition now,
22 20-plus years later, the Applicant thought that the
23 wording of the condition could be a little more
24 finely tuned particularly because that road was
25 built.

1 So I'll just point you to -- if you care to
2 look at it -- but the Applicant did have some back
3 and forth with the Department of Public Works, and
4 ultimately, I believe, quite cooperatively, the
5 Department of Public Works and the Planning
6 Department and the Planning Commission, because it
7 was presented to the Planning Commission, agreed to
8 the following condition which is included in County's
9 Exhibit 24, which is -- again, this is to replace the
10 condition that I just read.

11 So this is one of the few changes to the
12 conditions that we are requesting. At the request
13 from the Department of Public Works, access to
14 Waikoloa Road shall comply with Chapter 22 of the
15 Hawaii County Code. Additionally, after the fifth
16 anniversary of the issuance of the extended permit --
17 so that's the permit we're asking for approval of
18 today -- the Applicant shall prepare a traffic impact
19 analysis report at no cost to the County of Hawai'i
20 for submission to the Department of Public Works.

21 Applicant shall coordinate with the
22 Department of Public Works on implementing
23 Applicant's pro rata share of appropriate traffic
24 mitigating measures, if any, should it be determined
25 through the TIAR that improvements to the Waikoloa

1 Quarry Road intersection are needed due to
2 Applicant's activity at the quarry.

3 So that is the initial request. The
4 Applicant, again, as written in Exhibit 24, had
5 requested some rewording of that condition to
6 basically say: After the fifth anniversary of the
7 approval if the Department of Public Works requests
8 the TIAR, the Applicant will do it at no cost to the
9 county, and that the Applicant will coordinate with
10 Department of Public Works in implementing
11 Applicant's pro rata share of appropriate traffic
12 mitigation measures, if any, should it be determined
13 through the TIAR that improvements to the Waikoloa
14 Quarry Road intersection are needed due to the
15 Applicant's activities at the quarry; and access to
16 Waikoloa Road shall comply with Chapter 22 of Hawaii
17 County Code.

18 So there's a little bit of rewording
19 between what was in the Planning Director's
20 recommendation and report. But the Applicant asks
21 the Planning Commission to consider on December 17th,
22 and, of course, representatives from the Planning
23 Department are here to speak to it.

24 But I think you'll even see in the Planning
25 Commission's final approval that they submitted to

1 this Land Use Commission, that the Planning
2 Commission did not object to that really just
3 wordsmithing to that condition.

4 I think I've exhausted talks about traffic
5 and related kinds of things. I'll try to move on.

6 I'll move through this very quickly, and I
7 do hope that you all have questions, that's why we're
8 here. You may have noticed -- and Mr. Daryl
9 (phonetic) is here to see this -- Mr. Jeff Daryl, he
10 works with Mr. Arai at the Planning Department. And
11 when we filed this Application he said, oh, this is a
12 really big application for just an amendment to an
13 existing Special Permit.

14 There's nothing new going on here, no
15 surprises. But we have had experience in front of
16 the Planning Commission, and we try to do our best.
17 So we did try to put together an application that
18 touched all those basis that we believe the
19 Commission finds important. And so we did file
20 several exhibits with the Application. And the ones
21 that I'll bring your attention to particularly --
22 although we're happy to talk about any of them -- is
23 we do have a 2015 archaeological assessment that was
24 included as our Exhibit 12, and then as Exhibit 12A
25 is a letter from the State Historic Preservation

1 Division dated August 12, 2015, confirming or
2 approving the archaeological assessment that was
3 submitted and concurring with their recommendation
4 that no further archaeological work was necessary on
5 this property.

6 Another addition is, this is included as
7 our Exhibit 13, is the West Hawaii Concrete Waikoloa
8 Quarry Kapaa Kai discussion. This is July 2015
9 report prepared by Bob Rechtman. This is not a
10 cultural impact assessment in the way that you think
11 about them. But Mr. Rechtman made a very good faith
12 effort to look at cultural reports done on aerial
13 properties. Please remember too that Mr. Rechtman
14 has been involved on the historic research for this
15 property going back to the beginning.

16 So this report included as Exhibit 13 I
17 believe would address any of the Commission's
18 obligations or concerns over the Ka Pa'akai O Ka Aina
19 analysis.

20 Another report that I would like to bring
21 your attention to is the one that West Hawaii
22 Concrete commissioned and wanted to have before this
23 Commission and the Leeward Planning Commission is
24 included as our Exhibit 16, and that's a general
25 botanical survey, invertebrate-fauna assessment for

1 the Waikoloa Quarry. So this was done by two
2 different scientists that went out, assessed the
3 entire property to make sure that there weren't -- to
4 determine whether there were threatened or endangered
5 species, critical habitat, anything there that they
6 didn't know about.

7 Now, I know you can say this is a quarry,
8 why would you even do that. Well, if we didn't do
9 it, we'd all be sitting here wishing we had done it.
10 You just never know. They went out and they looked
11 over the whole property, no threatened or endangered
12 species. There's no critical habitat. There's no
13 proposed critical habitat. The property is entirely
14 clean that way.

