

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

Proceedings held on February 24, 2016

Commencing at 9:30 A.M.

Maui Arts & Cultural Center, Haynes Meeting Room

One Cameron Way, Kahului, Maui 96732

SP92-381 WAIKOLOA DEVELOPMENT COMPANY (Hawaii)
Adoption of Order

DR15-54 PU'UNOA H.O.A. & DEVONNE LANE (Maui)
Action

DR15-54 PU'UNOA H.O.A. & DEVONNE LANE (Maui)
Ho'omana Foundation's Petition to Intervene

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 COMMISSIONERS:

3 EDMUND ACZON, CHAIRPERSON
4 ARNOLD WONG, VICE CHAIR
5 JONATHAN SCHEUER, VICE CHAIR
6 NANCY CABRAL
7 KENT HIRANAGA
8 CHAD McDONALD
9 LINDA ESTES

DIANE ERICKSON, ESQ.
Deputy District Attorney

10 STAFF:

11 DANIEL ORODENKER, Executive Officer
12 BERT SARUWATARI, Planner
13 RILEY K. HAKODA, Planner/Chief Clerk

14 BRYAN YEE, ESQ.
15 Deputy Attorney General
16 LORENE MAKI, Office of Planning

For the State of Hawaii
Office of Planning

17 MICHAEL HOPPER, ESQ.
18 Deputy Corporation Counsel
19 KURT WOLLENHAUPT, Planner

For County of Maui

20 DEBORAH WRIGHT, ESQ.
21 DOUGLAS WRIGHT, ESQ.
22 Wright & Kirschbraun
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Wailuku, Maui 96793

23 Attorneys for Pu'unoa H.O.A. & Devonne Lane

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1 CHAIRPERSON ACZON: Good morning.

2 This is the February 24th, 2016 Land Use
3 Commission meeting.

4 The first order of business is the adoption
5 of the February 9th, 2016 minutes. Are there any
6 corrections or comments on them? If, not is there a
7 motion?

8 COMMISSIONER ESTES: I move approval.

9 CHAIRPERSON ACZON: Any second?

10 VICE CHAIR WONG: Second.

11 CHAIRPERSON ACZON: The motion has been
12 made by Commissioner Estes and seconded by Vice Chair
13 Wong to adopt the minutes. All in favor say "aye".
14 Opposed? The minutes are adopted unanimously.

15 Next agenda item is the tentative meeting
16 schedule. Mr. Orodenger.

17 EXECUTIVE OFFICER: Thank you, Mr. Chair.

18 On March 24th we're scheduled to be in
19 Kona, and then on March 23rd -- excuse me.

20 March 23rd to 24th, we'll be in Kona
21 overnight on the Queen Lili'uokalani Trust.

22 On April 14, 2016, we will have an update
23 on the Waimanalo Gulch case on Oahu and Declaratory
24 Ruling at that hearing at that time.

25 April 27th to 28 is currently open.

1 We have been reserving some time for
2 Ma'alaea Plantation. My understanding, that's
3 everything that we have that's current.

4 CHAIRPERSON ACZON: Commissioners, do you
5 have any questions? Thank you, Mr. Orodener.

6 The next agenda item action meeting.

7 Docket No. SP92-381, Waikoloa development
8 Company to adopt Form of the Order for the Request
9 For Amendment to Special Permit No. 833, SP92-381 to
10 allow a Time Extension of Condition No. 12 (Life of
11 Permit), and allow Greenwaste Composting, and allow
12 the Processing and Recycling of Portland Cement
13 Concrete and Asphalt Concrete Pavement Tax Map Key:
14 6-8-001: Portion of Lot 5.

15 Will the Applicant please identify
16 themselves for the record?

17 MR. MACY: My name is Mel Macy, and I am an
18 employee of the Applicant, West Hawaii Concrete.

19 CHAIRPERSON ACZON: Thank you, welcome.

20 MR. MACY: Thank you

21 CHAIRPERSON ACZON: On February 9th, 2016
22 the Applicant presented the summary of its proposed
23 request Amendment to Special Permit No. 833
24 (SP92-381), at the King Kamehameha Hotel, Ballroom 4
25 in Kailua-Kona, Hawaii.

1 In addition, the Commission received Hawaii
2 County's and OP's comments on this matter. After
3 questions and discussion, the Commission voted to
4 approve the recommendation of the County of Hawai'i
5 Leeward Planning Commission to approve the
6 Applicant's petition for Special Permit with
7 modifications.

8 On February 17, 2016, the Commission mailed
9 the February 24th, 2016 LUC agenda notice to the
10 parties.

11 Are there any individuals desiring to
12 provide public testimony on this docket?

13 EXECUTIVE OFFICER: We don't have anyone
14 signed up to testify on this docket.

15 CHAIRPERSON ACZON: Thank you.

16 Mr. Macy, do you have comments at this
17 time?

18 MR. MACY: I just -- I just wasn't
19 available at the February meeting, so I just want to
20 thank you all for approving our request, allowing us
21 to continue serving the Big Island. So thank you
22 very much for an approval. I appreciate it.

23 CHAIRPERSON ACZON: Commissioners, before
24 you is the Form of the Order approving the
25 recommendation of the County of Hawai'i Leeward

1 Planning Commission to approve the State Special Use
2 Permit Petition with modifications in this Docket
3 SP92-381.

4 The Form of the Order is the form submitted
5 by Petitioner with the amendments adopted by the
6 Commission and other technical, non-substantive
7 changes.

8 The Chair will entertain a motion to the
9 Form of the Order in this matter. Commissioners?

10 COMMISSIONER CABRAL: As the Commissioner
11 from the Big Island, I would like to go ahead and
12 move in favor this petition.

13 COMMISSIONER ESTES: Second.

14 CHAIRPERSON ACZON: The motion has been
15 made by Commissioner Cabral and seconded by
16 Commissioner Estes. Any discussion?

17 VICE CHAIR SCHEUER: I would just like to
18 thank the Petitioner because they took the time and
19 did a very thorough job at looking at the things,
20 bringing information about -- we need to bring
21 traditional and customary native issues into the
22 Application, and it made our job easy. So thank you,
23 very much.

24 EXECUTIVE OFFICER: The motions is o adopt
25 the order.

1 Commissioner Cabral?

2 COMMISSIONER CABRAL: Yea.

3 EXECUTIVE OFFICER: Commissioner Estes?

4 COMMISSIONER ESTES: Yea.

5 EXECUTIVE OFFICER: Commissioner Mahi is
6 absent. Commissioner Wong?

7 VICE CHAIR WONG: Aye.

8 EXECUTIVE OFFICER: Commissioner Scheuer?

9 COMMISSIONER SCHEUER: Aye.

10 EXECUTIVE OFFICER: Chair Aczon?

11 CHAIRPERSON ACZON: Aye.

12 EXECUTIVE OFFICER: Thank you. Mr. Chair,
13 the motion passes unanimously.

14 CHAIRPERSON ACZON: Thank you.
15 Congratulations.

16 The Chair will call a five-minute recess.

17 (Recess was taken.)

18 CHAIRPERSON ACZON: We're back on record.

19 The next agenda item is an action meeting
20 on DR15-54 Pu'unoa H.O.A. & Devonne Lane to consider
21 Petition for Declaratory Order that the proposed
22 construction of a homeless encampment and commercial
23 campground of 7.9 acres of a 22.7 acre parcel located
24 at Hokiokio Place and Lahaina Bypass Road at Maui Tax
25 Map Key No. (2)4-7-003 Portion of Lot 31, Lahaina,

1 Maui Hawaii, in the State Land Use Agricultural
2 District requires a District Boundary Amendment.

3 Let me remind the audience that this is not
4 a contested case hearing.

5 Will the Petitioner please identify
6 yourself for the record?

7 MS. WRIGHT: Good morning. My name is
8 Deborah Wright, and with me is Doug Wright. We are
9 attorneys who represent Devonne Lane and the Pu'unoa
10 Homeowners Association.

11 Present with me is Mr. Ross Scott, whose a
12 director on the board for the Pu'unoa Homeowners
13 Association. Mr. Dieter Lane. Devonne Lane had a
14 commitment scheduled prior to this scheduling and is
15 unable to be here but we're here as her
16 representatives.

17 CHAIRPERSON ACZON: Thank you.

18 Let me update the record.

19 On December 4, 2015, the Commission
20 received Pu'unoa Homeowner's Association and Devonne
21 Lane's Petition for Declaratory Order, Exhibits A-B
22 and \$1,000 application fee.

23 On January 25th, 2016, the Commission
24 received Maui County Planning Department's Position
25 Statement.

1 From January 30th to February 22nd, 2016,
2 the Commission received approximately 57 comments via
3 email, fax and written testimony from individuals,
4 couples and community organizations whose names are
5 on file.

6 On February 1st, 2016, the Commission
7 received Maui County Planning Department's Revised
8 Position Statement.

9 On February 4th, 2016, the Commission
10 received OP's response to the Petition for
11 Declaratory Order.

12 On February 17, 2016, the Commission mailed
13 the February 24th, 2016 LUC agenda notice to the
14 Parties and the Statewide, Maui and Hawaii mailing
15 lists.

16 On February 19th, 2016, the Commission
17 received a Petition to Intervene and Position
18 Statement from Ho'omoana Foundation. The Petition to
19 Intervene will be considered after action on the
20 Petition for Declaratory Order.

21 Our procedure for DR15-54 will be as
22 follows:

23 First, I will call for all those
24 individuals desiring to provide public testimony on
25 docket to identify themselves. All such individuals

1 will be called in turn to the witness box where they
2 will be sworn in prior to their testimony.

