

## LAND USE COMMISSION HEARING

STATE OF HAWAII

Videotaped Conference

Proceedings held on 1/25/2018

State Department of Transportation

District Office

650 Palapala Drive

Kahului, Hawaii 96732

Commencing at 10:12 a.m.

## AGENDA

## IX HEARING AND ACTION

A15-798 Waikapu Properties LLC et al (Maui)

To consider Petition to Amend the Agricultural Land Use District Boundaries into the Rural Land Use District for certain lands situated at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, consisting of 92.394 acres and 57.454 acres, and to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at Waikapu, District of Wailuku, Island and County of Maui, State of Hawai'i, consisting of 236.326 acres, 53.775 acres, and 45.054 acres.

To hear closing arguments and decision-making.

## X Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 COMMISSIONERS:

3 OAHU

ARNOLD WONG, Chairperson  
4 JONATHAN SCHEUER, Vice Chair  
DAWN N.S. CHANG  
5 GARY OKUDA  
AARON MAHI  
6 NANCY CABRAL (Hilo)  
LINDA ESTES (Kauai)

7 MAUI

8 LEE OHIGASI, Presiding Officer

9 STAFF:

10 DIANE ERICKSON, Deputy Attorney General (Maui)  
11 DANIEL E. ORODENKER, Executive Officer (Maui)  
RILEY K. HAKODA, Planner/Chief Clerk (Oahu)  
12 JEAN McMANUS, Court Reporter (Maui)

13 JAMES W. GEIGER, ESQ. (Maui)  
For Waikapu Properties, LLC

14 MICHAEL HOPPER, ESQ. (Maui)  
Deputy Corporation Counsel Maui  
15 CLAYTON YOSHIDA, Planning Program Administrator  
16 KURT WOLLENHAUPT, Planner  
For County of Maui

17 DAWN APUNA, ESQ. (Oahu)  
18 LORENE MAKI, Planner  
Office of Planning, State of Hawaii

1 CHAIRPERSON WONG: Calling the meeting to  
2 order.

3 Good morning, this is the January 25th,  
4 2018 Land Use Commission video conference networking  
5 on Maui, Oahu, Kaua'i and Hawai'i. The main site for  
6 this meeting this morning is Maui to address the  
7 Maui-based docket.

8 The first order of business is to confirm  
9 that Commissioners Ohigashi, Estes, Okuda and Chang  
10 have reviewed the materials and transcripts of the  
11 December 6th and 7th, 2017 meeting, and are prepared  
12 to participate in these proceedings.

13 Commissioner Ohigashi?

14 COMMISSIONER OHIGASHI: Yes

15 CHAIRPERSON WONG: Commissioner Estes?

16 COMMISSIONER ESTES: Yes.

17 CHAIRPERSON WONG: Gary Okuda?

18 COMMISSIONER OKUDA: Yes.

19 CHAIRPERSON WONG: Commissioner Chang?

20 COMMISSIONER CHANG: Yes.

21 CHAIRPERSON WONG: Thank you.

22 EXECUTIVE OFFICER: Arnold, we can't hear  
23 Linda, and I'm not sure we can hear Nancy either.

24 VICE CHAIR CABRAL: You can hear me?

25 EXECUTIVE OFFICER: We got Nancy.

1 EXECUTIVE OFFICER: Linda, can you hear us?  
2 We can't hear you.

3 CHAIRPERSON WONG: Linda say something. We  
4 cannot hear you. You got to try to unmoot yourself.

5 VICE CHAIR CABRAL: Have Linda call you  
6 back and just put the phone to your microphone.

7 CHAIRPERSON WONG: Linda is your mike red?  
8 That one, is it red on the top?

9 Linda, move it closer to you, the mike.

10 COMMISSIONER ESTES: Better?

11 CHAIRPERSON WONG: That's good, thank you.

12 So, again, Linda, I just wanted to make  
13 sure that you have read the materials and transcripts  
14 and ready to proceed?

15 COMMISSIONER ESTES: I am. I have read --

16 EXECUTIVE OFFICER: Don't touch the mike.

17 COMMISSIONER ESTES: I have read the  
18 materials.

19 CHAIRPERSON WONG: And you're ready to  
20 participate?

21 COMMISSIONER ESTES: Yes.

22 CHAIRPERSON WONG: Thank you.

23 Before I move to assign Commissioner  
24 Ohigashi to serve as presiding chair for these  
25 videoconference, I wanted some information about what

1 to occur for this meeting.

2 Can you, Mr. Orodenker, can you please  
3 explain to us?

4 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
5 The purpose of this meeting is to vote on whether to  
6 approve or deny the Petitioner's request for District  
7 Boundary Amendment.

8 Should this Commission approve the proposed  
9 District Boundary Amendment, staff can be directed to  
10 prepare a written Decision and Order which will then  
11 be voted on by the Commission at a later date.

12 The form of the order will have to be  
13 reviewed by staff and attorney general to ensure  
14 conformance with the Commission's decision, which is  
15 why we need the third meeting on this matter to  
16 ensure that we have the conditions set properly and  
17 the Findings of Fact.

18 CHAIRPERSON WONG: So what happens, Mr.  
19 Executive Officer, just wanted to make sure that we  
20 received some late materials.

21 Do you -- how do we take those issues?

22 EXECUTIVE OFFICER: The filings that we  
23 received, that we received last night, are a Proposed  
24 Decision and Order that staff will review and  
25 incorporate into its recommended Final Decision and

1 Order or not incorporate, depending on how the  
2 Commission votes, and will be presented to the  
3 Commission at a later date.

4 At this time it's not necessary to vote on  
5 the Proposed Decision and Order or any form of the  
6 Proposed Decision and Order.