15 Because they do not have expertise,
16 specific expertise on invertebrates, West Hawaii
17 Concrete also had a report commissioned, and this is
18 our Exhibit 17, called Blackurn's Sphinx Moth Survey.
19 This is a moth that is an endangered species, it is
20 all often found on a tree called tree tobacco which
21 is not endangered, not threatened or endangered in
22 any kind of way a special plant, it's all over the
23 place. But the moth that can live on the plant is an
24 important species. So West Hawaii Concrete wanted to
25 make sure there was some tree tobacco on the

1 property. As you'll find all over this part of the
2 island. So they had these guys go out. First they
3 gave a preliminary survey, and then they went back
4 and did the real hard core survey where they looked
5 at every single leaf of every single plant and made
6 sure that there weren't any Blackburn's Sphinx Moth.
7 So that's included as Exhibit 17.

8 And the other report that I'll bring to
9 your attention is the hydrologic assessment that was
10 prepared as Exhibit 18. Now, the point of this
11 report, again, you could say, well, the quarry has
12 been going on for all these years, why are we talking
13 about the impacts from water resources.

14 We know that that's something that the
15 Commission is concerned about, and has to be
16 concerned about, so we wanted to make sure we looked
17 into it and provided the Commission and the Planning
18 Commission with adequate information by which to make
19 a decision.

20 What you'll see in this report is that the
21 amount of water use on the property is pretty
22 minimal. I can read those numbers, if you would
23 like. And the amount of additional water use should
24 these requested added uses be permitted, again,
25 that's the concrete recycling, asphalt and concrete

1 recycling, and the greenwaste processing is minimal,
2 super minimal. So the amount of water being used
3 right now is fairly insignificant when compared to
4 the entire aquifer where the water is coming from.
5 The additional water will be extremely insignificant,
6 and perhaps more importantly, the difference in the
7 amount of water both the flow rate underneath the
8 property and the discharge at the shoreline will be
9 absolutely insignificant. And there is a lot more
10 words. I don't mean to give short shrift to this
11 report.

12 Those were the basic findings. You can
13 read through the report and you're familiar with it
14 yourself.

15 So in the Application, in the Planning
16 Director's report -- in the Planning Director's
17 recommendation and ultimate Leeward Planning
18 Commission approval was sent to you folks, I believe
19 that you'll see that all of us, the Applicant and the
20 Planning Department and Planning Commission tried to
21 march down the various criteria that have to be
22 considered when granting a special permit.

23 Again, this is special permit that's
24 already been issued, so you're not being asked to
25 grant this, but you are being asked to extend this,

1 so everybody marched down those conditions. In
2 addition, the Applicant did march down the Hawaii
3 State Plan, Chapter 205 arguably requires all Land
4 Use Commission to be compliant with the Hawaii State
5 Plan.

6 There is compliance with the County General
7 Plan, Urban Expansion Area, that is what this
8 property is designated, certainly this type of
9 industrial quarry-type use is in the Urban Expansion
10 Area. It's in the South Kohala Community Development
11 Plan area, South Kohala Community Development Plan
12 doesn't designate uses in the same way that the
13 General Plan does. So the General Plan has Urban
14 Expansion, and no doubt Mr. Arai and Mr. Patel will
15 speak to this better than I could try.

16 But unlike the General Plan that kind of
17 identifies in a way like zoning, different
18 categories, the South Kohala Community Development
19 Plan doesn't do that. What it does do in this case,
20 is say: There is a few things that we're concerned
21 about here in South Kohala, and one of those things
22 is pu'u and views. Is there anything about a
23 development project that is going to interfere with
24 the pu'u? Anything going to interfere with existing
25 views?

1 And the determinations were, no. In terms
2 of the pu'u, that's addressed in Dr. Rechtman's
3 report.

4 In terms of the views, our Exhibit 19,
5 which again is within the County's Exhibit 1, are
6 views of the quarry in various different advantage
7 points. As I said before, it's surrounded by vacant
8 land, and even if you go to the nearest residences or
9 businesses, I think there's no view impact. And
10 again, for the last 20 years it's been operating
11 without problems.

12 So I think that speaks to something, as
13 does the fact that we have sent public notice, no
14 fewer than two times, at least two times in addition
15 to posting the time on the property.

16 And I've ran out of gas, I think. I
17 believe we have met all the criteria. What we filed
18 yesterday was certainly not our most comprehensive
19 piece of work. We did try to touch on some of the
20 more important things.

21 Mr. Arai pointed out that one typo to you
22 that I identified to you folks, and I also note that
23 our Findings of Fact 19 on page five, what we filed
24 yesterday, clearly that needs to be revised, because
25 Director Kanuha is not here today, and neither is Ms.

1 Stebbins, Corporation Counsel. And if it is not in
2 there, we should have of course requested that all of
3 the filings, including the Application and Planning
4 Department put together be incorporated to that D and
5 O. So with that, I'll ask for questions or turn it
6 over to Mr. Arai.