3 The Maui County Planning Department
4 Representative and the State Office of Planning will
5 be given the opportunity to provide public testimony
6 at the close of the Petitioner's presentation.

7 I will then give opportunity for the
8 Petitioner to comment on the Commission's Policy
9 governing reimbursement of hearing expenses and
10 Declaratory Order filing fees.

11 After completion of the public testimony,
12 the Petitioner will be given the opportunity to make
13 its argument in support its petition.

14 After the completion of Petitioner's
15 argument, we will receive any public witness comments
16 that the County or the Office of Planning may want to
17 offer.

18 Thereafter, the Commission will conduct its
19 deliberations.

20 The Chair would also note that from time to
21 time I will be calling for short breaks.

22 Are there any questions on our procedure
23 for today?

24 (No response.)

25 Thank you.

1 Good morning, Mr. and Ms. Wright, has the
2 Petitioner been advised of the LUC's policy on
3 reimbursement of LUC hearing expenses?

4 MRS. WRIGHT: Yes.

5 CHAIRPERSON ACZON: Could you state your
6 client's position with respect to this request?

7 MS. WRIGHT: For the fee aspect, we're
8 agreeable.

9 CHAIRPERSON ACZON: Thank you.

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

12 EXECUTIVE OFFICER: Thank you, Mr. Chair.
13 We have five people signed up to testify, starting
14 with Lon Wilke, followed by Todd Erickson.

15 CHAIRPERSON ACZON: Just a reminder, the
16 public testimony today should be limited to the
17 Petition for Declaratory Order, and should not go
18 into the merits of the proposed project. This is not
19 the time for contested case hearing.

20 Prior submitted written testimony in this
21 matter is already part of the record and does not
22 need to be repeated.

23 Also if you have written testimony or other
24 documents you would like to submit, please give them
25 to the Chief Clerk so they can file-stamp and make

1 part of the record.

2 May I swear you in?

3 MR. WILKE: Yes.

4 LON WILKE

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

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

10 THE WITNESS: Yes, I do.

11 DIRECT EXAMINATION

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

14 THE WITNESS: My address is in Puamana
15 across the highway from this planned development.

16 Sorry, I'm not too familiar with this.

17 Our building is 216-6 in Puamana, and we
18 have been following this application for the last
19 couple months. And we feel that it's very
20 detrimental to our property values, and to our
21 safety.

22 It's going cause the association that we
23 belong to more money for security. And it's going to
24 devalue our properties.

25 And also I notice this property could be

1 taken off the tax rolls if it's a charitable
2 organization or not.

3 But my wife and I are dead against this
4 proposal, and that's about what I got to say.

5 It actually will devalue a lot of
6 properties in Lahaina itself. I think something like
7 this should be put away from the city, and I think
8 there would be less problems with the people in the
9 camp.

10 We've tried this in Portland, Oregon with
11 these camps and stuff, and they haven't really ever
12 worked out.

13 That's about all I have to say. Thank you
14 very much. Are there any questions?

15 CHAIRPERSON ACZON: Ms. Wright, any
16 questions?

17 CROSS-EXAMINATION

18 BY MS. WRIGHT:

19 Q I just wanted to clarify.

20 What you're talking about that you're in
21 opposition to is not our Petition for Declaratory
22 Order, but you're in opposition to the commercial and
23 homeless camp, is that correct?

24 A That's correct.

25 CHAIRPERSON ACZON: Anybody else?

Commissioners? Thank you.

Next witness, please.

EXECUTIVE OFFICER: Todd Erickson.

CHAIRPERSON ACZON: May I swear you in?

MR. ERICKSON: Yes.

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

THE WITNESS: Yes.

TODD ERICKSON

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

DIRECT EXAMINATION

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

THE WITNESS: I'm Todd Erickson, and my
place is located at 147 Mele Komo Place in Pu'unoa.

One of the things I just wanted to say is
that the whole procedure here for everybody as a
homeowner or property owner in the area is very
confusing, and difficult to understand what they need
to do, and who they need to do it to, and who's
looking at it and who's not. So forgive any
confusion.

I just wanted to state right off the bat,

1 I'm dead set against this proposal by Ho'omoana
2 Foundation.

3 The part that is concerning is that it
4 doesn't seem to be a fair playing field. Everywhere
5 else -- I know in any sort of civilized community,
6 developments like this are debated throughout the
7 community. The proposals are put forward in a master
8 plan that is in detail that goes through everything
9 that is going to happen prior to breaking ground on
10 any development like this.

11 And it's hard not to look and try and
12 figure out who's West Maui Land, and who is Ho'omoana
13 Foundation, because so many of the individuals are
14 the same people. And it's hard not to feel like
15 there is complicity with one another and achieving
16 each other's goals.

17 And it appears as though a certain amount
18 of disclosure is given, but not in its entirety. It
19 is: This is the plan for the area. Come in and buy.
20 Be a part of our community. Let's hold up these
21 agricultural ideas. And then the veil gets pulled
22 away, and after time you find out that the intentions
23 may be and probably are a lot different than what was
24 stated to all those who are now in and a part of the
25 community.

1 And all those who have invested in this
2 community and are upholding the agricultural
3 components, the requirements of their zoning, feel
4 like they have been lied to. That it's a bait and
5 switch. That they've spent considerable time, money
6 and effort appealing -- appeasing, I should say, the
7 county in its -- their bylaws to stay within the
8 agricultural requirements.

9 And when it comes to bigger organizations,
10 that they seem to be able to walk in and throw a
11 curve ball in the middle of it with very little
12 warning to the community, with almost no discussion
13 or very little, or if it's done, it's very
14 fractionalized and not all inclusive. And there is
15 very little opportunity to express opposition in a
16 timely manner.

17 And I just think when there's changes of
18 this sort of magnitude, and the implications
19 particularly a homeless camp, which the gentleman
20 before was stating that Portland there was problems.
21 I can tell you from spending a lot of time on the
22 mainland, there is very few, if any, successful
23 homeless camps with serious implications.

24 I know in Vancouver where I'm from, it was
25 only after the second murder did they shutdown the

1 homeless camp in that community. End of the story.

2 I hope that you will look at this and look
3 at it the same way you would look at any other
4 application, and not give any preference to a larger
5 company, because that is how the people feel, that
6 there is more preference given to certain groups than
7 there is to the average individual who is trying to
8 make a go of it.

9 And probably is one of the largest
10 investments in their lives, and trying to take care
11 and uphold the agricultural standards at the same
12 time.

13 CHAIRPERSON ACZON: Do you have any
14 questions?

15 MS. WRIGHT: No, thank you.

16 COMMISSIONER ESTES: I have a question.

17 Your position is homeless camps don't work,
18 is that right?

19 THE WITNESS: Well, my position is that
20 nobody, I think, in any committee in any of Maui
21 County or with Ho'omana or in the community has done
22 enough research to evaluate what the effectiveness of
23 it is.

24 I can tell you what I've read, and what
25 I've seen on the mainland is it's been disastrous.

1 And, in fact, even, you know, a lot of communities
2 have now gone to -- the only thing that benefits them
3 is building proper homes for them. And I think if
4 the Ho'omoana Foundation, their true intent was to
5 take care of the homeless, they would build proper
6 structures for these people, not tents in the middle
7 of -- it's almost desert down there. And I don't see
8 how you can -- and they mention it's going to be
9 transitionally homeless not chronically homeless.

10 Well, I don't know how somebody comes to
11 your door and you say are you transitionally homeless
12 or chronically homeless? And if you're
13 transitionally homeless, you can come in. If you're
14 chronically, you can't come in.

15 There is going to be no oversight on that.
16 And I think it would be -- if there was any sort of
17 formal oversight, it would be hard to monitor.

18 I think if you are going to do something
19 for homeless, really do something, not just throw a
20 bunch of blank pads on the ground in the middle of
21 the desert and say, here you go, because you want to
22 get commercially zoned, to rezone everything along
23 Lahaina Bypass to make a lot more money.

24 I'm all for helping the homeless, but in
25 the proper way.

1 COMMISSIONER ESTES: Thank you.

2 CHAIRPERSON ACZON: Next.

3 EXECUTIVE OFFICER: Rich Holmer followed by
4 Lisa Wear.

5 CHAIRPERSON ACZON: Do you affirm that the
6 testimony that you're about to give is the truth.

7 THE WITNESS: Yes.

8 RICH HOLMER

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.

14 THE WITNESS: Rich Holmer, 40-2 Pua Kui,
15 Puamana.

16 CHAIRPERSON ACZON: Please proceed.

17 THE WITNESS: I agree with the former
18 speakers that it's a little difficult to tell where
19 we are in the process.

20 But as I understand it, if I can ask a
21 question. Your main thing that you're looking at
22 today here is the conversion of the agricultural land
23 to other uses?

24 CHAIRPERSON ACZON: No, the Declaratory
25 Order. We are not discussing the merits of the

1 project.

2 EXECUTIVE OFFICER: The question before the
3 Commission right now is whether or not this is an
4 allowed use in agricultural land. It does not go to
5 the merits of whether or not it will be permitted.
6 This at the county level to make a determination on
7 the question.

8 THE WITNESS: I think it would be
9 appropriate to talk to some of the agricultural
10 issues here. We've owned our house since sugarcane
11 was in this area and, of course, it was all owned by
12 the one big landowner. And since it's been taken
13 out, a lot of it has laid fallow.

14 But there's also quite a few little farms
15 coming in now. Up on the other side of the bypass,
16 somebody has put in orchard and farming operation
17 there that's just getting started and looks pretty
18 nice. There's a little nursery. There's quite a few
19 farms of up in Launiupoko area.