7 CHAIRPERSON WONG: Thank you. Everyone  
8 understand?

9 COMMISSIONER CHANG: Point of  
10 clarification. Mr. Orodener, with this late filing,  
11 will the other parties, Office of Planning, have an  
12 opportunity to review and comment as well as the  
13 County on the Petitioner's proposal?

14 EXECUTIVE OFFICER: At this point the  
15 County has submitted, and the State Office of  
16 Planning have submitted their comments on the  
17 Proposed Decision and Order. Usually at this stage  
18 it is left to staff to conform the Decision and Order  
19 to whatever the Commission decides.

20 So do they have the opportunity to comment?  
21 We -- this is kind of the close of the hearing. They  
22 can comment today on what they have seen, but once  
23 you take the vote, and staff is authorized to prepare  
24 Proposed Decision and Order, for all intents and  
25 purposes the proceedings are closed.

1 CHAIRPERSON WONG: Vice Chair Scheuer.

2 VICE CHAIR SCHEUER: So if, because of  
3 receiving the proposed D and O language late last  
4 night, if we are to vote today not to continue the  
5 hearing but to vote to accept or deny the petition,  
6 we would necessarily be voting on a document that we  
7 wouldn't have had the chance to read; is that  
8 correct, Dan?

9 EXECUTIVE OFFICER: I'm sorry, could you  
10 repeat that, Commissioner? I'm sorry.

11 VICE CHAIR SCHEUER: We also have the  
12 option to continue the hearing?

13 EXECUTIVE OFFICER: Yes, but I'm not sure  
14 it's necessary at this point. As I stated, the  
15 Decision and Order is actually prepared by staff.  
16 The submittals are simply proposals on the part of  
17 the Petitioner, OP and the County. They're not  
18 definitive in any manner.

19 I would suggest that continuance at this  
20 point may be irrelevant.

21 CHAIRPERSON WONG: Commissioner Chang.

22 COMMISSIONER CHANG: I guess this is just a  
23 point of process, procedure, because normally the  
24 other -- Office of Planning, the County would have an  
25 opportunity to review. We don't know whether there

1 is anything of substance. So may I ask the County  
2 and Office of Planning if they would like an  
3 opportunity to review the Petitioner's new findings?  
4 If they have no objection, I'm willing to proceed,  
5 but if they had like an opportunity to review it, I  
6 think they should be given such an opportunity.

7 MR. GEIGER: Can I have an opportunity to  
8 address the Commission? This is James Geiger.

9 CHAIRPERSON WONG: Let me hold off on that,  
10 Mr. Geiger.

11 I transfer to Chair Ohigashi, do you agree  
12 to proceed over this mornings proceedings?

13 COMMISSIONER OHIGASHI: I do only if I'm  
14 not called Chair. Presiding Officer.

15 CHAIRPERSON WONG: Thank you, Mr. Presiding  
16 Officer, I now turn it over to you.

17 PRESIDING OFFICER OHIGASHI: Picking up on  
18 the discussion, the question is whether or not Mr.  
19 Geiger gets to address the Commission regarding this,  
20 the matter that has been proposed.

21 Mr. Geiger, as Presiding Officer, I'm going  
22 to recognize you.

23 MR. GEIGER: Thank you, Mr. Chair,  
24 Commissioners.

25 By way of explanation, the Petitioners

1 submitted proposed Findings of Fact and Conclusions  
2 of Law, Decision and Order, and conditions in  
3 December. Those were submitted to State Office of  
4 Planning and to Department of Planning of the County  
5 of Maui. Both the County of Maui, Department of  
6 Planning, and State Office of Planning provided  
7 comments to those proposed findings, conclusions,  
8 Decision and Order and conditions.

9 The comments were incorporated in the  
10 supplemental proposed findings which is what was  
11 provided to staff yesterday afternoon, and that you  
12 received last night.

13 So the only changes between what was filed  
14 and the comments that were made were to incorporate  
15 those comments into the document that you have in  
16 front of you. And I hope by way of explanation that  
17 allows you to understand that both State Office of  
18 Planning and the County Maui Department of Planning  
19 have seen these documents and have had the  
20 opportunity to comment on them.

21 PRESIDING OFFICER OHIGASHI: But before we  
22 go forward, I think I have to ask everybody to  
23 identify themselves so that we can have a reasonable  
24 discussion. So why don't we start with State  
25 Planning.

1 MS. APUNA: Good morning, Deputy Attorney  
2 General, Dawn Apuna on behalf of Office of Planning.  
3 Lorene Maki is here with me today.

4 PRESIDING OFFICER OHIGASHI: Anybody else  
5 over there? How about on Maui?

6 MR. GEIGER: James Geiger, again on behalf  
7 Petitioner. Also present with me is Petitioner's  
8 representative, Mr. Michael Atherton.

9 MR. HOPPER: Michael Hopper, Deputy  
10 Corporation Counsel for County of Maui Department of  
11 Planning. With me is Clayton Yoshida, Planning  
12 Program Administrator, and Kurt Wollenhaupt, staff  
13 planner is also behind us here.

14 PRESIDING OFFICER OHIGASHI: With that, the  
15 comments of Mr. Geiger, I guess I would ask the  
16 comments coming from the Department of Planning,  
17 Office of Planning.

18 MS. APUNA: Thank you. So we did receive  
19 the latest Proposed Findings of Facts by the  
20 Petitioner, however, I can't say that we were able to  
21 review it in the time given. I did look at it and  
22 there were some differences from what we proposed, so  
23 we would not be able to stipulate at this time to the  
24 latest proposed Findings of Fact and Conclusions of  
25 Law.