7 CHAIRPERSON ACZON: Any questions for Ms.
8 Lim. Commissioner Cabral.

9 COMMISSIONER CABRAL: I have a couple
10 questions since I am here from the Big Island. I
11 have driven, at least by your driveway and know that
12 you're there.

13 I will confirm that there is not a lot of
14 action around them and not a lot of dense
15 neighborhoods. But I also understand that the
16 roadway, now that the Saddle Road has been realigned,
17 that there's going to be changes in the Waikoloa Road
18 at some point in the future -- God knows when -- but
19 the federal government is involved.

20 Are you aware of that? And is that
21 changing any roadway? I don't know if it's going to
22 affect the entrance at your driveway or not, if
23 that's affecting you at all, I don't know. I'm just
24 thinking that that might be a change that might
25 impact your future.

1 MR. MACY: I don't know the final route of
2 that last ten mile section. I know one of the routes
3 is actually on the opposite side of the quarry,
4 little more toward Pu'uanahulu landfill on the south
5 side, but also several routes that bring it back into
6 the Waikoloa Road, but I think those are about a mile
7 to two miles mauka of our existing intersection.

8 It's kind of hard to tell at this point
9 until we see what route they actually choose for that
10 road.

11 COMMISSIONER CABRAL: Then the second thing
12 too is, because 25 years is a long time in the
13 future, and I don't know the exact -- and I'm reading
14 what I have today or received this morning -- on your
15 situation with Public Works and county and that to
16 pay for your share of mitigate or do any improvements
17 on that intersection, although right now I will agree
18 that the truck a day, the 12 truck a day is probably
19 not a major significance since we all fly down the
20 road, but the day may come, because this is a huge
21 growth growing populated area and as other things
22 change, that may become much more populated or much
23 more traveled.

24 Is there any -- this requirement that you
25 have to do it within five years, have to do your

1 study, and then you have to make an agreement. But
2 five years is very soon. 25 years is a long time
3 away.

4 I can't tell from the language if that
5 requirement to continue to mitigate any road
6 improvement, i.e., 15 years from now, it's so heavily
7 traveled and potentially so dangerous because you
8 have large trucks pulling out and pulling in that are
9 slower, and you only one lane that are face-to-face
10 with each other, if there's any requirement that in
11 15 or 20 years if it is a problem you would have to
12 make two separate dividing roadways with a median in
13 the middle to make sure you have pullout lanes or
14 something. I don't know if that ends if in five
15 years or is that something that the county controls,
16 have you pay for future improvements?

17 MR. MACY: What we tried to do with the
18 county, was establish something that if they view
19 this as perhaps a negative and our business does pick
20 up, they have an option to have us do a TIAR and get
21 that study done. And see if our current traffic
22 levels are at levels that we need to put in
23 separation or deceleration at that intersection to
24 safely get our trucks on the road and keep the public
25 safe. That's kind of how we tried to address it.

1 COMMISSIONER CABRAL: So it could be five
2 years or ten years?

3 MR. MACY: Yeah. The county has a right to
4 tell us that we want you to do a TIAR, and based on
5 that finding we will or will not have to do some sort
6 of improvements to that intersection.

7 CHAIRPERSON ACZON: Commissioner Wong.

8 VICE CHAIR WONG: Question about the
9 Greenwaste. I guess from my knowledge Greenwaste
10 does produce methane. Are you using it in any way or
11 just --

12 MR. MACY: What we are doing with the
13 greenwaste is we have actually a private landscaper
14 and he controls all the greenwaste. They bring in
15 Greenwaste. They do several resorts down there. And
16 all they're doing is composting it, and then reusing
17 it for their own use in their landscape business and
18 putting it back out there right now.

19 We are not trying to capture any methane or
20 anything at this time. It was just kind of a
21 convenience that most of the resort areas are all on
22 that Kohala Coast out there, and the Greenwaste was
23 having to be trucked by him all the way into Kona to
24 dispose of it, so we were kind of a convenient
25 location for that customer to go through that process

1 and divert some waste from the landfill.

2 COMMISSIONER WONG: Thank you.

3 CHAIRPERSON ACZON: Any other questions?

4 COMMISSIONER MAHI: Just a short question.

5 I notice in the documents we have here
6 there is a reference to a firm -- in Hawaiian what
7 firm is kupu kupu?

8 MS. LIM: I don't know.

9 COMMISSIONER MAHI: Just wondering.

10 Another question was like the 20 years that
11 you've been there, that was your time, were there any
12 artifacts or burials discovered for that time?

13 MR. MACY: Not on the quarry site. We
14 never saw anything on the quarry site.

15 COMMISSIONER MAHI: Mahalo.

16 MS. LIM: If I may expand on his response.

17 CHAIRPERSON ACZON: Go ahead.

18 MS. LIM: This is my area, I should have
19 spent more time talking about it, but our Exhibit 5,
20 which is the Final Plan Approval. This isn't a great
21 picture, kind of a rough picture, but here's the
22 quarry site, and up above it is an area that's noted
23 as archaeological complex and proposed buffer area.