20 The value of this land is in the
21 agricultural resource. There is only so many places
22 on an island this size where you have the soil and
23 the climate to grow the crops that you need. And I
24 think you know, there's a trend in Maui right now to
25 try to become more self-sufficient, and have people

1 supply their own food instead of importing everything
2 from the mainland. And that's a great trend. That
3 provides fresh and wholesome food for people on the
4 island.

5 So converting ag land to other uses is not
6 good. The value of this land is in the soil and its
7 productivity and that's, you know, use for some other
8 project.

9 So I guess what I would like to say is that
10 this is taking a way agricultural land. It's setting
11 a precedent for that area that's just opened up with
12 the roadway. And it's also going to impact on the
13 existing agricultural operations.

14 You put a lot of hungry people into an area
15 where people are growing food crops, I think it's
16 easy to see what might happen.

17 So I'm opposed to this coming in.

18 CHAIRPERSON ACZON: Ms. Wright, any
19 questions?

20 MS. WRIGHT: No questions, thank you.

21 CHAIRPERSON ACZON: Commissioners? Thank
22 you, Mr. Holmer.

23 EXECUTIVE OFFICER: Lisa Wear followed by
24 Gordon Firestein.

25 MS. WEAR: I think my testimony does not

1 pertain to legal issues, so I'm going to pass.

2 CHAIRPERSON ACZON: Thank you. Mr.
3 Firestein, may I swear you in?

4 THE WITNESS: Yes.

5 CHAIRPERSON ACZON: Do you affirm that the
6 testimony that you're about to give is the truth?

7 THE WITNESS: Yes.

8 GORDON FIRESTEIN

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.

14 THE WITNESS: My name is Gordon Firestein,
15 and my address is 186 Paia Pohaku place in Lahaina.

16 CHAIRPERSON ACZON: Please proceed.

17 THE WITNESS: Thank you.

18 My wife Doris and I live in Launiupoko
19 about a mile and a half from the proposed campground.
20 And like everyone here, we recognize that
21 homelessness is a serious problem, and we're
22 sympathetic to those who are working hard to find
23 solutions. Sadly the proposed homeless campground is
24 not one of them.

25 First, it's proposed for the wrong site.

1 And it's wrong for a number of reasons, but the one
2 under consideration today is its zoning, in which
3 body has the right to determine whether that zoning
4 should be changed.

5 Ag land in Hawaii is a limited precious
6 resource to be preserved. And the state has given
7 this body the mandate to decide matters such as
8 these.

9 The attempt by the Ho'omoana Foundation to
10 seek rezoning through the county is clearly intended
11 to subvert your mandate. I urge you to resist this
12 attempt and require them to apply for a district
13 boundary amendment.

14 And we need State LUC. The diversity of
15 expertise that you bring and the representation of
16 the entire state to be part of this process, and to
17 be the first step in the process.

18 And when the time comes, I urge you to
19 reject any attempt to rezone this site or any portion
20 of it. We need ag land to remain ag land unless
21 there is a very compelling reason to the contrary.

22 And I do support the Ho'omoana Foundation
23 in locating a more suitable site and more practical
24 solution for the benefit of Lahaina's homeless
25 population.

1 CHAIRPERSON ACZON: Any questions for Mr.
2 Firestein?

3 MS. WRIGHT: No. Thank you.

4 CHAIRPERSON ACZON: Commissioners?

5 COMMISSIONER ESTES: You talk about a
6 proper site and a more suitable site.

7 Can you suggest one?

8 THE WITNESS: Well, I'm not intimately
9 familiar with the potential sites in the area, but I
10 know there is a homeless shelter located more
11 centrally in Lahaina. I think something that's
12 closer into town where there are services available
13 would probably be a more practical solution.

14 And as has been stated earlier, the site
15 under consideration is clearly unsuitable. That
16 is -- I don't know if you've been out there to see it
17 or seen photographs, but it's a very, very harsh
18 location, dry, rocky, windy, next to what's basically
19 a freeway. This is not a hospitable site for anybody
20 to live.

21 So I'm sure there are better sites to be
22 found nearby.

23 COMMISSIONER ESTES: Thank you.

24 CHAIRPERSON ACZON: Thank you. Are there
25 any more public witnesses?

1 EXECUTIVE OFFICER: There's no one signed
2 up, Mr. Chair.

3 CHAIRPERSON ACZON: Thank you. Anybody
4 from the audience? Thank you.

5 Ms. Wright, please proceed with your
6 argument.

7 MS. WRIGHT: I thought we were going to the
8 county. I got the order confused.

9 As I mentioned to you, we represent Pu'unoa
10 and we represent Devonne Lane as an individual.

11 Ms. Lane owns property in Pu'unoa and she
12 is also president of the board for Pu'unoa. She
13 grows -- on her own property she grows over 80
14 different types of producing fruit trees. She has
15 beehives, and she is actively involved in agriculture
16 herself.

17 Pu'unoa borders on the Kauaula Stream which
18 also goes past this same property that is being
19 proposed.

20 I'm giving you a little geographic and
21 little a background before I get to what I consider
22 to be the issue. In fact, we have a couple maps I
23 may ask Doug Wright to put out just to see where this
24 is located.

25 The proposal, the application that is

1 pending before the Maui Planning Commission currently
2 is an application for a Special Use Permit to allow a
3 commercial and transient campground. The campground
4 is going to be concrete pads. It's not going to have
5 tents. The people have to bring their own tents if
6 they want to camp. And it's to build some sort of
7 shower or shower and restroom, and then charge
8 facility also, and also to have a manager's house.

9 This is sometimes referred both by the Maui
10 Planning Commission and by the Office of Planning as
11 a farm dwelling, but it actually has no farm use. It
12 is a house for the manager of the campground to live
13 in.

14 And so the way this has been proposed has
15 been that it would be two acres of actual camping
16 area. And in the application that was submitted to
17 the County of Maui, the application says the other
18 20 acres may be used for gardening in association
19 with the campers.

20 Now, we had checked -- we had asked the
21 Maui planner if this application had actually been
22 formally amended, and we were told that it had never
23 been amending, however, in later documentation, the
24 references are only to 5.9 acres for gardening or
25 farming in conjunction with two acres.

1 So there is a little confusion as to what
2 the application says and what is sort of generally
3 accepted at this point as being the extent of the
4 project for the campground.

5 The campground request, we believe, cannot
6 be done in a Special Use Permit Application for the
7 reason that it is expressly prohibited by state law.
8 HRS 05-4.5(6), A6, but 6, specifically prohibits
9 overnight camps on certain types of land.

10 The land at issue is under the Land Study
11 Bureau's detail land classification system, B level
12 land. It's rated B, which is very good soil. And
13 there are proscriptions under state law as to what
14 can be done on land that is either A or B. And one
15 of the things that cannot be done is overnight camps,
16 and that's by statute.

17 So we don't believe that you can get a
18 Special Use Permit to do something that is already
19 specifically prohibited by law.

20 Now, it's also not permitted in general
21 under the Maui County ordinances. You cannot have
22 overnight camps like this where people are going to
23 have extended stays. It's not a permitted use. It's
24 not an accessory use. It's just prohibited.

25 So our concern is that we think in order to

1 even present in a proper way this type of proposal,
2 there has to be an application for a District
3 Boundary Amendment. We think it's fairly clear just
4 legally that it's fairly clear.

5 Additionally, in most of these instances,
6 even say there was some question about whether it
7 could be allowed, you have to look at what is
8 permitted under the state plan or state designation,
9 the county and community designations as well. And
10 in this particular instance, the application strikes
11 out on all counts because the state designation for
12 the land is B, as we noted.

13 In the Maui Island Plan, which was adopted
14 at the end of 2012, December 28, 2012, it is the plan
15 to extend through 2030. So it is for the economic,
16 social, ecological, all those aspects, the plan, this
17 is designated as ag land.

18 So, again, it doesn't conform to the island
19 or county plan. The West Maui Community Plan
20 designates it as ag land. So it doesn't conform with
21 any of those plans besides the fact that, as we
22 noted, its prohibited by law.

23 We believe it would be very important to
24 have it in a District Amendment Application where
25 there is a broader review or the standard for a

1 decision is a clear preponderance of evidence, where
2 there is more participation both from the Office of
3 Planning and from other aspects.

4 And that is what we are asking for today,
5 is for the Land Use Commission to enter a Declaratory
6 Order that a District Boundary Amendment is what is
7 required for the use of the intended use of
8 agricultural land that has a B rating where they want
9 to put in a commercial and urban type of use, such as
10 a commercial and transient campground.

11 If you look HRS 205-3.1(a) this is where we
12 get into the question of what size the project is.
13 As I mentioned to you, when we looked at the
14 application, and got a copy of the application -- I
15 can read you what it said under description of uses,
16 page three, section C, it says:

17 Small gardens are both therapeutic and
18 productive for the campers. There will be 20 acres
19 of 22 of the property that may be used for gardening.

20 So we have asked in our Petition to Land
21 Use Commission that the Land Use Commission say that
22 there has to be a District Boundary Amendment
23 process. And we still believe it actually should be
24 before the Land Use Commission, because the
25 Application itself seems to encompass the whole

1 project.

2 Now, there may have been some other type of
3 amendment that we are not aware of, but when we asked
4 if there had been amendments to the application, we
5 were told there are no amendments to the application.

6 However, if you proceed with the concept
7 that everybody seems to be using, that it's really
8 two acres and 5.9 of possible gardening, the other
9 problem is that there is no commitment of any kind of
10 actually do any agriculture. You obviously can't
11 require commercial campers to perform agricultural
12 aspects.