1           PRESIDING OFFICER OHIGASHI:   Department of  
2 Planning.

3           MR. HOPPER:   The County of Maui did receive  
4 the supplemental filing, and we think that it's  
5 closer to a finished product than the original  
6 Decision and Order, because I think the idea is that  
7 it incorporates the comments of the County and state.  
8 We don't want to speak for the State, but at least  
9 for the County, it appears to have the conditions in  
10 them that the County kind of wants to see. And we  
11 believe that it adequately sets forth the conditions  
12 that the County of Maui has requested in this  
13 project.

14           We obviously can't speak for the State, but  
15 the County's position is that the supplemental  
16 findings, conclusions and Decision and Order, after  
17 our review, because the changes were based on  
18 requested County changes, is a document that we could  
19 consider stipulating to.

20           But again, this is up to the Commission as  
21 far as how it wants to proceed, and we can't speak  
22 for the State Office of Planning.

23           PRESIDING OFFICER OHIGASHI:   Just to  
24 clarify then, is it Maui County's position that they  
25 stipulate to the proposed order or not?

1           MR. HOPPER: Yes, we are comfortable with  
2 it and it sets forth all the conditions, findings and  
3 conclusions that the County would want to see, so,  
4 yes, we are amenable to that.

5           PRESIDING OFFICER OHIGASHI: I refer this  
6 matter to the Commission. Any questions,  
7 commissioner Chang who brought this up?

8           COMMISSIONER CHANG: Mr. Orodenker, is  
9 there a time period upon which we have to make a  
10 decision?

11          EXECUTIVE OFFICER: We have one year from  
12 the filing of the Petition, which we're not  
13 approaching. Otherwise, I think we're okay  
14 timeframe-wise.

15          PRESIDING OFFICER OHIGASHI: Commissioner  
16 Cabral.

17          VICE CHAIR CABRAL: This is Nancy Cabral  
18 here in Hilo. And I didn't see this before I got  
19 here, but even while sitting here waiting on my phone  
20 I've been able to scroll through the 95 pages and  
21 only read the sections in red which I'm assuming  
22 those are the only changes, and as far as I can tell  
23 they incorporate all of the items just as Maui County  
24 just indicated that it is probably a better document  
25 than the original document, because it incorporates

1 all the different items that have been brought up.

2 And I'm only about five minutes from my  
3 office, so I can return any time, no big deal, but I  
4 suspect as a practical matter, we can probably read  
5 them out loud to each other, or read them silently in  
6 the next ten to 15 minutes, which would be shorter  
7 than you folks driving back to your place of business  
8 and coming back to such a meeting in the future.

9 So it seems like it might be something that  
10 if we're really practical we can get through this in  
11 the next 15 minutes, but that's up to the larger body  
12 there if that's number of enough time to read and  
13 absorb the information.

14 I'm in favor of what I've read. Thank you.

15 PRESIDING OFFICER OHIGASHI: Commissioner  
16 Chang?

17 COMMISSIONER CHANG: I would like to ask  
18 the Petitioner if they have objection to a reasonable  
19 delay of two weeks to give OP an opportunity to  
20 review the supplemental Findings of Facts,  
21 Conclusions of Law and Decision and Order and  
22 stipulate to them.

23 PRESIDING OFFICER OHIGASHI: Before you  
24 answer that, Mr. Geiger, I'm going to ask for a  
25 motion to enter executive session to confer with our

1 attorney on this matter.

2 CHAIRPERSON WONG: I move.

3 PRESIDING OFFICER OHIGASHI: Is there a  
4 second? I see Chairman Wong making the motion,  
5 seconded by Commissioner Scheuer.

6 VICE CHAIR SCHEUER: No, Mr. Ohigashi,  
7 Attorney General from the Office of Planning asked to  
8 be recognized.

9 MS. APUNA: If I may address. So just for  
10 clarification, we haven't been able to review their  
11 latest filing, however, what we submitted on  
12 January 12th is what we're comfortable with. And  
13 from what I understand, I believe that Mr. Geiger is  
14 just incorporating our changes based on our filing,  
15 and then County's changes based on their filing.

16 I'm not sure as far as the County. But if  
17 the Commission is comfortable with reviewing what was  
18 filed by OP on January 12th, and then that  
19 Petitioner's original proposed findings back in  
20 December, we are okay with going forward in that way  
21 today. That we -- whatever changes or comments we  
22 had on January 12th is what we are proposing, and  
23 that might be enough for the staff and for the  
24 Commission to make a decision.

25 COMMISSIONER CHANG: But you are not

1 comfortable stipulating to the supplemental so long  
2 as what your comments were in your filing is  
3 incorporated accurately into the supplement?

4 MS. APUNA: Yes, we would -- we haven't  
5 been able to review it enough, but we're fine with  
6 what has been filed prior to yesterday.

7 COMMISSIONER CHANG: Sorry, Presiding  
8 Officer, I spoke out of turn.

9 CHAIRPERSON WONG: Excuse me, Presiding  
10 Officer, my motion is on the table. Do you need a  
11 second?

12 PRESIDING OFFICER: Do we need a second?

13 VICE CHAIR CABRAL: I'll second it. Here  
14 in Hilo, I'll second that.

15 PRESIDING OFFICER OHIGASHI: Moved by  
16 Chairman Wong and second by Commissioner Cabral to go  
17 into executive session. All those in favor indicate  
18 by saying "aye". Any nay's?

19 Thank you. We're in executive session,  
20 clearing the room now.

21 (Executive session.)

22 PRESIDING OFFICER OHIGASHI: Calling this  
23 hearing back into session.

24 Getting back to my script, I will ask is  
25 there anyone in the audience who wishes to provide

1 public testimony on this matter? Seeing none, now  
2 we're ready to hear closing arguments.

3 Are you ready, Mr. Geiger?

4 MR. GEIGER: If everyone can hear me, and  
5 I'm looking mostly at the court reporter.

6 Thank you, Presiding Officer, Chair,  
7 Commissioners, on behalf of the Petitioners we wish  
8 to thank you for considering our request to Amend the  
9 District Boundary for a parcel in Waikapu.

10 As you know, there are six criteria that  
11 must be applied. We had 14 witnesses who provided  
12 the information that supports the changing of the  
13 classification from Agricultural to Urban and Rural  
14 in connection with the lands that are the subject of  
15 the Petition area.

16 It is important to note that in this  
17 particular case we had eight public witnesses, or  
18 eight people who testified by way of public  
19 testimony, and all of them were in favor of this  
20 project. The State Office of Planning in their  
21 closing argument at the December 7th -- excuse me --  
22 yes, December 7th date was also in favor of it with  
23 the conditions that they proposed.

24 The Department Planning and County of Maui  
25 was in favor with conditions that were proposed.

1           And so we believe that your decision should  
2     be clear and should be straight forward that, yes,  
3     the Petition for Amendment of the District Boundary  
4     should be granted and we would ask the Commission to  
5     do so.

6           We would also advise the Commission that  
7     the Petitioners are agreeable to the conditions that  
8     are proposed by both Department of Planning and  
9     County of Maui, and by the State Office of Planning,  
10    and we attempted to incorporate all of those  
11    conditions within our proposed findings and  
12    supplemental proposed findings in addition to the  
13    general conditions that were proposed by the Land Use  
14    Commission staff and provided to us.

15          So as I indicated, this is a short closing  
16    argument because I believe that we have, in the  
17    record before you, met each of the criteria that you  
18    must review and consider in allowing for a change in  
19    District Boundary, and we would ask this Commission  
20    to change and grant our petition. Thank you.

21          PRESIDING OFFICER OHIGASHI: Commissioners,  
22    do you have any questions for Mr. Geiger? Seeing  
23    none -- Commissioner Okuda.

24          COMMISSIONER OKUDA: This is Gary Okuda.

25          Mr. Geiger, if it's okay with you, may I

1 ask certain questions?

2 MR. GEIGER: Yes.

3 COMMISSIONER OKUDA: My questions are  
4 basically one of clarification. I would like to  
5 first preface this by stating it's my inclination to  
6 vote in favor of your Petition. That inclination is  
7 based on the well-documented evidence that was  
8 presented in this case, together with the testimony  
9 and the input from the State Office of Planning and  
10 the County.

11 My first question is an overall question.  
12 In your Proposed Findings you describe in certain  
13 places Petition Area and in certain other areas  
14 descriptions of a Project Area.

15 Is there a difference between the Petition  
16 Area versus the Project Area?

17 MR. GEIGER: The answer is yes, and the  
18 difference is this. The Final Environmental Impact  
19 Statement, which was approved by this Commission,  
20 encompassed more than just the Petition Area, because  
21 it included the agricultural lands that are going to  
22 be the subject of a Conservation Easement.

23 The Petition Area is limited to the acreage  
24 that is included and described in Revised Exhibits 12  
25 and 13.

1           COMMISSIONER OKUDA:   So if our staff --  
2       strike that.

3           If the Commission votes in favor of your  
4       Petition, would you have any objection if our staff,  
5       in preparing the final document for our review and  
6       approval, would clarify and make clear the  
7       distinction between Petition Area and Project Area?

8           MR. GEIGER:   We have no objection.   We  
9       think it's within the proposed findings, but we have  
10      no objection with that clarification.

11          COMMISSIONER OKUDA:   Thank you.

12          The proposed document that you prepared  
13      included statements of conditions which would apply  
14      to lands which are previously zoned Agricultural  
15      which would be redesignated as Urban.

16          Would you have any objection to those  
17      conditions also applying to any lands which were  
18      previously designated Rural, where the designation of  
19      those rural lands would change?

20          MR. GEIGER:   In concept, no, but I don't  
21      believe there are any lands that were within the  
22      Petition Area that were previously classified as  
23      Rural.   The Maui Tropical Plantation --

24          COMMISSIONER OKUDA:   I may be misreading  
25      it, so I'm sorry if I must understood that.

1 Can I ask you to look at Paragraph 103 on  
2 page 20, and there's a reference in Paragraph 103 to  
3 what's been described as adjacent lands.

4 Would you have any objection if the staff  
5 included a specific statement of the acreage of the  
6 adjacent lands? I think it would be 800 acres, but I  
7 could be wrong.

8 MR. GEIGER: You are correct, and no, we  
9 would not.

10 COMMISSIONER OKUDA: Thank you.

11 And if you look at page 41, Paragraph 46,  
12 would you have any objection to our staff making a  
13 correction about the level above sea level if it  
14 turns out that it's not really 350 feet, but it might  
15 be 256?

16 OMR. GEIGER: The answer is no. But I  
17 believe that both elevations occurred, the difference  
18 being one within the Petition Area, one is the  
19 Project area.

20 COMMISSIONER OKUDA: Okay, thank you.

21 And then calling your attention to page 59,  
22 Paragraph 368, would you have any objection if the  
23 condition clearly stated the obligation to provide  
24 easement access to any of the described parcels which  
25 require such access?

1           MR. GEIGER: The answer is no, we would  
2 have no objection.

3           COMMISSIONER OKUDA: Thank you.

4           Looking the page 58, Paragraph 441, would  
5 you have any objection if staff or the Commission  
6 were to clarify Paragraph 441 -- let me just state  
7 for the record that my references to pages and  
8 paragraphs are from your previously filed proposed  
9 document, not from the document which was filed in  
10 the last 24 hours, so the record is clear.

11           Look on page 58, Paragraph 441, would you  
12 have an objection if that statement was made to be  
13 clear that the finding that the Petitioners have the  
14 financial capability to undertake the project based  
15 on the financial statement provided and the funding  
16 plan that was submitted into evidence or received in  
17 evidence?

18           MR. GEIGER: No, we have no objection to  
19 that. That would be fine.

20           COMMISSIONER OKUDA: One moment, just  
21 trying to look at my notes here.

22           And there might be some descriptive changes  
23 that the staff might need to include by reviewing the  
24 evidence, for example, the amount of units that are  
25 being counted, and I'm referring to page -- Paragraph

1 No. 1 on page 74. If there are these technical  
2 corrections or inclusions or clarifications, would  
3 you have any objection to the staff including those  
4 in whatever the draft or review by the Commission?

5 MR. GEIGER: The answer is no. We would  
6 encourage accuracy in the document. So to the extent  
7 we have made mistakes, we would encourage correction.

8 COMMISSIONER OKUDA: Thank you.

9 Looking at Paragraph No. 2 on page 74 there  
10 seems to be -- I don't want to call it an automatic  
11 termination of certain conditions. But, for example,  
12 if you look at the last sentence in Paragraph No. 2  
13 on page 74, it provides that the best management  
14 practices shall include a certain program for  
15 maintenance, but it's limited for the life of the  
16 project.

17 Where there are statements or provisions in  
18 your proposed document which limit conditions for the  
19 life of the project, would you have an objection that  
20 these type of automatic termination statements be not  
21 included -- now, we don't want to create extra  
22 paperwork or extra expense, but from a land  
23 management standpoint, I would suggest that it might  
24 be clearer and better for the record that if you want  
25 the condition lifted, that a petition be submitted to

1 the Land Use Commission to lift or cancel those  
2 conditions just so that the record is clear.

3 Would there be any objection to eliminating  
4 any type of automatic termination of conditions?

5 MR. GEIGER: Commissioner, and obviously it  
6 is up to the Commission as to what it wishes to do on  
7 this. My general inclination is that you don't want  
8 to have conditions out there that are in effect  
9 forever. And if there are certain things, for  
10 example, best management practices that might  
11 terminate because a structure goes away, they should  
12 terminate without having to come back.

13 But, again, we leave that up to discretion  
14 of the Commission.

15 COMMISSIONER OKUDA: Thank you. I just  
16 state for the record that my inclination is to vote  
17 in favor of what you submitted, but with that  
18 provision that we don't have any type of automatic  
19 termination provisions in there, but I appreciate  
20 your statement.

21 I'm referring to the last paragraph in  
22 Paragraph No. 8 on page 77. Where reports must be  
23 submitted to certain departments such as Department  
24 of Transportation or other agencies, would you have  
25 objections that the reports or documents which are

1 required to be submitted to such other departments,  
2 be also submitted to the Land Use Commission?

3 MR. GEIGER: We would have no objection to  
4 including them.

5 COMMISSIONER OKUDA: Thank you.

6 PRESIDING OFFICER OHIGASHI: Any other  
7 questions, Commissioner Okuda?

8 COMMISSIONER OKUDA: Yes. If you can just  
9 bear with me, I just want to double check this. We  
10 might have covered all of them.

11 If I can ask you to look at page 80,  
12 Paragraph 17, there's a reference to the header that  
13 says "agricultural easement", but did you really mean  
14 with the body of "conservation easement"; is that a  
15 typographical error?

16 MR. GEIGER: No. Actually the heading  
17 which is really just directional was to inform  
18 everyone that we were referencing the conservation  
19 easement for agricultural lands.

20 COMMISSIONER OKUDA: I see, I see.

21 I do recall in the testimony that there was  
22 some testimony about the fact that with accessory  
23 farm dwelling units would not be allowed on the land  
24 subject to this agricultural conservation easement.  
25 Was that also the continued intention of the

1     Petitioner not to allow accessory farm dwelling type  
2     of units?

3             MR. GEIGER:   The answer is yes.   And I  
4     believe that was one of the comments that State  
5     Office of Planning had, which we incorporated in the  
6     supplemental file.

7             COMMISSIONER OKUDA:   Thank you.

8             This may be more a legal theoretical thing,  
9     on page 86 to 87, Paragraph 31, would you have an  
10    objection to providing for filing of the document  
11    where necessary with the assistant registrar of the  
12    land court if it turns out that any of these parcels  
13    are subject to land court registration?

14            MR. GEIGER:   Just so I'm on the same page  
15    as you, which condition are you talking about?

16            COMMISSIONER OKUDA:   Well, there's usually  
17    a requirement that, you know, the D and O and  
18    statement of conditions be recorded against title,  
19    and I believe the normal practice has been to record  
20    it at the Bureau of Conveyance.   But if property is  
21    registered with the land court, you know, there's the  
22    land court statute, plus cases like:   In re Bishop  
23    and Aames Versus Mores provides that if the  
24    encumbrance is not noted on the Certificate of Title,  
25    it may not run with the land, may not be enforceable.

1           If it's necessary, would you object to  
2           having the filing of the document filed with the  
3           registrar of the land court?

4           MR. GEIGER:   The answer is no, we would not  
5           object to that.   I would inform the Commissioners  
6           that evidence indicates that none of this property is  
7           land court property.

8           COMMISSIONER OKUDA:   That was my  
9           recollection.   Just in the event.

10          Okay, that's basically all I have.

11          Let me state for the record, Mr. Geiger,  
12          that the quality of your presentation is not a  
13          surprise, based on my experience with you and your  
14          firm, even in cases where you have opposed our law  
15          firm in other cases years ago.

16          And the Applicant should be commended by  
17          its forthright presentation, starting from the Final  
18          Environmental Impact Statement and EIS process that  
19          it went through.

20          I'm not qualified to say what should be a  
21          textbook example of good practice, but if there is a  
22          textbook, I wouldn't be surprised to find your work  
23          in this petition included in such textbook.

24          Thank you for bearing with me.

25          MR. GEIGER:   Thank you.

1                   PRESIDING OFFICER OHIGASHI: Any other  
2 questions?

3                   So we move onto Mr. Hopper.

4                   Mr. Hopper, do you have a closing?

5                   MR. HOPPER: Yes, Mr. Presiding Officer.

6                   County of Maui at the outset of this  
7 project has supported the reclassification subject to  
8 conditions, so the County of Maui would recommend  
9 that the Commission adopt the supplemental proposed  
10 Findings of Fact, Conclusions of Law, and Decision  
11 and Order that was submitted because we believe it is  
12 the most recent and most comprehensive list of the  
13 conditions as discussed between the County Office of  
14 Planning and the Petitioner. So we would recommend  
15 reviewing that and adopting that as the Decision and  
16 Order.

17                   The county notes that throughout this  
18 proceeding it has provided testimony from Planning  
19 Director William Spence, both written and oral, and  
20 testimony from Public Works Director David Goode  
21 orally as well. The Department has supported this  
22 project for the reasons stated in the documents it  
23 has filed.

24                   Of note is the fact that the project is set  
25 forth in the Maui Island Plan, which is the most

1 recent comprehensive planning document available to  
2 the County.

3 The key there is that not only is the  
4 property listed within the appropriate growth  
5 boundaries of the document, but also is specifically  
6 listed in the document, that the Project Area as well  
7 as the project, and the County believes that the  
8 project as proposed is in substantial compliance with  
9 what is in the Maui Island Plan.

10 In fact, one of the conditions does require  
11 the property to be developed in substantial  
12 compliance with the project as described in the Maui  
13 Island Plan, so that was significant to the County.

14 The County would note one difference  
15 between -- I know State Office of Planning had stated  
16 that their most recent filing is what they would  
17 stand by -- the County would just note that it had  
18 just one issue with that filing, Condition 8B on  
19 transportation proposed there sort of suggested that  
20 there would be a joint traffic agreement between the  
21 County of Maui and the -- County of Maui, State  
22 Office of Planning and the Petitioner. And the  
23 County would want to make clear that the traffic  
24 agreements or any MOU on traffic would be between  
25 County and Petitioner and State and Petitioner

1 separately dealing with the issues that the State or  
2 County respectfully have with traffic improvements in  
3 that area.

4 I think OP doesn't have a problem with  
5 that, but I just wanted to note that if we close the  
6 record today with that statement, we still would have  
7 the issue of 8B as set forth in the supplemental  
8 filing to make clear there are separate MOAs with the  
9 County and Petitioner and State and Petitioner so  
10 issues wouldn't overlap.

11 Other than that, the County believes that  
12 if the terms or methods are met with the conditions  
13 proposed, there are conditions dealing with a variety  
14 of County issues, including water, wastewater,  
15 traffic, drainage and other issues. So the County  
16 supports the District Boundary Amendment as  
17 requested.

18 We note Applicant has spent substantial  
19 amount of time meeting with County and State agencies  
20 as well as members of the public, which we believe is  
21 reflective in the testimony that you've seen for this  
22 project.

23 Again, the County would recommend that the  
24 LUC grant the District Boundary Amendment as  
25 requested subject to the conditions as set forth in

1 the supplemental Proposed Findings of Fact,  
2 Conclusions of Law, and Decision and Order submitted  
3 by the Petitioner. Thank you.

4 PRESIDING OFFICER OHIGASHI: Do we have any  
5 questions from the Commission for the County?

6 Seeing none, Ms. Apuna, you've made closing  
7 argument before on December 7, 2017. Do you have any  
8 comments to add to that?

9 MS. APUNA: Yes, thank you, I do have a few  
10 comments to make.

11 OP reviewed Petitioner's proposed Decision  
12 and Order of December 26, 2017, and has provided  
13 comments, and suggested in its filing on  
14 January 12th, 2018, which includes the following:

15 Inclusion of Findings of Facts regarding  
16 the cultural impacts of the proposed project as  
17 testified to by Petitioner's cultural expert Mr.  
18 Hokuao Pelegrino, to support conditions to ensure  
19 minimal to no adverse effects to traditional and  
20 customary rights and practices, as well as proper  
21 archeological monitoring.

22 The inclusion of Findings of Facts based on  
23 written testimony from the Department of  
24 Transportation on traffic impacts and airports, and  
25 the Department of Defense recommendation for three

1 sirens.

2 Revisions to the Wastewater Condition No. 4  
3 to allow for the possibility of a public wastewater  
4 system.

5 Revisions to the Airport No. 7 and Highways  
6 No. 8 conditions, gathering and access rights  
7 Conditions No. 16, archaeological/historic sites  
8 Condition No. 20, and infrastructure deadline  
9 Condition No. 25, based on condition language  
10 suggested through written testimony by state  
11 agencies, and consistent with prior Decision and  
12 Order condition language.

13 As to Mr. Hopper's comments on Condition  
14 No. 8A, we agree that we would stipulate to the  
15 condition, that condition as written in Petitioner's  
16 most recent Supplemental Proposed Findings and Fact,  
17 however, we do urge this Commission to adopt OP's  
18 proposed language in our January 12th filing for all  
19 other Findings of Fact and conditions, as we believe  
20 that the language is accurate and modified from  
21 language recommended by the state agencies.

22 We humbly ask the Commission's approval of  
23 this Petition with OP's suggested edits, and we thank  
24 you for your time and dedication in this matter.  
25 Mahalo.

1           PRESIDING OFFICER OHIGASHI: Any questions  
2 for Ms. Apuna?

3           Seeing none, Commissioners, last call.  
4 Anybody have any questions they want to ask anybody?

5           Seeing none, the Commission will now  
6 conduct formal deliberation concerning whether to  
7 grant or deny the Petition,

8           I would note for the parties and the public  
9 that during the Commission's deliberations, I will  
10 not entertain any additional input from the parties  
11 or the public unless those individuals or entities  
12 are specifically requested to do so by the Presiding  
13 Officer. If called upon, I would ask that any  
14 comments be limited to the question at hand.

15           The Commission held hearings on the merits  
16 of this Petition on December 6th and 7th, 2017, and  
17 closing arguments were concluded today.

18           Commissioners, let me confirm that each of  
19 you have reviewed the record and read the transcripts  
20 for any meeting that you may have missed and that you  
21 are prepared to deliberate on the subject docket.  
22 After I call your name, would you signify with either  
23 "aye" or "nay" that you are prepared to deliberate on  
24 this matter.

25           Commissioner Chang?

1 COMMISSIONER CHANG: Aye.

2 PRESIDING OFFICER OHIGASHI: Commissioner  
3 Estes?

4 COMMISSIONER ESTES: Aye.

5 PRESIDING OFFICER OHIGASHI: Commissioner  
6 Mahi?

7 COMMISSIONER MAHI: Aye.

8 PRESIDING OFFICER OHIGASHI: Commissioner  
9 Okuda?

10 COMMISSIONER OKUDA: Yes.

11 PRESIDING OFFICER OHIGASHI: Commissioner  
12 Scheuer?

13 VICE CHAIR SCHEUER: Aye.

14 PRESIDING OFFICER OHIGASHI: Commissioner  
15 Wong?

16 CHAIRPERSON CHAIR WONG: Aye.

17 PRESIDING OFFICER OHIGASHI: Commissioner  
18 Cabral is excused -- Commissioner Cabral?

19 VICE CHAIR CABRAL: Yes. Freezing cold in  
20 Hilo.

21 PRESIDING OFFICER OHIGASHI: I am also  
22 ready to ready to deliberate on this matter.

23 At this point in time the Presiding Officer  
24 will entertain a motion that the Land Use Commission  
25 accepts or does not accept Waikapu Properties LLC

1     Petition for District Boundary Amendment. The motion  
2     should state the reasons for acceptance or  
3     nonacceptance of the Petition, and any additional  
4     Findings of Facts or changes to the Petitioner's  
5     Proposed Findings of Fact, and the conditions that  
6     will apply.

7             I also suggest that the motion also direct  
8     staff to prepare the order under the Petitioner's  
9     Proposed -- using Petitioner's Proposed Decision and  
10    Order filed on December 26, 2017, and as supplemented  
11    on January 25th, 2018, as a basis for the order  
12    making any necessary technical or non-substantive  
13    changes and corrections, as well as including the  
14    matters set forth in the motion.

15            COMMISSIONER MAHI: I do.

16            PRESIDING OFFICER OHIGASHI: Commissioner  
17    Mahi. You moved to accept -- what is your motion?

18            COMMISSIONER MAHI: I will not repeat the  
19    motion. I asked you -- and stated I vote in favor of  
20    that motion.

21            PRESIDING OFFICER OHIGASHI: My  
22    understanding is that you moved to accept Wailuku  
23    Properties LLC for District Boundary Amendment  
24    subject to the statements that the Presiding Officer  
25    has made concerning said motion. Is that right?

1 COMMISSIONER MAHI: Indeed.

2 PRESIDING OFFICER OHIGASHI: Is there a  
3 second?

4 I recognize Commissioner Okuda.

5 COMMISSIONER OKUDA: Mr. Presiding Officer,  
6 I second the motion. And just for clarification and  
7 to the extent this is needed as a friendly amendment,  
8 it's with the conditions and clarifications which Mr.  
9 Geiger so kindly responded to in my questioning, and  
10 also to incorporate the statements and filing of  
11 conditions presented by the Office of Planning and  
12 the County, and with the authorization of staff to  
13 prepare for the Commission's final review and  
14 approval a document which reflects the record, and  
15 what was stated here today.

16 PRESIDING OFFICER OHIGASHI: I am not sure  
17 if we treat it as a friendly amendment, but  
18 Commissioner Mahi, was that technically the motion  
19 that you made?

20 COMMISSIONER MAHI: Right. I'm good.

21 PRESIDING OFFICER OHIGASHI: I'm sorry, the  
22 court reporter has asked me to make sure that I said  
23 Waikapu Properties not Wailuku Properties.

24 So hearing the motion and the second, is  
25 there any discussion? Chairman Wong.

1 CHAIRPERSON WONG: I'm speaking in favor of  
2 the motion. I just wanted to speak for the record  
3 that I'm all in favor of this project of this  
4 Petition for the dba, however, I am very concerned  
5 about how the late D and O was given to us. I had no  
6 sleep last not just to read it. I was very concerned  
7 that the timing of this was kind of late.

8 If it was earlier -- I got it last night --  
9 it would be okay. So I just want to say that I'm for  
10 this, but I don't like how this last minute thing  
11 came up. Thank you.

12 PRESIDING OFFICER OHIGASHI: Any other  
13 comments or statements that the Commissioners may  
14 want to make?

15 There being no further -- oh, Jonathan,  
16 Commissioner Scheuer.

17 VICE CHAIR SCHEUER: It rhymes with lawyer,  
18 Commissioner Ohigashi.

19 Briefly, I first want to thank the  
20 Petitioner for having worked for over a decade very  
21 thoughtfully and meaningfully respond to community  
22 concerns. This is how these projects should be done.  
23 And you set a standard that I hope others will follow  
24 with when they attend to appear in front of us.

25 So the only pause that I had during the

1 entire proceedings had to do with the representations  
2 made by one of your expert witnesses on water. And I  
3 just will briefly say for the record that putting two  
4 straws into the same aquifer at different places  
5 doesn't mean that because, one, you're putting in a  
6 nonpotable system, and the other you're putting in a  
7 potable system, doesn't mean you're saving any water.  
8 You're still drawing water from the same aquifer.

9           It does make sense to have a dual system,  
10 but I don't think you can say this is conservation  
11 per se. That said, that's the only quibble I have,  
12 and it really gives me incredible pleasure to vote in  
13 favor of this.

14           PRESIDING OFFICER OHIGASHI: Any other  
15 comments, Commission? Commissioner Chang.

16           COMMISSIONER CHANG: Thank you, Presiding  
17 Officer.

18           I too unfortunately I was not at the  
19 hearing, but I did read all the transcripts. So  
20 while I could not hear the inclination or see  
21 community support, I too, like the previous  
22 Commissioners, want to applaud the work done by the  
23 Petitioner, that he took the time to listen to the  
24 community, stop, make appropriate modifications and  
25 adjust the project so that the community feels a

1 sense that this reflects what is right for this  
2 community.

3 I really also enjoyed the cultural impact  
4 assessment and hearing the testimony from the various  
5 community in support of the project.

6 I do have one final comment, more of a  
7 direction to staff, that in light of our hearing  
8 yesterday in Kona, this is going to be a long-term  
9 project. There's going to be a lot conditions that  
10 may be placed on this project.

11 I really would like staff to ensure that as  
12 they draft the proposed D and O, they take into  
13 consideration the enforceability of those conditions.  
14 Who is LUC holding responsible to ensure that those  
15 conditions are being met.

16 I, like Commissioner Okuda, don't  
17 necessarily like automatic termination. However, I  
18 do understand this is a long-term project, and if  
19 there could be a way to incorporate some discretion  
20 to staff and executive director to determine what  
21 requires the Petitioner to submit all requests to  
22 terminate the conditions, either because it's  
23 satisfied or was not applicable, but to give the  
24 discretion to executive director and staff to  
25 determine which of those conditions can be

1 administratively reviewed and decided, and which may  
2 have to be brought to the LUC Commission, but I don't  
3 think everything has to come back, but I will leave  
4 that up to staff to draft that for the Commission.

5 That's my only comments. Thank you,  
6 Presiding Officer.

7 PRESIDING OFFICER OHIGASHI: Thank you. Is  
8 there anybody else wants to make a statement or  
9 comment at this time? Commissioner Okuda, second  
10 time.

11 COMMISSIONER OKUDA: I just like to keep it  
12 short and state that I agree with what Commissioner  
13 Chang has proposed, and that would satisfy my  
14 concerns about automatic termination.

15 PRESIDING OFFICER OHIGASHI: Anybody else  
16 want to make a comment? I'll end with saying that I  
17 too am inclined to vote for this project. I would  
18 like to note that I am honored to be the Presiding  
19 Officer for this particular project, because I think  
20 it's a good one. The participants have put a lot of  
21 work into it. I hope that my inept handling of this  
22 matter does not affect anybody else's vote.

23 So with that, I'm going to ask that Mr.  
24 Orodenker please poll the Commission.

25 EXECUTIVE OFFICER: Thank you, Presiding

1 Officer.

2 The motion is to grant the Proposed  
3 District Boundary Amendment and to authorize staff  
4 and have staff prepare proposed Decision and Order  
5 for adoption with amendments by Commissioner Okuda --  
6 as suggested by Commissioner Okuda.

7 Commissioner Mahi?

8 COMMISSIONER MAHI: Aye.

9 EXECUTIVE OFFICER: Commissioner Okuda?

10 COMMISSIONER OKUDA: Yes.

11 EXECUTIVE OFFICER: Commissioner Estes?

12 COMMISSIONER ESTES: Yes.

13 EXECUTIVE OFFICER: Commissioner Scheuer?

14 VICE CHAIR SCHEUER: Aye.

15 EXECUTIVE OFFICER: Commissioner Chang?

16 COMMISSIONER CHANG: Aye.

17 EXECUTIVE OFFICER: Commissioner Cabral?

18 VICE CHAIR CABRAL: Yes.

19 EXECUTIVE OFFICER: Chair Wong?

20 CHAIRPERSON WONG: Aye.

21 EXECUTIVE OFFICER: Presiding Officer

22 Ohigashi?

23 PRESIDING OFFICER OHIGASHI: Aye.

24 EXECUTIVE OFFICER: Thank you. Mr.

25 Presiding Officer, the motion passes with eight

1 votes.

2 PRESIDING OFFICER OHIGASHI: Before I go  
3 I'm going to say Jonathan Scheuer. I want that on  
4 the record.

5 Anyway, thank you all for appearing here.  
6 I'm going to adjourn this meeting.

7 (The proceedings adjourned at 11:29 a.m.)  
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## CERTIFICATE

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HONOLULU            )

I, JEAN MARIE McMANUS, do hereby certify:

That on January 25, 2018, at 10:12 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 25th day of January, 2018, in Honolulu, Hawaii.

/S/ Jean Marie McManus  
JEAN MARIE McMANUS, CSR #156