24 That is entirely outside the 219.990, and
25 that's more clearly described in Dr. Rechtman's

1 report. There's a 50-foot buffer around this
2 property, and then there is a further 50-meter
3 distance between the 50-foot buffer and the Special
4 Permit property. So there was never any indication
5 or any suggestion that there were any sites within
6 the actual quarry property, and then that was
7 confirmed by Mr. Rechtman's study and approved by
8 SHPD.

9 The important things are up here and that's
10 entirely outside the Special Permit.

11 If I just make one addition to the exchange
12 that Commissioner had with Mr. Macy, I know it's a
13 condition, but he didn't use the word pro rata share.
14 So, yes, helps West Hawaii Concrete affirms that it
15 will be there, it will do the traffic report and it
16 will mitigate if there are significant traffic -- I
17 mean of course they will do their pro rata share.
18 They're not going to fix traffic problems coming from
19 all over the place, but they will take
20 responsibility. Just getting that clear.

21 CHAIRPERSON ACZON: Does county wish to
22 offer any public witnesses this morning?

23 MR. PATEL: Deputy Corporation Counsel Dan
24 Patel. No, not too many more. On our end, we just
25 like to confirm that the Leeward Planning Commission

1 does make a favorable recommendation to grant the
2 request of the Applicant.

3 Touching on the Applicant's proposed
4 Decision and Order, aside from the revisions that Ms.
5 Lim mentioned this morning, we would note that the
6 factual statements in the proposed Decision and Order
7 appear to accurately reflect the proceedings before
8 and the ultimate decision of the Leeward Planning
9 Commission.

10 In response to Commissioner Mahi's
11 question, I believe the correct is polo day
12 (phonetic). It's in the botanical survey. That's
13 all.

14 CHAIRPERSON ACZON: Ms. Lim, any questions
15 for Mr. Patel?

16 MS. LIM: No.

17 CHAIRPERSON ACZON: Go ahead, Vice Chair
18 Scheuer.

19 COMMISSIONER SCHEUER: Just to affirm -- I
20 know the Leeward Planning Commission was okay with
21 the change to condition regarding traffic
22 improvements.

23 Was the Department of Public Works, who
24 originally proposed the condition, were they amenable
25 to that change? If can you point me to where in the

1 record it might indicate that.

2 MR. PATEL: That was discussed at the
3 December 17 Leeward Planning Commission meeting,
4 SHPD, it is in the minutes. That was for the
5 forwarded to you along with the rest of the record.

6 COMMISSIONER SCHEUER: Sorry, they were
7 voluminous.

8 CHAIRPERSON ACZON: Mr. Yee.

9 MR. YEE: Office of Planning has no
10 objection to the proposed amendment to the Special
11 Permit.

12 CHAIRPERSON ACZON: Ms. Lim, any questions?

13 MS. LIM: No questions.

14 CHAIRPERSON ACZON: Commissioners, any
15 final comments?

16 COMMISSIONER CABRAL: I'm assuming
17 somewhere along the line it assures that -- nor do I
18 see in any information I have, and that the owners of
19 the property are a party to or agreement with this
20 extension. I would assume that that's taking place
21 in your commercial lease. So that it doesn't appear
22 that they are part of the Petition, but they are
23 aware of the agreement. Just a concern I have.

24 MS. LIM: Thank you. Please rest assured,
25 the Exhibit 3, which is included with our

1 Application, that is your Exhibit 1 from the County,
2 is the fee authorization from those two fee owners
3 that I mentioned before, Exhibit 3A is West Hawaii
4 Concrete's authorization for my firm to process this
5 application.

6 In addition, at the Leeward Planning
7 Commission hearing Mr. Charlie Jenks, who was
8 representative of the landowners, was there in
9 attendance. In fact he joined Mr. Macy, Senior and I
10 when we met with the Office of State Planning and the
11 Land Use Commission in those informal meetings that I
12 mentioned that took place several months ago.

13 So the landowner is fully aware of it and
14 in support of it.

15 CHAIRPERSON ACZON: Commissioner Scheuer.

16 COMMISSIONER SCHEUER: I just want to thank
17 Applicant and the counsel for the thorough job. We
18 had a meeting on a different permit on a different
19 island recently and there was no, for instance, Ka
20 Pa'akai analysis explicitly done in the record. I
21 found that troubling. I voted against it.

22 I have no problem with the thorough job
23 that you have done, and the necessary information
24 provided. So thank you very much

25 MS. LIM: Thank you for saying that.

1 CHAIRPERSON ACZON: Commissioners, what is
2 your pleasure?

3 COMMISSIONER CABRAL: Since I'm from this
4 island, I would go ahead and move to approve the
5 amendment to the Special Permit Application by West
6 Hawaii Concrete based on the findings as recommended
7 by the Leeward Hawaii Planning Commission.

8 COMMISSIONER MAHI: I second.

9 CHAIRPERSON ACZON: The motion has been
10 made by Commissioner Cabral and seconded by
11 Commissioner Mahi. Any discussion?

12 COMMISSIONER SCHEUER: Note for the record
13 that errors are going to be corrected in the Proposed
14 Findings of Fact and the D and O.