13 And with regard to the transient campers,
14 even when it's been filed with the LUC, talks about
15 we might do this. It's a temporary situation. We
16 are going to kind of see if it works, and at some
17 point we may have them do some agricultural or
18 gardening.

19 Saying that they may do something is not
20 the same thing as saying there will be agriculture.
21 And what is supposed to happen, whether you're under
22 HRS 205-3.1 (a) or (c) which is where it would go for
23 District Boundary Amendment to the county.

24 It's supposed to be if it promotes
25 agricultural, if it promotes the effectiveness and

1 objectives of the statute, then Maui County can
2 decide the smaller -- this clearly doesn't -- it has
3 no agricultural aspects to it of any kind except
4 thrown in as possibility.

5 And the Office of Planning sort of leapt on
6 that and said, well, they're going to do some
7 agriculture, so it's agriculture.

8 But the thing is will do some ag, and may
9 do some ag possibly in the future are different
10 things.

11 So we don't believe it meets the objectives
12 or effectiveness of meeting the objectives under the
13 statute, and that there is any agricultural use.

14 Now, just to give you some general idea,
15 and we will hold it up and happy to hold it up also.
16 This is where Puamana is. Our client Pu'unoa lots
17 extend down there, but right there is the Lahaina
18 bypass, and there's where the campground is proposed.
19 (Indicating.)

20 What we believe this really is is an
21 attempt at spot zoning. Because if you allow an
22 urban use on this grade B land, if you can get it by
23 a Special Use Permit as opposed to having to go
24 through the proper District Boundary Amendment, then
25 you've got an urban use in the middle of ag land, and

1 if as, I think there was written testimony where Mr.
2 Martin, who is both a member of Kauaula Land Company
3 who owns the property, and who is on the board for
4 Ho'omoana Foundation, he said, yeah, I'm thinking
5 about getting a zone change.

6 Once you've already got an urban use on the
7 property, how much easier is it to go in and say
8 there is already an urban use. What is the big deal
9 about changing the rest of this property.

10 With this bypass here, this is very visible
11 property, and of course it would be very attractive
12 if it's got commercial zoning for other types of
13 uses.

14 So we see this as an attempt to spot do
15 zoning, and to eventually convert it to urban use
16 when all of the community plans, the county plan, the
17 state designation prohibits that.

18 So we have great concerns about the
19 approach when we think contrary to the law. As we
20 noted before, we don't see anything where this
21 particular application at the lower level is going to
22 promote agriculture, which is required before even
23 under 15-acre size where the county has the ability
24 to make the determination on a District Boundary
25 Amendment.

1 My client Devonne Lane, who could not be
2 here, asked me to stress a couple of things that she
3 had written down.

4 She has a severe problem with the fact that
5 she feels that both under the constitution, the
6 Hawaii constitution, and under the statute that
7 protects agricultural lands that we have been
8 referring to Chapter 205, that there is nothing being
9 done to be ensure that this project will promote
10 agriculture, and that because of the location of the
11 lot right next to the Lahaina bypass, that it is very
12 simple to see that this is going in a direction that
13 simply promotes urban uses over agricultural uses.

14 She's also very concerned about that
15 Kauaula Stream, because of the fact that in the past
16 there have been homeless who just camped along the
17 stream, and a lot of problems with keeping the stream
18 clean.

19 The proposals talk about how attempts will
20 be made to regulate, but again, when you're talking
21 about urban use, you're talking about the possibility
22 of something that's very important environmentally
23 suffering because of the change from agriculture.

24 When asked in an email by the Maui County
25 planner how long a camper could stay at the

1 campgrounds, Mr. Martin sent an email and said, well,
2 rules are made to be broken, but maybe up to two to
3 three months.

4 That may have been a statement made
5 lightly, but the problem with this project in the
6 form of a Special Use Permit is that it breaks too
7 many rules and it breaks state law.

8 One second, if you don't mind.

9 And simply as I noted, none of this
10 campground type thing is a permitted use, an
11 accessory use either under the State of Hawaii
12 Chapter 205 or under Maui County ordinances, and I
13 don't think you can make it a permitted use through a
14 Special Use Permit. Thank you.

15 CHAIRPERSON ACZON: Thank you.
16 Commissioners, do you have any question for Ms.
17 Wright. No questions.

18 County, please note that the documents you
19 have filed in this matter will become part of the are
20 record. That being said, do you wish to offer public
21 testimony?

22 MR. HOPPER: Yes. Thank you, Mr. Chair.
23 If you would allow -- Michael Hopper, we represent
24 Maui County Department of Planning. With me is staff
25 planner Kurt Wollenhaupt. He is the planner assigned

1 assigned to this project as it moved to the Maui
2 Planning Commission for the Special Use Permit
3 Application.

4 The County of Maui, as you mentioned, has
5 filed position statement, as well as a revised
6 position statement in this case and has taken the
7 position that because the application is for a
8 Special Use Permit area, of which 7.9 acres, that is
9 the area that the use would be allowed on, that that
10 is case where the Maui Planning Commission has
11 exclusive jurisdiction to determine whether or not to
12 grant or deny a Special Use Permit.

13 The county notes that this permit is
14 actually under the act of consideration of the Maui
15 Planning Commission. They held public hearing
16 earlier in July, and sent out notice to -- the
17 Applicant had to send out notice to parties within
18 500 feet of the project area. We had a full day
19 hearing and the Commission deferred action on the
20 permit to provide an opportunity for the Applicant to
21 discuss essentially with the neighbors and others
22 that had problems with the project to try to come to
23 some sort of resolution. That is where we are at the
24 Maui Planning Commission right now.

25 I think you were asked by the Chair -- or

1 the public testifiers were asked not to discuss the
2 merits of the project. The County believes that is
3 because the Maui Planning Commission is considering
4 the merits of this project.

5 They have heard testimony, including
6 testimony from the Petitioner and their counsel,
7 before the Planning Commission and you, and the
8 county believes that is the appropriate forum to
9 determine the issues surrounding the Special Use
10 Permit and not LUC.

11 This is, again, a Special Use Permit where,
12 under HRS 205-6, if the area is under 15 acres, the
13 Maui Planning Commission has the jurisdiction to
14 determine whether to grant or deny permit. This is
15 under their consideration, and Commission has not
16 made determination yet.

17 Maui Planning Department has done a staff
18 report, and there is an extensive record before the
19 Commission on this that this Commission, LUC, does
20 not have before it here.

21 The county believes issuing the Declaratory
22 ruling as requested by Petitioner would be especially
23 divesting the Maui Planning Commission in mid stream
24 of its jurisdiction that it is allowed by statute,
25 and I think that would be unprecedented move.

1 At least I haven't seen anything like that.
2 Maybe it has happened in the past, but to have the
3 matter under consideration by Maui Planning
4 Commission, then have LUC issue to prevent any
5 decision by Maui Planning Commission would be a step
6 that I have not seen before and believe would be
7 unprecedented.

8 Obviously the issue before this Commission
9 is not whether to grant or not to grant this use.
10 The county believes the initial and critical decision
11 is whether or not the LUC has jurisdiction over this
12 permit. And for the reasons set forth in the
13 county's position statement, it believes that this
14 Commission does not.

15 The county would note that even if the Maui
16 Planning Commission grants the Special Use Permit for
17 this project, the Applicant would still need a
18 Conditional Use Permit, which is called a county
19 Conditional Permit from the Maui County Council.

20 That requires going to the legislature,
21 county legislature and having an ordinance pass to
22 allow the use as well. So this would not be the end
23 of the review.

24 Again, the Commission has not decided
25 whether to grant or deny this permit, and may end up

1 denying the permit. It's up to them.

2 But, in addition, if the issue such as
3 those brought up by the Petitioner are of concern,
4 there is HRS 91-14, review process by which
5 additional review could be sought of contested case
6 hearing by eligible appellants. So that's another
7 possible avenue of review that could happen over this
8 project should the Maui Planning Commission rule in
9 favor of the Applicant in this case.

10 The county does note that the uses are not
11 permitted as outright permitted uses. Obviously, if
12 they were, then the Applicant could do the outright
13 permitted uses and wouldn't need a State Special
14 Permit.

15 That's why they sought a state Special
16 Permit to do a use not expressly allowed by the
17 statute. If it was a permitted use, then they would
18 just be able to do that use.

19 The county has asked, in its Position
20 Statement that the Commission decline to issue a
21 Declaratory ruling. We do see alternatives suggested
22 by the Office of Planning, which I think would also
23 be attainable, which is to rule that the Maui
24 Planning Commission has jurisdiction over the matter
25 in determining whether to issue permit. In this case

1 Office of Planning can obviously discuss what their
2 position is on the project.

3 That's a summary of the county's position
4 in this case. And, again, we have our pleadings that
5 we have filed to state that position and would
6 request that the Commission issue an order, or in
7 alternative, rule that the Maui Planning Commission
8 has the authority to determine whether or not to
9 issue a permit in this case.

10 CHAIRPERSON ACZON: Thank you. Ms. Wright,
11 questions for Mr. Hopper?

12 MS. WRIGHT: I do.

13 MR. HOPPER: I object, counsel for Office
14 of Planning -- and I wouldn't see why counsel would
15 be subject to cross-examination in this case.

16 CHAIRPERSON ACZON: Okay. Mr. Yee.

17 Commissioner Scheuer, sorry.

18 COMMISSIONER HIRANAGA: I understand
19 15-acre requirement jurisdiction boundary is between
20 island local Planning Commission versus the LUC. So
21 my question is: The parcel in question is
22 22.7 acres. The SUP is applied to 7.9 acres. But
23 and I don't know if this is the question for you or
24 our AG, but can you request a SUP for a portion of a
25 parcel, or does the SUP need to be applied to the

1 entire size of the parcel? Because why not make an
2 application for 14.5 acres. Just a question whoever
3 wishes to answer.

4 MR. HOPPER: I can provide an answer. We
5 have the applications like that where there is a
6 larger parcel that the use would only be allowed if
7 someone applies for a use permit for an area under
8 the full size of the parcel. The consideration would
9 be the land where the special use would be allowed.

10 So in this case, 7.9 acres for the special
11 use outside of that 7.9 acres, only uses that are
12 allowed as permitted uses would have to be allowed
13 there. So the county in the past has taken that
14 approach, and the applicable statute, I believe, is
15 HRS 205-6, and they talk about -- see if I can find
16 the actual section.

17 Talk about the -- it says:

18 Special permits for the land, the area of
19 which they talk about. So the land area for the
20 permit itself is considered the area that the special
21 uses being sought for. So it would only be allowed,
22 in this case, if they requested a 7.9-acre permit,
23 they can only do the use on 7.9 acres on that parcel,
24 not the full.

25 That's consistent with statewide, how

1 that's been applied as well.

2 COMMISSIONER HIRANAGA: So with that
3 practice you have not had any objections from the
4 state LUC of that previous practice?

5 MR. HOPPER: Not to my knowledge. I don't
6 really necessarily see it as a practice, I think
7 that's how the statute actually reads.

8 COMMISSIONER HIRANAGA: Thank you.

9 CHAIRPERSON ACZON: Commissioner Scheuer.

10 VICE CHAIR SCHEUER: Good morning, Mr.
11 Hopper.

12 I'm trying to understand your argument
13 about exclusive jurisdiction.

14 So in this case we have a proposed use of
15 land that is something that's expressly prohibited
16 under the Agricultural District and part of the code,
17 part of Chapter 205. But you're saying we still have
18 exclusive jurisdiction, because it's a Special Use
19 Permit, even if something's against the law.

20 So would you take it as far as -- the
21 constitution says you can't build a nuclear power
22 plant in Hawaii unless you have two-thirds prior
23 approval from the house and the senate.

24 If somebody came to Maui County for a small
25 nuclear power plant, put it on agricultural land

1 under 15 acres, we are going to say we have exclusive
2 jurisdiction?

3 MR. HOPPER: That is a separate statute
4 that would also prohibit it other than the HRS
5 205-4.5. HRS 205-6 expressly says that the Planning
6 Commission or the Land Use Commission, if it's over
7 15 acres, can allow uses that aren't expressly
8 allowed in HRS 205-4.5. Now, that wouldn't give the
9 Maui County Planning Commission the authority to
10 allow, in your example, a nuclear plant if there was
11 a separate statute also prohibiting the nuclear
12 plant.

13 In this case though, HRS 205-6 allows the
14 Maui Planning Commission to allow uses in the
15 Agricultural District if the only restriction is the
16 Agricultural District itself.

17 For example, some other type of land use
18 permit, in addition to the Special Use Permit to do
19 this use, then they would need to still get those
20 permits. Or if they need some other type of -- like
21 you said, a two/third approval from the legislature,
22 they would still have go and do that.

23 But in case, the Application is a Special
24 Use Permit Application. In that case it's really up
25 to the Maui Planning Commission by statute whether or

1 not to grant the use.

2 Of course that decision is subject to
3 judicial review. The cases that were provided by the
4 Petitioner of cases where judicial review is
5 exercised, we're talking about appeals from the
6 Planning Commission's decision, not from LUC decision
7 in those cases.

8 So I think that that's the key issue here.
9 It wasn't a case where the Commission came in and
10 said you can't do this use. It was a case where the
11 Maui Planning -- or the Planning Commission decided
12 to grant a permit, then that would be subject to
13 judicial review which is different than the
14 Commission coming in the middle of a hearing and
15 saying we're going to close down the hearing. You
16 can't grant this permit at all, which we do believe
17 is contrary to HRS 205-6.

18 VICE CHAIR SCHEUER: Thank you.

19 CHAIRPERSON ACZON: Vice Chair Wong.

20 VICE CHAIR WONG: I got a question.

21 So the Planning Commission hearing is still
22 ongoing?

23 MR. HOPPER: Yes, Commissioner Wong. It's
24 been deferred.

25 VICE CHAIR WONG: So I have a question

1 because I'm getting confused, very simple mind here.

2 HRS -- which is true, my wife always tells
3 me that.

4 HRS 205-4.5, subsection 6 specifically say
5 you can have a day camp, but no overnight camping,
6 correct?

7 MR. HOPPER: Yes, as a permitted use, yes,
8 that's what it says.

9 VICE CHAIR WONG: So the question also is,
10 I guess, so you're saying that a Planning Commission
11 can give a special permit on this 7.9 acres, is that
12 correct?

13 MR. HOPPER: I we believe the Commission
14 does have the authority to grant it under 205-6 in
15 the language there.

16 VICE CHAIR WONG: I guess I'm just a little
17 confused.

18 Because, you know, the Land Use Commission
19 is tasked in terms of take care of the public trust
20 which includes agricultural lands; is that correct?

21 MR. HOPPER: Yes, I suppose that's true,
22 yes.

23 VICE CHAIR WONG: So I just was wondering
24 in terms of this is B lands, correct? Ag lands that
25 are B, not A, but B lands?

1 MR. HOPPER: I believe it's a matter of
2 record, yes.

3 VICE CHAIR WONG: I just wanted to make
4 clear in terms of why do you -- besides stating the
5 HRS, that land -- it's not Land Use Commission's to
6 oversee this. Is there like a Planning Commission
7 only and not our decision for to deal with B lands?

8 MR. HOPPER: Well, Commissioner Wong, the
9 issue here we do believe is whether a Special Use
10 Permit can be granted, and it sounds like Declaratory
11 ruling request, which is to say you have to get
12 district boundary amendment, rather than special use,
13 although in the Petition it's not clear what the
14 Petitioner is requesting.

15 But we reviewed the Petition itself, and
16 that's what we were basing jurisdictional comments on
17 as saying you need to get District Boundary Amendment
18 rather than Special Use Permit for this use.

19 So that's what the county focused its
20 position statement on was Declaratory Ruling and
21 believed that was basis for requesting LUC's action
22 in this case.

23 VICE CHAIR WONG: Thank you.

24 CHAIRPERSON ACZON: Anybody else?

25 Before we go to Mr. Yee, the Chair would

1 like to call a short recess.

2 (Recess was taken.)

3 CHAIRPERSON ACZON: We're back on record.

4 Mr. Yee, please note that the documents you
5 have filed in this matter will become part of record.
6 That being said, do you wish to offer public
7 testimony?

8 MR. YEE: We do. Thank you very much.

9 The Office of Planning has submitted its
10 response indicating that the current Special Permit
11 process is an appropriate method to resolve this
12 dispute. We do want to be clear on what is and isn't
13 being presented today.

14 This is not a question of whether this is a
15 good or bad project. This is not a process by which
16 we are looking at whether a Special Permit should be
17 granted or denied on the merits. That's just not the
18 issue before the Land Use Commission.

19 We also want to be clear that we're not
20 suggesting that you can appeal the County Special
21 Permit through a Declaratory Petition for the LUC.

22 But there is a closer question though, is
23 whether you can issue a Declaratory Order which
24 simply answers the larger question of whether a
25 Special Permit is an appropriate process to follow,

1 not whether it should be granted, but whether that's
2 the appropriate process.

3 And it becomes a little more -- we will
4 defer the jurisdictional question to the Land Use
5 Commission as to whether you have or don't have
6 jurisdiction. We do note though that if you decide
7 that you do not have jurisdiction, be very clear that
8 this is not a case which we were asked to resolve a
9 purely legal question.

10 This is not a case which you are being
11 asked to provide sort of a statewide guidance that
12 would be applicable to all counties on a matter that
13 could be repeated in different circumstance.

14 If you decide to determine that you do not
15 have jurisdiction, we hope you would at least limit
16 it to the particular facts in this case. In
17 particular that it appears to require a very fact
18 specific decision, rather than a law -- rather than
19 interpretation of a law.

20 However, if you should proceed with this
21 under the idea that perhaps this is either to provide
22 guidance to the county, or to provide general legal
23 interpretation of a state law, which, of course, a
24 state forum would be the more appropriate or state
25 agency would be in a more appropriate forum to

1 decide. We think the question is simply whether a
2 Special Permit is an appropriate process.

3 Now, the Petitioner has argued that the
4 District Boundary Amendment is the appropriate
5 process because overnight camps are expressly
6 prohibited under 205-2 or 205-4.5.

7 While it is correct that overnight camps
8 are not a permitted use in agricultural lands. As we
9 pointed out in our memo, there are two different ways
10 in which non-permitted uses may then be allowed on
11 agricultural land, first being a Special Permit;
12 second being District Boundary Amendment.

13 So the basis of the Petitioner's first
14 argument that a District Boundary Amendment should be
15 -- or a Special Permit is not an appropriate process
16 because it's expressly prohibited, is incorrect.

17 Special permits are specifically made so
18 that uses which are not permitted uses on
19 agricultural lands could then be allowed. And you
20 have a multitude of am examples before you in which
21 you have granted Special Use Permits for a quarry or
22 landfill, in which these are not permitted uses in
23 agricultural lands.