15 CHAIRPERSON ACZON: Any discussion? No
16 discussion. Mr. Orodener please poll the
17 Commission.

18 EXECUTIVE OFFICER: Thank you, Mr. Chair.
19 The motion is to approve the amendments to
20 the Special Use Permit.

21 Commissioner Cabral?

22 COMMISSIONER CABRAL: Yea.

23 EXECUTIVE OFFICER: Commissioner Mahi?

24 COMMISSIONER MAHI: Yes.

25 EXECUTIVE OFFICER: Commissioner Wong.

1 VICE CHAIR WONG: Aye.

2 EXECUTIVE OFFICER: Commissioner Scheuer?

3 COMMISSIONER SCHEUER: Aye.

4 EXECUTIVE OFFICER: Commissioner Hiranaga?

5 COMMISSIONER HIRANAGA: Aye.

6 EXECUTIVE OFFICER: Commissioner Estes?

7 COMMISSIONER ESTES: Aye.

8 EXECUTIVE OFFICER: Chair Aczon?

9 CHAIRPERSON ACZON: Aye.

10 EXECUTIVE OFFICER: Mr. Chair, the motion
11 carries with seven votes.

12 MS. LIM: Thank you very much.

13 CHAIRPERSON ACZON: Five-minute recess.

14 (Recess was taken.)

15 CHAIRPERSON ACZON: We're back on the
16 record.

17 The next agenda item is an action to
18 appointment a LUC Legislature Committee.

19 Before I take a motion, I would like Mr.
20 Orodenker to describe the growth of these meetings.

21 EXECUTIVE OFFICER: Thank you, Mr. Chair.

22 The legislature, the one that was appointed
23 last year is a subcommittee of the Commission that
24 would allow for quick decision-making by the
25 Commission with regard to testimony and legislation.

1 As you know, very often we have testimony
2 that has to be submitted on short notice. We have
3 changed the bills and things like that that occur.
4 In between meetings, and we would have to respond
5 much more quickly than that.

6 So this legislative committee would be
7 representing the Commission as a whole with regard to
8 what was going on before the legislature.

9 CHAIRPERSON ACZON: Thank you. I'm
10 assuming no public testimony on this.

11 The Chair would like to entertain a motion
12 to appoint LUC Legislative Committee to attend to LUC
13 legislative matters during the 2016 Legislative
14 Session.

15 COMMISSIONER ESTES: I make the motion that
16 we appoint a Legislative Committee. Is that what
17 you're asking for?

18 CHAIRPERSON ACZON: Yes.

19 COMMISSIONER CABRAL: I would like to add
20 to that, I would recommend that the Chairman and the
21 two vice chairs on the legislative committee.

22 CHAIRPERSON ACZON: Whose motion is that?

23 (Laughter).

24 COMMISSIONER ESTES: I don't get a second.

25 COMMISSIONER MAHI: I have a second.

1 COMMISSIONER ESTES: I would like to speak
2 it what Nancy said.

3 It seems to me it ought to be all five of
4 the Commissioners in Oahu on the legislative
5 committee. They're there. Nobody has to get on a
6 plane. If there's something special that you want
7 one of us to deal with you can always call us and we
8 can get them on the phone.

9 CHAIRPERSON ACZON: That's too many.

10 MS. ERICKSON: Five Commissioners is a
11 quorum.

12 COMMISSIONER ESTES: My apology. I didn't
13 understand.

14 CHAIRPERSON ACZON: This is Commissioner
15 Estes' motion?

16 COMMISSIONER ESTES: Yes.

17 COMMISSIONER HIRANAGA: There was a motion
18 before.

19 COMMISSIONER CABRAL: Was it seconded
20 already? I'll second that motion to have a
21 committee, and then I would like to amend it to be
22 that it would be the Chair and the two vice chairs
23 that would make up the legislative committee to work
24 with our staff.

25 CHAIRPERSON ACZON: Everybody okay with

1 that?

2 COMMISSIONER ESTES: Okay with that.

3 CHAIRPERSON ACZON: Moved by Commissioner
4 Estes and seconded by Commissioner Cabral to appoint
5 the Chair and two Vice Chairs to be on the
6 Legislative Committee. Any discussion?

7 COMMISSIONER SCHEUER: Mr. Chair. The
8 Commission and the member of the public testifying to
9 say the member and member of the public here, with
10 the legislature you never know what is going to
11 happen in the very end.

12 There has already been one hearing on a
13 bill that would have radically changed our powers of
14 LUC, and you saw the testimony from our Executive
15 Director. That bill has been amended but it is still
16 alive and if it goes to conference anything can
17 happen.

18 There's also some bills that would increase
19 administrative bills from individual legislatures
20 that would increase our enforcement powers, which are
21 severely lacking right now, especially after the
22 Supreme Court ruling in Bridge Onalea (phonetic). We
23 have very limited power even regarding even undoing
24 District Boundary Amendment to try to make sure that
25 the applicants follow the conditions that they're

1 doing.