24 There's nothing in the law that allows
25 quarries on agricultural land. Nevertheless, Special

1 Permits -- in order to allow this non-permitted use
2 to occur on agricultural lands.

3 Now, of course there are other -- in order
4 to get a Special Permit you need to establish that it
5 is an unusual reasonable use. But, again, that
6 question of whether this particular project is an
7 unusual or reasonable use is not appropriately before
8 you. That is the issue that has to be decided by the
9 county through their Special Use Permitting process.

10 A variety of issues were brought up that we
11 think are really not related to the question before
12 you. For example, the question on whether the area
13 should be 7.9 or 15 plus acres is really not a
14 question that you necessarily need to decide. That
15 is an issue that will be before the county. They
16 will make a decision. If that's an incorrect
17 decision, there should be a judicial appeal that
18 could be followed in order to make that
19 determination.

20 This is whether -- this is spot zoning is
21 another issue that will be before the county. And
22 the spot zoning question, frankly, occurs in almost
23 every Special Permit because the purpose of the
24 Special Permit or Special Use Permit is to allow
25 these non-permitted uses in defined areas.

1 There's always a question as to whether it
2 would result in spot zoning. That doesn't mean that
3 Special Permits are never granted, just means it's
4 one of the considerations that the county means to
5 look at.

6 Same with consistency with county plans,
7 and whether or not it's clear how ag will be
8 incorporated into the project. These go to whether a
9 Special Permit should or should not be granted. They
10 don't go to whether the process of Special Permit is
11 the appropriate process.

12 Based upon the facts as we have seen them,
13 there is a question as to whether or not a dba or
14 District Boundary Amendment is appropriate where that
15 Special Permit is being used to -- I believe we use
16 the term "circumvent" the District Boundary Amendment
17 that is not an ad hoc confusion of major urban uses
18 as set forth in Neighborhood Board No. 24 versus
19 State Land Use Commission, State of Hawaii 64 Hawaii
20 265.

21 In that particular case, we noted that this
22 involved 103 acres of the agricultural land. And
23 just to quote from that case, it involved cultural
24 theme rides, restaurants, fast food shops, retail
25 stores, exhibits, theaters and amphitheaters, a bank,

1 nurseries, 12 acres of park, a sewage treatment plant
2 and other related sport services.

3 Now, you can certainly understand that case
4 where the court looked at 103 acres that is intent to
5 be put from agricultural into urban use. Really
6 you're just trying to circumvent the more rigorous
7 process under District Boundary Amendment.

8 In this case overnight camp of 7.9 acres,
9 given the relatively small size, the minimal
10 intensity of urban use, the potential for reversion
11 to agricultural activity, unlike many other urban
12 uses, and the incorporation of these possible
13 incorporation of agricultural into its operations,
14 the Office of Planning has concluded that the request
15 for Special Permit is not an attempt to circumvent
16 the District Boundary Amendment, that it is not an ad
17 hoc profusion of major urban uses, and that a
18 District Boundary Amendment is not required in this
19 case. Thank you.

20 CHAIRPERSON ACZON: Commissioners, any
21 questions for Mr. Yee? Commissioner Scheuer.

22 VICE CHAIR SCHEUER: Good morning, Mr. Yee.
23 You mentioned in your argument that we have
24 routinely granted, concurrent with Special Use
25 Permits for quarrying operations on agricultural

1 lands. It's correct that we have -- just this
2 morning we adopted the Form of the Order on such a
3 permit. But quarrying is not mentioned specifically
4 as a disallowed use in section 4.5 in Chapter 205 as
5 opposed to overnight camps which are specifically
6 mentioned.

7 Another specifically mentioned prohibited
8 use is a golf course. Would you use your argument to
9 say somebody could then come in for a Special Use
10 Permit for a golf course on agricultural land despite
11 the fact that it specifically outlawed, and declared
12 as nonagricultural use in Section 4.5?

13 MR. YEE: The problem with golf courses is
14 not that it's specifically prohibited. The problem
15 with golf courses is size and intensity of use,
16 manicuring of the lawns, et cetera. And the fact
17 that its hundreds -- well, I believe they're
18 typically very, very large acreages. I won't try to
19 give a particular number.

20 So based upon that -- and they are
21 typically associated with other urban uses next to
22 it -- so typically associated with hotel or country
23 club and therefore it's more urban in its actions.

24 So we think that would be a more difficult
25 question to justify as a Special Use Permit.

1 There is a different question that you
2 raised I think where if the statute says you're not
3 allowed to do this, is that intended then to be a
4 specific prohibition on the use of Special Permits.

5 It's the Office of Planning's position that
6 it's not. That if you wanted -- I mean there are
7 certainly circumstances or provisions in 205-4.5
8 which says -- soil facilities are a big example. You
9 can only do this if A happens, B happens, and you get
10 a Special Permit.

11 In those circumstance if A and B do not
12 have it, it seems to us it's clear that you cannot do
13 it through a special Permit. But simply says, you're
14 prohibited from doing this.

15 Well, I don't think that there's anything
16 in legislative history or anything that we have read
17 from the language of the statute which indicates what
18 somehow special permits were intended to be the
19 disallowed method of doing so.

20 The overnight camps it seems to us was more
21 of a historical reference to things that were
22 occurring on agricultural lands at the time, and that
23 the legislature wanted to be clear that these things
24 are not allowed on ag lands. These are not permitted
25 ag uses. So you need to get something done in order

1 to allow overnight camps.

2 So as we read the statute anyway -- we
3 understand the argument that if it's prohibited that
4 might mean something else. That might mean that
5 Special Permits are not allowed. We just have
6 difference of opinion.

7 VICE CHAIR SCHEUER: Thank you, very much.

8 CHAIRPERSON ACZON: Vice Chair Wong.

9 VICE CHAIR WONG: I guess, Mr. Yee, I think
10 we take a different opinion on legislative intent,
11 because I believe that the senate or house, when they
12 put in that section HRS 05-4.5(6) specifically said
13 overnight camps, airports, golf courses, country
14 clubs. So I guess the intent was to really protect
15 ag lands, A and B ag lands. And I guess my
16 understanding is it kind of says we shouldn't let the
17 Special Permit take precedent or -- you know, to know
18 make sure that we protect the ag lands.

19 Because I guess what I read it, at least
20 that there has been a decrease in ag lands. And I
21 guess the intent of the legislature has now come into
22 more to focus on that we should protect ag lands.

23 I just was wondering when looking at senate
24 and committee reports, it appears that it says that
25 you shouldn't use Special Permits to protect, to

1 overrule important ag land, that A and B ag lands.
2 That's just a statement.

3 MR. YEE: I appreciate the comment. We're
4 not suggesting that's not a reasonable argument, but
5 it's not our reading of the statute. Our reading of
6 the statute and legislative history does not refer to
7 Special Permits, that I've seen, nothing to indicate
8 Special Permits are not admissible means of allowing
9 any of these things to occur, or that the purpose of
10 this prohibition was to prevent special things from
11 being issued.

12 I think we're all looking at the same
13 language in the statute and just reaching different
14 conclusions about what that language means.

15 I don't know that I've seen anything else
16 other than just sort of reading of the statute to
17 indicate one way or the other.

18 VICE CHAIR WONG: Thank you.

19 CHAIRPERSON ACZON: Commissioner Hiranaga.

20 COMMISSIONER HIRANAGA: Mr. Yee, I guess
21 what I grappling with is non-permitted use versus
22 prohibited use. And so when you look at HRS 205 it
23 says -- shall be restricted to the following use
24 permits. Go down to number 6, but not including
25 airstrips at airports and overnight camps.

1 So my question is: Is overnight camps a
2 non-permitted use or is a prohibited use?

3 MR. YEE: We rated it as being
4 non-permitted use.

5 COMMISSIONER HIRANAGA: I think that the
6 court decision probably have to decide.

7 Nowhere in the statute does it say
8 overnight camps are prohibited.

9 MR. YEE: Correct.

10 COMMISSIONER HIRANAGA: Are there
11 prohibited uses within that section of the statute?

12 MR. YEE: I don't want to spend your time
13 to look through it. I have a recollection that under
14 a prior version there was an issue of solar
15 facilities on A lands. That was recently changed, I
16 believe, to be very clear that you only have solar
17 energy on A rated lands if, A happens, B happens, and
18 you get a Special Permit.

19 Prior to that I think it was indication
20 that you could not have solar facility on A rated
21 lands. That's the closest I can remember to being
22 prohibition, but I don't remember the word
23 "prohibited" was used.

24 COMMISSIONER HIRANAGA: Thank you.

25 CHAIRPERSON ACZON: Anybody else,

1 Commissioners? Thank you, Mr. Yee.

2 CHAIRPERSON ACZON: Mr. Geiger, do you wish
3 to add anything?

4 MR. GEIGER: James Geiger appearing on
5 behalf of Ho'omoana Foundation.

6 Thank you, Chair, for giving me the
7 opportunity to speak. We have, as you know, filed a
8 position statement on this as well as a Motion to
9 Intervene, which will not be heard until after the
10 Commission takes action.

11 We support the Office of Planning's
12 position and County of Maui position. We believe
13 they are both correct.

14 This is a situation where you are being
15 asked basically jurisdictional question, who has the
16 right to act on this particular request. This is a
17 request for a very small project in the ag area. And
18 we believe that the appropriate amendment to approve
19 this type of use is through a Special Use Permit
20 process.

21 As you've heard it is being reviewed, it is
22 being vetted. A number of people testifying on this.
23 It's not like this project is not being reviewed or
24 in any fashion. The ag use lands is not being
25 protected.

1 And we think that while there is two ways
2 you could do this, the appropriate way for this type
3 of project is through the Special Use Permit process.
4 Thank you.

5 CHAIRPERSON ACZON: Thank you,
6 Commissioners, any questions for Mr. Geiger? Thank
7 you, Mr. Geiger.

8 Ms. Wright, do you wish to give rebuttal?

9 MS. WRIGHT: Very briefly.

10 I think a lot of the questions raised by
11 the Commissioners were the same things I would have
12 pointed out. First of all, what we're asking for
13 today is a Declaratory Order that a District Boundary
14 Amendment process is the correct process over Special
15 Use Permit.

16 What we are not saying is that they don't
17 get a review, not that they can't apply to try and
18 have this campground. What we are saying is that the
19 process that they are using, we believe, is
20 inappropriate and that it should not be a Special Use
21 Permit, it should be a District Boundary Amendment.

22 And I point out just briefly to the
23 Commission that under HRS 205-6, which is the Special
24 Permit process, it specifically says that the county
25 can make certain decisions and place protective

1 restrictions with regard to a desired permit that
2 only when the use would promote the effectiveness and
3 objectives of this chapter. It's another reason we
4 don't think the Special Use Permit process is
5 correct, because this is not claimed to be something
6 that is going to promote the effectiveness and
7 objectives of Chapter 205.

8 Secondly, we disagree about what is
9 permitted or not permitted versus what is prohibited.
10 For example, you may have something in 205-4.5 that
11 is expressly permitted. You may have something
12 that's not mentioned. That would not be something
13 that's listed as permitted use, but you might still
14 be able to get a Special Use Permit for it.

15 Contrary to that is what is stated 205-4.5
16 (a)(6) where it says not these uses. To me that's
17 prohibited. That's different from saying because you
18 have a permitted use, there isn't something else.

19 And there have been examples of that where
20 people had a farm and they decided they wanted to --
21 in the past -- there are new ordinances. In the past
22 what they wanted to do was a farm stand to sell some
23 of the products to public passing by. They got
24 Special Use Permits for that. That was directly
25 related.

1 It was not listed as a permitted, use but
2 it was not a prohibited use, and that's where the
3 difference comes in between what is permitted is
4 listed in the statute, what is maybe not permitted
5 would be something that could go under the Special
6 Use Permit process, and something that is
7 specifically prohibited.

8 And I think that's where the give is. What
9 we believe is that they can go forward to apply for
10 this project, but it needs to be under the District
11 Boundary Amendment process. And saying this is just
12 a little bit and it's just a little problem, one of
13 the things that has come up is who has jurisdiction
14 ultimately to make the decision on the action
15 application. That's a second question.

16 The first question is should it be a
17 Special Use Permit or should it be a District
18 Boundary Amendment.

19 Then the next question is: Does it come
20 before you or does it go to the county on the
21 District Boundary Amendment. That's a separate
22 question.

23 Sometimes those seem to be overlapping and
24 confused when you talk about the size of the project.
25 Is it over 15 acres? Is it under 15 acres? But

1 first which process is correct? Special Use Permit
2 process, or is it District Boundary Amendment? And
3 we believe it's clear under the statute that this
4 requires District Boundary Amendment.

5 Thank you.

6 CHAIRPERSON ACZON: Any questions,
7 Commissioners? Thank you. Vice Chair Wong.

8 VICE CHAIR WONG: I wanted to move, go into
9 executive session, consult with the board attorney on
10 questions and issues pertaining to the board's power,
11 duties, privileges, communications, and liabilities.

12 MR. HOPPER: I have less than a minute. I
13 just wanted to note for the record the Special Permit
14 Law 205-6 states:

15 Subject to this section, the County
16 Planning Commission may permit certain unusual and
17 reasonable uses within Agricultural and Rural
18 Districts other than those for it which the district
19 is classified.

20 Any person who decides to use the persons'
21 land within an Agricultural or Rural District other
22 than or in agriculture or rural use, as the case may
23 be, may petition the Planning Commission of the
24 County within which the person's land is located for
25 permission to use the person's land in the manner

1 desired decide.

2 It says, under for which the lands for
3 which the district is classified. So the purpose of
4 the statute is not to allow under the statute.

5 CHAIRPERSON ACZON: We will take that under
6 consideration. We have a motion on the floor.

7 COMMISSIONER McDONALD: Second.

8 CHAIRPERSON ACZON: Moved by Vice Chair
9 Wong, seconded by Commissioner McDonald to go into
10 executive session. Those in favor say "aye",
11 opposed. Motion carries.

12 (Executive session.)

13 CHAIRPERSON ACZON: We're back on the
14 record.

15 Commissioners - Section 15-15-100 provides
16 us with various options.

17 We may issue a Declaratory Order on the
18 matter without further hearing. This would be the
19 case if you believe that the Commission has received
20 sufficient evidence upon which to make a decision.

21 Number two, schedule the matter for a
22 contested case hearing.

23 Or number three, deny the petition if it is
24 speculative or hypothetical; if the Petitioner does
25 not have standing; the issuance of the Order may

1 adversely affect the state or the Commission in any
2 litigation which is pending or may reasonably be
3 expected to arise, or; the matter concerns a
4 statutory provision not administered by the
5 Commission or is otherwise not within the
6 jurisdiction in the Commission.

7 Is there any discussion?

8 COMMISSIONER HIRANAGA: Mr. Chair, are you
9 asking for a motion?

10 CHAIRPERSON ACZON: Discussion. If there
11 is no discussion --

12 COMMISSIONER HIRANAGA: Questions of the
13 proceedings?

14 CHAIRPERSON ACZON: Questions. Do the
15 Commissioners or LUC staff have any final questions
16 for Ms. Wright, County or OP?

17 No one. Okay, Commissioners, what is your
18 pleasure?

19 COMMISSIONER HIRANAGA: I'll make a motion.
20 I move that we deny the Petitioner's petition for a
21 Declaratory Order.

22 CHAIRPERSON ACZON: Any second? The motion
23 failed without a second.

24 Vice Chair Scheuer.

25 VICE CHAIR SCHEUER: Mr. Chair, I move to

1 grant the Petitioner's Petition for a Declaratory
2 Order. Overnight campgrounds on lands with soil
3 classified by the Land Study Bureau's detailed land
4 classification as having overall productivity rating
5 of Class B are prohibited by HRS 205-4.5(a)(6) and
6 cannot be permitted by a Special Use Permit.
7 Accordingly, Ho'omoana is required to file a District
8 Boundary Amendment Petition with the County of Maui
9 Department of Planning for its proposed campground.

10 COMMISSIONER ESTES: Second.

11 VICE CHAIR SCHEUER: May I speak to the
12 motion?

13 I have a lot of respect for all the parties
14 in the room and I believe this is a fairly complex
15 legal issue. We have two parts of Hawaii Revised
16 Statute, which at least on the surface seem to
17 contradict each other.

18 The language in 205-6, which gives the
19 county very broad powers to issue Special Use
20 Permits. Section 205-4.5, which allows uses in the
21 Agricultural District is silent about certain uses
22 such as quarrying; and then prohibits certain types
23 of uses including golf courses and overnight
24 campgrounds.

25 I want to be really clear for everybody in

1 the room. This is not about the merits of the
2 project what I believe the Petitioner is really seek
3 to have happen, which I've personally seem happen
4 successfully in some areas, which people are against
5 it or arguing about the rest of the project. It's
6 not about merits. It's how you interpret the law
7 when you have two things.

8 Generally there is a principle that we want
9 to honor. When they get into greater specificity in
10 a portion of the statute you have to follow the area
11 that has greater specificity rather than more general
12 language.

13 So while I agree that the broad language in
14 205-6 seems to give the county broad discretion and
15 home rule in issuing a Special Use Permit, it's not
16 untethered, it's not without restriction. And one of
17 those restrictions the legislature took the effort to
18 specially enumerate in Section 205-4.5, which is no
19 overnight campground in the district.

20 That's why I made the motion.

21 CHAIRPERSON ACZON: Thank you. Anybody
22 else?

23 VICE CHAIR WONG: I just wanted to be --
24 also it's not on the merits, it's just more for me
25 the issue was they were very specific in 205-4.5(6),

1 so that's the reason I support this motion.

2 The other thing I wanted to say, Mr. Chair,
3 is I don't know if I have to make a motion to allow
4 to sign the DOA at this time on behalf of the
5 Commission.

6 EXECUTIVE OFFICER: Matter of
7 clarification, Mr. Chair. There is a 45-day time
8 limit -- excuse me 90-day declaratory ruling. That
9 period of time will run for our next meeting. In the
10 past it has been the Chair has been authorized to
11 sign Decision and Order with regard to declaratory
12 ruling as it is not a District Boundary Amendment
13 proceeding.

14 CHAIRPERSON ACZON: We can take that on
15 after this motion. Keep it simple.

16 VICE CHAIR WONG: I'll take it afterwards.
17 I'll hold off on that.

18 CHAIRPERSON ACZON: Commissioner Hiranaga.

19 COMMISSIONER HIRANAGA: I will not be
20 supporting the motion on the floor. And, again, this
21 is not about the merits of the proposed use. I
22 believe action by the LUC is premature because this
23 matter is still before the Maui Planning Commission,
24 and if they decide to deny the request, it's a moot
25 point; if they decide to grant the request, there are

1 judicial options available to the Petitioners.

2 I believe 7.9 acres is not a subject area
3 that the LUC should become involved in. It is the
4 reason why there's a 15-acre criteria for something
5 coming before the LUC or at the county level, and I
6 would discourage these types of subject matters of
7 this size being placed upon the LUC agenda. So I
8 will not be supporting the motion on the floor.

9 CHAIRPERSON ACZON: Thank you. Anybody
10 else? If there is no further discussion, Mr.
11 Orodenker.

12 EXECUTIVE OFFICER: The motion is to grant
13 the Petition for Declaratory Ruling.

14 Commissioner Scheuer?

15 VICE CHAIR SCHEUER: Aye.

16 EXECUTIVE OFFICER: Commissioner Estes?

17 COMMISSIONER ESTES: Aye.

18 EXECUTIVE OFFICER: Commissioner McDonald?

19 COMMISSIONER McDONALD: Aye.

20 EXECUTIVE OFFICER: Commissioner Wong?

21 VICE CHAIR WONG: Aye.

22 EXECUTIVE OFFICER: Commissioner Mahi is
23 absent. Commissioner Hiranaga?

24 COMMISSIONER HIRANAGA: Nay.

25 EXECUTIVE OFFICER: Commissioner Cabral?

1 COMMISSIONER CABRAL: Aye.

2 EXECUTIVE OFFICER: Chair Aczon?

3 CHAIRPERSON ACZON: Aye.

4 EXECUTIVE OFFICER: Motion carries with six
5 votes and one no.

6 CHAIRPERSON ACZON: Thank you.

7 Vice Chair Wong, I believe you have another
8 motion.

9 COMMISSIONER WONG: I want to make a motion
10 to allow the Chairman, on behalf of the Commission,
11 to sign the order, the form and all that for this
12 motion that passed.

13 VICE CHAIR SCHEUER: I'll second that. I
14 just I believe that because we might not necessarily
15 have a Form of the Order to file within the statutory
16 time frame, we're delegating to the Chair the
17 authority to sign the order on our behalf.

18 CHAIRPERSON ACZON: Thank you. Anybody
19 else?

20 So it's moved by Vice Chair Wong and
21 seconded by Vice Chair Scheuer.

22 Those in favor say "aye", opposed. Motion
23 carries.

24 Since the Commission has decided to grant
25 this request for Declaratory Order, Petition for

1 Intervention is moot.

2 The Chair will entertain a motion to deny
3 the Petition for Intervention on the basis that it is
4 moot.

5 VICE CHAIR WONG: So moved.

6 MR. GEIGER: On behalf of the movant, this
7 decision that you just made has a lot of unintended
8 consequences as to what is going to happening down
9 the road, because I think you've effectively made the
10 Special Use Permit statute ineffective and it doesn't
11 count.

12 But with regard to this you also, by not
13 allowing an intervenor, who has a property interest,
14 what is happening here to be a party I believe
15 prejudices severely my client on this particular
16 matter.

17 So I understand what the Commission is
18 going to do. I'm registering my objection to the
19 process.

20 CHAIRPERSON ACZON: We'll take that under
21 advisement. Vice Chair Scheuer.

22 VICE CHAIR SCHEUER: Very briefly. I try
23 to keep a very clean eye on due process concerns, and
24 I thought about what the effects would be upon
25 passing, if we chose to, which we did, grant the

1 motion and then deny intervention. There was nothing
2 in the position statement of the party that said
3 anything other than we should actually deny the
4 motion.

5 And it was it's a question of law, it's not
6 a particular facts that are going to come up in this
7 case. This is just a statement, not seeking response
8 from counsel, but to reflect my significant thinking
9 on this.

10 CHAIRPERSON ACZON: Let me entertain --
11 there is a motion by Vice Chair Wong. Any second in
12 that motion? We can have discussion. Motion is to
13 Deny Intervention, seconded by Vice Chair Scheuer.

14 COMMISSIONER HIRANAGA: More from a
15 procedural question. I'm wondering why the action to
16 consider the intervention was done before the
17 Declaratory Order.

18 EXECUTIVE OFFICER: Trying to answer that
19 question without getting into areas that should be
20 handled by executive session.

21 COMMISSIONER HIRANAGA: Would you like to
22 call for executive session.

23 EXECUTIVE OFFICER: Let me see if this
24 answers your question. The statute provides us with
25 certain options handling a declaratory ruling. One

1 of those options is to render decision on declaratory
2 ruling at the time filed without scheduling a
3 contested case here.

4 As you may have noted, both county and OP
5 are usually parties as a right and a district
6 boundary amendment where we have duty to provide
7 public testimony. So it's kind of a technicality
8 here.

9 If the Commission felt that further
10 discussion was warranted beyond what was contained to
11 have public testimony that was provided we could have
12 scheduled a -- that was one of the options to
13 schedule a contested case hearing. Since that option
14 was not pursued, there is no reason to intervene.

15 I guess what I'm trying to say that under
16 the statute there is a preliminary decision that
17 needs to be made as to whether or not there is going
18 to be a further hearing on the matter and whether or
19 not there is going to be parties allowed.

20 There is nothing to intervene on if there
21 are no parties to the proceedings. Only party to the
22 proceeding in this case was the Petitioner.

23 COMMISSIONER HIRANAGA: When was the
24 decision made that contested case hearing was not
25 going to be granted for this?

1 EXECUTIVE OFFICER: The Commission just
2 made it. That was one of the three options you had,
3 grant, deny or schedule for contested case.

4 COMMISSIONER HIRANAGA: Thank you.

5 CHAIRPERSON ACZON: Anybody else? If no
6 further discussion, Mr. Orodanker poll the
7 Commission.

8 EXECUTIVE OFFICER: The motion is to Deny
9 the Motion to Intervene.

10 Commissioner Wong?

11 VICE CHAIR WONG: Aye.

12 EXECUTIVE OFFICER: Commissioner Scheuer?

13 VICE CHAIR SCHEUER: Aye.

14 EXECUTIVE OFFICER: Commissioner McDonald?

15 COMMISSIONER McDONALD: Aye.

16 EXECUTIVE OFFICER: Commissioner Mahi is
17 not here. Commissioner Hiranaga?

18 COMMISSIONER HIRANAGA: Aye.

19 EXECUTIVE OFFICER: Commissioner Cabral?

20 COMMISSIONER CABRAL: Aye.

21 EXECUTIVE OFFICER: Commissioner Estes?

22 COMMISSIONER ESTES: Aye.

23 EXECUTIVE OFFICER: Chair Aczon?

24 CHAIRPERSON ACZON: Aye.

25 EXECUTIVE OFFICER: The motion carries.

1 CHAIRPERSON ACZON: The Commission will
2 move on to discussion and action, if appropriate
3 regarding the legislative status report.

4 (Off the record discussion.)

5 CHAIRPERSON ACZON: Back on record. Mr.
6 Orodénker.

7 EXECUTIVE OFFICER: Most of the things that
8 we have been tracking of any significance have either
9 changed significantly or died.

10 There are a couple of bills that are still
11 proceeding. One of them we're not that concerned
12 about, but we are watching, is House Bill 2043 which
13 allows the Commission to force condition by acting
14 against the county. I'm not sure how far that's
15 going to go. I'm not even sure it's going to go, but
16 we are just standing back on that one to see what
17 happens. But it is still alive.

18 House Bill 2044 is the House Bill that
19 allows us to -- changes on our powers on enforcement.
20 That bill is continuing to proceed. It has been made
21 first lateral over to the Judiciary Committee, and
22 we're expecting hearing on that to schedule sometime
23 next week.

24 We're comfortable with the modifications
25 that were made to that bill.

1 The rest of the bills regarding different
2 uses are all in different places. Some of them like
3 the ones hydrologic powers and relating to land use
4 are in energy committee. Things like that, finance
5 or -- or subject matter committees such as energy.

6 House Bill 2617 on the house side relating
7 to land use. It was significantly modified. This is
8 a bill that we had a lot of problems with, and house
9 staff is the one that essentially gutted our powers
10 and handed over everything over to the county. That
11 bill has been significantly modified to state simply
12 the counties or OP are required to bring their
13 General Plan updates to Land Use Commission for
14 approval of any district boundary amendments.

15 That may be problematic from a land
16 standpoint, but it's proceeding.

17 On the senate side most of the others bills
18 have also died, and the ones that are proceeding
19 hopefully most are concerned with Senate Bill 2355
20 relating to our LUC -- oh, backing up.

21 That House Bill requires the county -- the
22 original draft of that bill was extremely worrisome.
23 The judiciary has -- it's been modified by Board of
24 Land and judiciary waived its hearing on that, and
25 house finance can now schedule a hearing on it and

1 pass it out so it will crossover.

2 Our understanding is that that may occur --
3 if the bill passes in it's current form, we're fine
4 with it. If it gets modified back to its original
5 form, obviously we are going to have difficulty.

6 2355 is the only significant bill with
7 regard to us, which is sort of a mirror of the House
8 Bill that provides us with enforcement authority.
9 That bill has passed out of Board of Land on the
10 senate side, and now is referred to attorney between
11 judiciary Ways and Means. We're expecting that to
12 get heard, but we're not sure when.

13 The amendments that were made to that bill
14 make it almost exactly the same thing as House Bill
15 2044.

16 Other bills such as those relating to
17 Hawaiian architecture seem to be moving. We're not
18 taking a hard stance on any of those one way or
19 another, just making comments on it. And that is
20 that.

21 CHAIRPERSON ACZON: Any question for Mr.
22 Orodénker?

23 EXECUTIVE DIRECTOR: The only comments that
24 I can add is that we are seeing some opposition from
25 LURF, a lot of misinformation about going around

1 allegedly represents developers, but if you ask the
2 developers this --

3 CHAIRPERSON ACZON: Okay. If there is no
4 other business, this hearing is adjourned.

5 (The proceedings adjourned at 11:47 a.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on February 24, 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 24th day of February, 2016, in Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156