2 So I just for the information I kind of --
3 at least I understand and envision though there is
4 not exclusive limitation on what we are going to
5 doing. Those are going to be the main focus on our
6 activity, trying to defend the existing powers of the
7 Land Use Commission and try to increase our ability
8 to have some enforcement when we go through careful
9 deliberation that we actually have some abilities
10 that applicants follow through on what they promised.

11 CHAIRPERSON ACZON: Thank you. Any
12 Commissioner?

13 COMMISSIONER HIRANAGA: Mr. Chair, I would
14 just like confirmation from the nominees that they're
15 willing to serve and that they will put forth their
16 best effort to represent LUC.

17 COMMISSIONER WONG: Yes.

18 COMMISSIONER SCHEUER: I'll serve. I don't
19 know about best effort. Yes, best effort,
20 absolutely.

21 COMMISSIONER ESTES: Why don't you give
22 them the oath, Edmund.

23 (Laughter.)

24 CHAIRPERSON ACZON: Any discussion? If no
25 further discussion, Mr. Orodener.

1 EXECUTIVE OFFICER: Thank you, Mr. Chair.

2 The motion is to apply the Legislative
3 Committee made up of the Chair and Vice Chair, Chair
4 Aczon, Vice Chair Scheuer, and Vice Chair Wong.

5 Commissioner Estes?

6 COMMISSIONER ESTES: Aye.

7 EXECUTIVE OFFICER: Commissioner Cabral?

8 COMMISSIONER CABRAL: Aye.

9 EXECUTIVE OFFICER: Commissioner Hiranaga?

10 COMMISSIONER HIRANAGA: Aye.

11 EXECUTIVE OFFICER: Commissioner Scheuer?

12 VICE CHAIR SCHEUER: Aye.

13 EXECUTIVE OFFICER: Commissioner Wong?

14 VICE CHAIR WONG: Aye.

15 EXECUTIVE OFFICER: Chair Aczon?

16 CHAIRPERSON ACZON: Aye.

17 EXECUTIVE OFFICER: Mr. Chair, the motion
18 carries unanimously.

19 CHAIRPERSON ACZON: The Chair would like to
20 thank the committee members for their best efforts.

21 Mr. Orodenker, anything to report?

22 EXECUTIVE OFFICER: We have a number of
23 bills that are being tracked, and that we are
24 tracking. I'll try to go through as quickly as
25 possible.

1 House Bill 2043 relating to the LUC
2 requires Land Use Commission to process the reversion
3 of Land Use District Boundary reclassifications and
4 revoke approvals for Special Use Permits in cases
5 where the pertinent county has violated or failed to
6 enforce land use conditions or restriction.

7 This one actually is kind of a funny bill
8 because it gives the power to enforce our conditions
9 against the county, but the point is who pays the
10 piper is the developer? So we support the intent,
11 but note potential due process issues with
12 restricting whom may bring an order to show cause.
13 That's been referred water, land and judiciary.
14 Hasn't been scheduled before a hearing yet.

15 HB2044 also relates to LUC, establishes
16 penalties for any petition or an amendment to a
17 district boundary that violates, neglects or fails to
18 conform to or comply with Chapter 205 HRS.

19 We're supporting the intent of this one as
20 well. Although current rules insure infrastructure
21 is delivered in a timely fashion.

22 There is a portion of this bill that
23 changes incremental districting in a 20-year project
24 instead of ten. However, our testimony will be that
25 although we don't have a problem with not requiring

1 incremental districting on projects that are going to
2 be built out over 20 years, we would like to require
3 developers to give an incremental districting plan so
4 we can insure that we craft conditions that would not
5 allow the developer to skate on building
6 infrastructure.

7 That's been referred to water, land and
8 judiciary, not scheduled. That's essentially the
9 house's version of an enforcement bill, similar to
10 the one that the administration drafted.

11 HB2045 relating to agricultural lands,
12 limits subdivision of agricultural lands to no more
13 than five lots. We support the intent. Intent is to
14 protect agricultural land from subdivision. Hasn't
15 been scheduled for hearing yet. Before agriculture,
16 water, land and judiciary.

17 House Bill 2091 permits agricultural
18 tourism uses and activities, including overnight
19 accommodations in conjunction with bona fide farming
20 operations on agricultural district land statewide.
21 Maui already does this. They have a special
22 exemption from Chapter 205.

23 Our feeling on this, is that this is a
24 legislative call. The farmers testify that they
25 can't make the farm work unless they can provide --

1 be provided with additional income that comes from
2 overnight accommodation and bed and breakfast things
3 like that. The problem is that our experience with
4 Maui has been that it completely changes the
5 character of the agricultural communities in that
6 Maui you see two or three of these a week, literally
7 two or three a week on these.

8 COMMISSIONER HIRANAGA: You're speaking
9 about things regarding PFV?

10 EXECUTIVE OFFICER: Yeah, any types of cars
11 and related activity in the Agricultural District.

12 COMMISSIONER HIRANAGA: Recently
13 36,000 acres of agricultural land become available
14 for other uses, so personally I don't have a problem
15 with that. Maybe it's a county issue.

16 EXECUTIVE OFFICER: Well, we are not taking
17 a position for or against the bill, just noticing the
18 implication of it.

19 House Bill 2157 is something -- it's a long
20 bill, project of a really involved with or interested
21 is that it allows notices for hearings instead of
22 mail out, so we're testifying in support. That's not
23 going to impact us directly other than our
24 operations.

25 HB2292, administrative bill that we put in

1 that allows -- expands our powers. Of course we are
2 going testify in support of that. It's been referred
3 to water, land and water land on the house side is
4 not going to hear it.

5 And pending bill SP2821 on the senate side
6 is also not going to be heard.

7 HB2443 relating to Ohana dwellings allows
8 the building of ohana dwellings on lands within an
9 agricultural district under certain conditions. We
10 support the intent of this. Our feeling though is
11 it's already allowed, so it's almost unnecessary.

12 HB2601 this repeals provision requiring
13 counties to adopt ordinances regulating agricultural
14 tourism as a precondition for allowing agricultural
15 tourism activities in an agricultural district.

16 Right now, the Maui provision, it allows
17 agricultural -- it allows tourism and agricultural
18 districts that have to have an ordinance before they
19 can do it.

20 This would say you don't need an ordinance,
21 you can just do it. So we're opposing this and for
22 the reasons that the county should at least regulate
23 it to a certain extent.

24 HB2617, authorizes the counties to petition
25 the LUC to reclassify lands. This was actually a

1 very complicated bill. This was heard the other day.
2 What it really did was, without getting rid of the
3 Land Use Commission, it gutted the Land Use
4 Commission of its discretionary power, basically to
5 rubber stamp for whatever the county wanted to do
6 regarding district boundary amendment.

7 So we testified in opposition to this, and
8 it ended up being gutted. At least we haven't seen
9 the final draft yet. But the Chair gutted it and
10 inserted some other provisions, one of them would be
11 to require counties to come to us with their general
12 plans for our action or approval. And also transfer
13 the boundary review back from the Office of Planning
14 to the Land Use Commission.

15 So sort of innocuous bill. Only problem is
16 that it could be -- one of the other committees it
17 could be regutted, so we have to pay close attention
18 to it.

19 HB2634 related to affordable housing,
20 grants the authority to counties to make district
21 boundary amendments for lands with an area of
22 100 acres or less. The title says it's related to
23 affordable housing, but what it really does it just
24 transfers the power to make district boundary
25 amendments to the county on 100 acres or smaller

1 lots. We're opposing this in large part because
2 state interests are not protected in this situation.
3 15 acres or less is the current county jurisdiction,
4 and there's sort of a feeling this is small enough
5 that 15 acres are small enough that the impacts would
6 be minor, and that the counties can protect the
7 public trust, if that small, and encourage 100 acres
8 is probably too big.

9 That's been sent to water, land and
10 finance.

11 HB2636 relating to solar energy facilities.
12 This one, we can't figure out what this is all about.

13 It restricts solar facilities in
14 residential housing areas in agricultural districts
15 to no more than 25 kilowatts in capacity. The
16 problem is that residential housing is not allowed in
17 the Agricultural District. I'm getting around on
18 this, has been -- has uncovered that there is
19 development I think on the Big Island, Ocean View
20 Estates where there's a proposal to cover a lot of
21 the lots with solar panels instead of homes, and it's
22 really a mess. It's a mess of a bill to deal with,
23 so we are opposing this one. Although we are not
24 really opposing as much as making comments on the
25 fact that it's unnecessary. If you follow the law,

1 you don't need it. If you break the law, then you
2 might need it, but if you follow the law, you don't
3 need it.

4 HB2712 relating to science and technology
5 research subzones, establish science and technology
6 subzones and incorporates a term of dispute
7 resolution. I think this was submitted to deal with
8 Mauna Kea. We oppose it, but this is not prime on
9 our radar. This is really DLNR's purview.

10 HB2752 relating to housing on agricultural
11 land, dwelling and housing on agricultural land to
12 farmers and immediate family members. We support the
13 intent, it's the best attempt we've seen to provide
14 clear guidelines as to what is a farm dwelling and
15 what is farm work housing, which has always been
16 something we have never been able to clearly define
17 or clearly get consensus on with the counties.

18 HB2757 relates to dwelling units and
19 housing facilities for the elderly on Class D or E
20 lands in the agricultural districts.

21 Once again, this is -- we generally oppose
22 it, but I don't know if we are going to testify on it
23 because it seems to be involved with something else
24 than land use.

25 Same thing with SP2001 which relates to

1 adult essential care homes on agricultural designated
2 districts if located in a farm dwelling. I don't
3 have a position on it.

4 SP2044 is similar to the House Bill on
5 solar energy production equipment on specified lots
6 within the agricultural districts.

7

8 We're not clear what problem that resolves.

9 SP2293 similar to the House Bill on
10 electronic mailing.

11 SP2350 restricts any subdivision, including
12 CPR, of parcels of agricultural lands 100 acres or
13 greater in size.

14 This is Senator Theilen's attempt to
15 protection large agricultural lots and we're going to
16 testify in support of that. Actually we're
17 monitoring that.

18 SP2351 relating to agricultural lands.
19 Prohibits the creation of CPR's on agricultural land
20 25 acres or greater.

21 Similar to the other one, just monitoring
22 it. We support the intent.

23 SP2355, this is Senator Theilen's bill with
24 regard to giving us enforcement powers. We
25 understand this is going to be heard on the 17th at

1 2:45. The bill would require us to identify
2 conditions that are of state interest when we do our
3 dba's. And all those other conditions would deal out
4 to enforce in a similar manner to the other
5 conditions, the bills that are received by whatever,
6 if they were violated.

7 We have made some -- been working on
8 Senator Thielen to make some changes in the language
9 so that it retracts everything else. The difficulty,
10 and this is something that we just thought about this
11 morning, is that it does not allow us to enforce
12 conditions in anything prior to the promulgation of
13 the bill.

14 In other words, we haven't done this
15 before, we haven't identified conditions that are of
16 state interest so we wouldn't be able to enforce
17 anything that's already been decided. I haven't had
18 a chance to talk to Diane about this, but I'm not
19 sure whether or not if somebody came in for amendment
20 and we put conditions in an identified them if we
21 could enforce those conditions.

22 So I have to have a discussion with Senator
23 Theilen's office about whether or not that's what she
24 intended to do. I think she hadn't thought it
25 through.

1 We support the intent, we just proposed
2 amended language.

3 SB2561 Relates to rental housing. This is
4 establishes a goal of developing at least 22,500
5 affordable rental housing units, and puts us on a
6 task force to do that, LUC on task force to do that.

7 This is something that everybody would like
8 too see happen, and our testimony is just going to be
9 that we would support the intent and are more than
10 happy to participate as-is, although I get tired just
11 thinking about it.

12 Senate Bill 2821 is the bill on extending
13 more powers, which we support if it comes to hearing.

14 SB2946 relates to indigenous Hawaiian
15 architecture. Authorizes indigenous Hawaiian
16 architecture on agricultural lands to be used for
17 farm worker housing.

18 We are not planning on testifying on this
19 other than to say we support the intent.

20 Senate Bill3020 relates to science and
21 technology research subzones and an approval process
22 for future research facilities that incorporates
23 alternative dispute resolution principles.

24 Once again, I think this is TMT bill.

25 We can fairly cease authority to process

1 issues, at this time we're going to just monitor it,
2 and perhaps comment on it, depending on what happens
3 after the first committee hearing.

4 SB3059 relates to indigenous architecture,
5 allows any state or county agency to designate public
6 and private lands under certain conditions for the
7 construction of indigenous architecture.

8 The only reason we oppose this, we don't
9 support acceptance to compliance with Chapter 205,
10 but think we are going to see what happens after it
11 comes out of the first hearing.

12 COMMISSIONER MAHI: I have a question.
13 What is indigenous architecture?

14 EXECUTIVE OFFICER: That's a good question.
15 I think what is intended for structures that are
16 built with palm fronds, you know, but it hasn't been
17 clearly defined.

18 COMMISSIONER SCHEUER: You know, I think
19 all four counties now have actually adopted
20 provisions that allow that building a traditional
21 hale from the building code, exempt them from the
22 building, factual living. It was I believe first
23 started on Maui by some people who are trying to
24 construct traditional hale around Mokulua (phonetic)
25 in Lahaina, and they were told by the county no can.

1 There were revisions and then they were adopted by
2 the other counties and ordinances.

3 So my limited understanding of this bill is
4 trying to take county conditions to be extended
5 statewide.

6 EXECUTIVE OFFICER: Once again, there are
7 so many different ways you could -- we don't have a
8 problem with the bill.

9 COMMISSIONER SCHEUER: I think it's much
10 more specifically described the county ordinance than
11 it is in the bill. We need to take some of that
12 language.

13 EXECUTIVE OFFICER: That's basically it.

14 There is a companion bill to the House Bill
15 on district boundary amendment for lands with
16 100 acres or less, but same testimony on that, we're
17 opposing that.

18 That's everything so as far that's going
19 on.

20 CHAIRPERSON ACZON: Any questions for Mr.
21 Orodanker?

22 Next discussion and action regarding
23 ratification of testimony provided by staff and
24 delegation to staff to provide testimony to the
25 Legislature on all bills set for hearing relating to

1 the LUC as directed by the LUC Legislative Committee.

2 VICE CHAIR WONG: Do we need a motion
3 approve that?

4 CHAIRPERSON ACZON: Yeah.

5 VICE CHAIR: Move.

6 CHAIRPERSON ACZON: Any second?

7 COMMISSIONER MAHI: Second.

8 CHAIRPERSON ACZON: Moved by Vice Chair
9 Wong and seconded by Commissioner Mahi. Any
10 discussions on that? Hearing none, those in favor
11 say "aye". Opposed? Motion carries.

12 Any other? Business if there is no further
13 business, this motion meeting is in recess until 8:30
14 tomorrow, Leiopapa A Kamehameha Building in Honolulu.

15 (The proceedings adjourned at 11:05 a.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on February 9, 2016, at 9:30 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 9th day of February, 2016, in Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #15