

## 1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3 Hearing held on September 13, 2018

4 Commencing at 9:00 a.m.

5 Maui Arts &amp; Cultural Center

6 One Cameron Way

7 Kahului, Maui 96732

8  
9 AGENDA

10 I. Call to Order

11 II. Adoption of Minutes

12 III. Tentative Meeting Schedule

13 IV. Docket No. A05-755 Hale Mua Properties, LLC

14 V. Adjournment

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21 BEFORE: Jean Marie McManus, CSR #156

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1     APPEARANCES:

2     JONATHAN SCHEUER, Chair  
3     NANCY CABRAL, Vice Chair  
4     DAWN N.S. CHANG  
5     GARY Y. OKUDA  
6     LEE OHIGASHI  
7     ARNOLD WONG  
8     EDMUND ACZON

9     STAFF:

10    RANDALL S. NISHIYAMA, ESQ.  
11    Deputy Attorney General

12    DANIEL ORODENKER, Executive Officer  
13    RILEY K. HAKODA, Planner/Chief Clerk  
14    SCOTT A.K. DERRICKSON, AICP-Planner

15    RANDALL SAKUMOTO, ESQ.  
16    Attorney for Southwest 7

17    STERLING KIM  
18    For Hale Mua Properties, LLC

19    DAVID A. GALAZIN, ESQ.  
20    MICHELE McLEAN, Planning Director  
21    For County of Maui

22    DAWN APUNA, ESQ.  
23    Deputy Attorney General  
24    LORENE MAKI, Planner  
25    For Office of Planning  
    State of Hawai'i

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1 CHAIRPERSON SCHEUER: This is the September  
2 13, 2018 Land Use Commission Meeting.

3 First order of business is the adoption of  
4 the September 6th, 2018 minutes. Are there any  
5 corrections or comments on the minutes?

6 Seeing none, is there a motion to adopt?

7 COMMISSIONER OHIGASHI: Move to adopt.

8 COMMISSIONER ACZON: Second.

9 CHAIRPERSON SCHEUER: Moved by Commissioner  
10 Ohigashi, and seconded by Commissioner Aczon.

11 Any discussion?

12 Hearing none, all in favor? Any opposed?

13 The minutes are unanimously adopted.

14 VICE CHAIR CABRAL: I will abstain as I was  
15 not present.

16 CHAIRPERSON SCHEUER: The record will show  
17 Commissioner Cabral has abstained.

18 Next agenda item is the tentative meeting  
19 schedule. Mr. Orodener?

20 EXECUTIVE OFFICER: Thank you, Mr. Chair.

21 September 27th we will be at NELHA Mauna  
22 Kea extension, Special Permit 90-374.

23 October 24th and 25th in Kona, King  
24 Kamehameha Hotel for the Waikoloa Mauka matter.

25 On November 14th, we will be on Oahu for

1 the Kapolei Development, motion to extend at the  
2 Honolulu Airport.

3 November 15th we will be on Maui for  
4 Emanuel Lutheran status report.

5 On November 18th we will be at NELHA for  
6 HHFDC status conference.

7 And that takes us to December and we still  
8 have things to catch up on. Appreciate the  
9 Commissioners keeping their schedules open.

10 CHAIRPERSON SCHEUER: Thank you, Dan. Are  
11 there any questions?

12 Hearing none, the next agenda item  
13 evidentiary hearing and action meeting on Docket  
14 A05-755 Hale Mua Properties, LLC to consider an Order  
15 to Show Cause as to why approximately 240.087 acres  
16 of land at Waiehu, County of Maui, Hawai'i, should  
17 not revert to its former land use designation or be  
18 changed to a more appropriate classification.

19 Will the parties please identify themselves  
20 for the record?

21 MR. SAKUMOTO: Randall Sakumoto here for  
22 the successor Petitioner Southwest 7, also with me is  
23 the owner's representative, Murray Smith sitting  
24 behind me.

25 CHAIRPERSON SCHEUER: Good morning.

1           MR. GALAZIN: Hi, good morning. Deputy  
2 Corporation Counsel David Galazin, County of Maui,  
3 Department of Planning, and Director Michele McLean  
4 Department of Planning.

5           MS. APUNA: Deputy Attorney General Dawn  
6 Apuna on behalf of Office of Planning. Here with me  
7 today is Lorene Maki.

8           CHAIRPERSON SCHEUER: Mr. Kim, you raised  
9 your hand.

10          MR. KIM: I'm here representing Hale Mua  
11 Properties, LLC.

12          CHAIRPERSON SCHEUER: Will you please  
13 approach the microphone, the seat next to Mr.  
14 Sakumoto.

15          Can you please repeat your name into the  
16 mic.

17          MR. KIM: Sterling Kim, and I represent  
18 Hale Mua Properties, LLC, and I'm here to speak to  
19 the project and its merits.

20          CHAIRPERSON SCHEUER: Are you claiming to  
21 be a party to these proceedings?

22          MR. KIM: Yes I am.

23          CHAIRPERSON SCHEUER: On what basis?

24          MR. KIM: We're still listed as owners of  
25 parcels within this property.

1                   COMMISSIONER OKUDA: Chair, can I ask a  
2 question of Mr. Kim?

3                   My name is I Gary Okuda. Have we met  
4 before?

5                   MR. KIM: Yes.

6                   COMMISSIONER OKUDA: Just so that I'm  
7 clear, it's at one of the lunches that Doss Tannehill  
8 and Mackie AVECILLA and John Pennebacker periodically  
9 have, correct?

10                  MR. KIM: Yes.

11                  COMMISSIONER OKUDA: I would like to  
12 disclose the fact that I have periodically attended  
13 lunches that have been put on by the people I  
14 mentioned, and Mr. Kim has been at those lunches  
15 also.

16                  CHAIRPERSON SCHEUER: Okay, thank you for  
17 the disclosure.

18                  Mr. Okuda, I'm going to wait until we  
19 clarify the issue about parties before I ask the  
20 parties whether they have any concerns or objections.

21                  Mr. Kim, I'm going to actually -- until we  
22 clarify this issue as standing as a party, I'm going  
23 to swear you in as a public witness since you're not  
24 an attorney. We typically swear in everybody who  
25 appears in front of us if you're not an attorney of

1 record.

2 Will you please swear or affirm that the  
3 testimony you're about to give is the truth?

4 MR. KIM: Yes, I do.

5 STERLING KIM

6 Was called as a witness on his behalf and was sworn  
7 to tell the truth.

8 CHAIRPERSON SCHEUER: Thank you.

9 Mr. Sakumoto, do you have a position on Mr.  
10 Kim's statement that he is a party to this  
11 proceeding?

12 MR. SAKUMOTO: Yes, I do. I had a short  
13 statement that I wanted to provide for the Commission  
14 that might help elaborate on that issue.

15 CHAIRPERSON SCHEUER: Please go ahead.

16 MR. SAKUMOTO: Aloha, Commissioners.

17 On June 4, 2018 Land Use Commission filed  
18 an Order to Show Cause instructing my client  
19 Southwest 7 to appear before the Commission to show  
20 cause as to why the property, which was reclassified  
21 in this docket, should not reverted to its former  
22 land use classification or be changed to a more  
23 appropriate classification.

24 The Commission stated that it had reason to  
25 believe that certain conditions of the subject

1 Decision and Order had not been complied with.

2 On July 19, 2018, we filed a stipulation of  
3 the parties. It was signed by myself as well as  
4 counsel to the Office of Planning and the County of  
5 Maui. The stipulation reflected mutual understanding  
6 of the parties that we were unaware of compliance by  
7 the original Petitioner Hale Mua Properties, and that  
8 the successor Petitioner Southwest 7 had not complied  
9 with certain conditions of the D and O.

10 The stipulation also confirmed the parties'  
11 mutual understanding that there had been no  
12 substantial commencement of the use of the  
13 reclassified property, or any substantial progress in  
14 developing the reclassified area in accordance with  
15 the representations made to the Commission.

16 Finally, the stipulation confirmed that the  
17 parties would not oppose a motion by the Commission  
18 to incorporate the Order to Show Cause by including a  
19 reversion of the reclassified area to its former land  
20 use reclassification, or to a more appropriate  
21 classification.

22 I believe this accurately summarizes the  
23 matter. The last time this docket was on your agenda  
24 in July, I think it still accurately summarizes the  
25 matter to date.

1           The one thing that has changed is explained  
2           in our supplemental position statement which  
3           indicated that in July of 2008 Southwest 7 made a  
4           loan to the original Petitioner Hale Mua Properties  
5           in the amount of \$10,612,980. The loan was made in  
6           connection with the development that had been planned  
7           by Hale Mua Properties.

8           Our understanding is that the security of  
9           the loan for that loan was supposed to have been a  
10          mortgage covering the land owned by Hale Mua  
11          Properties.

12          It did cover most of the land. It did not  
13          cover all of the land for reasons unknown to us. The  
14          omitted parcels were essentially a number of kuleana  
15          parcels.

16          Those parcels, the majority of them, were  
17          also the subject of quiet title action. The result  
18          of which was that Hale Mua Properties successfully  
19          established that it held good title to those  
20          properties.

21          Again, although the quiet title action was  
22          concluded in 2006, the kuleana parcels were for some  
23          reason omitted from the mortgage which was recorded  
24          in 2008.

25          In May of 2010 Southwest 7 commenced the

1 foreclosure action, and in October 2011, the court  
2 entered a judgment in excess of \$14 million in favor  
3 of Southwest 7.

4 At the public auction of the property,  
5 Southwest 7 used \$8 million of that judgment as a  
6 credit bid to successfully acquire the mortgage  
7 property.

8 In August of 2013 the court entered a  
9 deficiency judgment. And after subtracting the  
10 amount that was used by Southwest 7 for the \$8  
11 million credit bid, and adding interest and  
12 attorney's fees and costs that had accrued, the  
13 amount of the deficiency judgment was \$8.3 million  
14 approximately.

15 The deficiency judgment was then recorded  
16 in the Bureau of Conveyances, and under Hawai'i law  
17 it became a lien on all real property that was held  
18 by the judgment debtors.

19 To try and pull this together, I know that  
20 was a lot of facts and chronology, I handed out a set  
21 of maps this morning which you should all have. And  
22 this may help you understand what's happening.

23 The first map, which is yellow and  
24 crosshatched in red, that is the area that was  
25 successfully reclassified by the Commission.

1           CHAIRPERSON SCHEUER: Mr. Sakumoto, if I  
2 may. Can you give us a hint of whether you're going  
3 to be opposing or agreeing to the inclusion of Mr.  
4 Kim as a party?

5           MR. SAKUMOTO: We are agreeing to his  
6 status as a party as Hale Mua Properties still owns  
7 some of the parcels that were covered by the  
8 reclassification.

9           CHAIRPERSON SCHEUER: That being the case,  
10 and you're not objecting to inclusion of Mr. Kim as a  
11 party, if there's -- is there anything that you're  
12 going to present that is directly relevant to trying  
13 to limit Mr. Kim's standing in this proceeding, or  
14 are we okay to move on to see what the County and OP  
15 believe.

16                   Alternately, are there things in here that  
17 you can discuss that are relevant to your overall  
18 position on the substantive matter before us?

19           MR. SAKUMOTO: Our substantive position  
20 that we have no basis to object to the Motion for  
21 Order to Show Cause is unchanged. The only thing  
22 that has changed is we do recognize Hale Mua  
23 Properties as the owner of the portion of the  
24 reclassified properties.

25           CHAIRPERSON SCHEUER: Thank you very much.

1 I would like to proceed to check with the County.

2 County, do you have a statement on Mr.  
3 Kim's contention that he's a party to this matter?

4 MR. GALAZIN: Thank you.

5 David Galazin again.

6 No, based on the representation made by  
7 counsel for Southwest 7, County would concur with the  
8 supplemental position statement that title does  
9 appear to -- still appear to be held by Hale Mua  
10 Properties. To that extent we would not object to  
11 Hale Mua being party to this proceeding.

12 CHAIRPERSON SCHEUER: Thank you, Mr.  
13 Galazin.

14 Office of Planning?

15 MS. APUNA: Thank you, Chair. We didn't  
16 receive anything from Mr. Kim, and I'm not sure if  
17 that's something distributed to him to the parties or  
18 Commissioners.

19 CHAIRPERSON SCHEUER: I believe there was  
20 something handed in this morning from Mr. Kim.

21 MS. APUNA: So we haven't received that, so  
22 we haven't reviewed it. But we would defer to  
23 Petitioner. We have no objection to Mr. Kim's  
24 participation.

25 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.

1 Commissioner Wong.

2 COMMISSIONER WONG: Thank you, Chair.

3 Ms. APUNA: Because you received this just  
4 this morning, do you want to take five minutes just  
5 to review this before we --

6 MS. APUNA: I can review it as we move  
7 forward. We haven't received a copy yet, but you  
8 can -- the Commission can move forward while I review  
9 it.

10 COMMISSIONER WONG: Chair, can we have a  
11 recess while OP receives a copy of this and reviews  
12 it?

13 CHAIRPERSON SCHEUER: We're in recess.

14 (Recess taken.)

15 CHAIRPERSON SCHEUER: We're back.

16 Ms. Apuna, have you had a chance to review?

17 MS. APUNA: Yes. Thank you, Chair.

18 CHAIRPERSON SCHEUER: Does that alter where  
19 OP stands on Mr. Kim?

20 MS. APUNA: No.

21 CHAIRPERSON SCHEUER: Commissioner Wong.

22 COMMISSIONER WONG: Mr. Sakumoto, you know,  
23 you were talking about what you handed out. Do you  
24 mind continuing on what you were saying?

25 MR. SAKUMOTO: Sure.

1           So the very first page of this handout  
2 shows the reclassified property. It's shaded in  
3 yellow with red crosshatching.

4           The next page shows the property that was  
5 acquired by Southwest 7 through the foreclosure  
6 action.

7           And the following page shows the property  
8 that is still owned by Hale Mua Properties. These  
9 were the parcels that were omitted from the mortgage,  
10 and hence, still held by Hale Mua.

11           So the last page is an overlay of the first  
12 three pages, and the relevant part of the last page  
13 is the area that's basically shaded in brown and  
14 crosshatched. That area constitutes land that is  
15 still owned by Hale Mua Properties and part of the  
16 reclassified area, hence, the conclusion that they  
17 actually are still a party to the proceeding.

18           CHAIRPERSON SCHEUER: Commissioners. Do we  
19 have further questions?

20           Yes, Mr. Ohigashi.

21           COMMISSIONER OHIGASHI: How far you going  
22 to allow us to ask follow-up questions regarding that  
23 issue?

24           CHAIRPERSON SCHEUER: I'm not limiting it  
25 yet.

1           COMMISSIONER OHIGASHI: I was just going to  
2 ask. Could you tell us or describe to us the  
3 proposed build-out on each of those parcels?

4           Is the proposed project your parcel as well  
5 as Mr. Kim's parcel?

6           MR. SAKUMOTO: When you said "proposed  
7 build-out", are you referring to the original project  
8 that was proposed for this?

9           COMMISSIONER OHIGASHI: Yes.

10          MR. SAKUMOTO: I guess I would defer to Mr.  
11 Kim to answer that question.

12          Our client, Southwest 7, was the mortgagee.  
13 They had no plans to develop this property, so I  
14 don't know what the actual build-out that was  
15 intended, you know, in terms of the layout of how  
16 this land was going to be utilized.

17          We were simply a mortgage lender that  
18 foreclosed on the mortgage and acquired the property  
19 through judicial foreclosure. There was never any  
20 intent to develop the land.

21          COMMISSIONER OHIGASHI: Mr. Chair, I guess  
22 I'll follow up with Mr. Kim.

23          CHAIRPERSON SCHEUER: Ms. Chang,  
24 Commissioner Chang.

25          COMMISSIONER CHANG: Mr. Sakumoto, good

1 morning.

2 I guess I'm wondering on looking at Exhibit  
3 A -- and I have to believe you thoroughly went  
4 through all of the real property transactions and you  
5 agreed with the conclusions Mr. Kim.

6 So the Exhibit A that's attached to the  
7 mortgage that identifies all the properties, the  
8 kuleana lands are not included in Exhibit A?

9 MR. SAKUMOTO: That's correct.

10 COMMISSIONER CHANG: Did your client --  
11 when Mr. Kim took the original mortgage out, was it  
12 for the entire property including the kuleana, or did  
13 it specifically exclude the kuleana?

14 MR. SAKUMOTO: The mortgage -- when you say  
15 took it out, you're saying when the mortgage --

16 COMMISSIONER CHANG: The original loan.

17 MR. SAKUMOTO: I was not involved in this  
18 transaction, so I can't speak for firsthand  
19 knowledge.

20 From talking with my client, what they had  
21 understood was that the purpose of the loan in  
22 general was to facilitate the project, which Hale Mua  
23 had intended to proceed with, and I think what their  
24 assumption was, was that they were going to get a  
25 mortgage on the property, all of the property.

1           But through somebody's lack of noticing  
2           that the kuleanas were missing, that's the way the  
3           mortgage was finalized and recorded. So that's all I  
4           can tell you.

5           I think from what my client has told me,  
6           the intention was to get a mortgage on all of the  
7           land, and it turned out it wasn't. And so that's  
8           just a fact, the way the documents were prepared.

9           COMMISSIONER CHANG: From your conversation  
10          with your client, was that the representation of Mr.  
11          Kim that they were getting -- that they had no  
12          discussions with Mr. Kim?

13          MR. SAKUMOTO: I did not ask my client what  
14          representations were made in connection with the  
15          loan.

16          COMMISSIONER CHANG: With respect to the  
17          loan, are you aware of whether there was ever a title  
18          report given on this property, and did the title  
19          report disclose these kuleana parcels?

20          MR. SAKUMOTO: Again, I was not involved  
21          with this matter when the loan was made, so I don't  
22          know what documentation there was, and how the  
23          mortgage was prepared.

24          So this matter came to my firm only  
25          recently in the last few months, and so what happened

1 years ago, I would only speculate at this point.

2 COMMISSIONER CHANG: So it is now the  
3 position of your client Southwest that they have no  
4 objection to Mr. Kim's participation as they  
5 recognize Mr. Kim as an owner of these kuleana  
6 parcels?

7 MR. SAKUMOTO: Yes. I think from the title  
8 research that we did, looking at what was acquired by  
9 Southwest 7 and what was not, that was a conclusion  
10 we reached, is we never successfully acquired the  
11 kuleanas.

12 COMMISSIONER CHANG: May I ask Mr. Kim a  
13 question?

14 CHAIRPERSON SCHEUER: Go ahead.

15 COMMISSIONER CHANG: Mr. Kim, can I ask  
16 you, when you took out the loan, did you represent to  
17 the company that you were including all the parcels,  
18 kuleana parcels as well? Was it on the entire  
19 property?

20 MR. KIM: It truly -- the mortgage  
21 documents were drawn by Southwest 7, so I never made  
22 any representation except to sign the mortgage when  
23 it was proffered. So I never had a chance to go over  
24 it, or we never had that discussion.

25 COMMISSIONER CHANG: Was it your

1 representation to them that when you took out the  
2 loan, that it was for the entire property including  
3 the kuleana parcels, notwithstanding you didn't  
4 review the documents?

5 MR. KIM: Actually I did not make any  
6 representations.

7 COMMISSIONER CHANG: When you took out the  
8 loan, was it -- did you know that it did not include  
9 the kuleana parcels?

10 MR. KIM: No.

11 COMMISSIONER CHANG: You didn't know?

12 MR. KIM: That's the reason why I have not  
13 been at any of the previous hearings, because it was  
14 unbeknownst to me until this last hearing was  
15 represented in the Maui News, and then I did my  
16 homework on finding out just what was going on, and  
17 how my standing may be, because I was still all these  
18 years looking for the funding to go forward with the  
19 project, and been unsuccessful until just a month  
20 ago.

21 So I had approached the lenders to purchase  
22 the property back and try to move forward with the  
23 project since I finally found the funding.

24 COMMISSIONER CHANG: So you always knew  
25 that you did not -- when the mortgage was taken, that

1 it did not include the kuleana parcels?

2 MR. KIM: I was unaware.

3 COMMISSIONER CHANG: No further questions.

4 CHAIRPERSON SCHEUER: Commissioners, other  
5 questions? Mr. Okuda.

6 COMMISSIONER OKUDA: Mr. Kim, if I could  
7 followup on Commissioner Chang's questions.

8 But you knew there was a foreclosure taking  
9 place regarding the property whether it included the  
10 kuleana properties or not, correct?

11 MR. KIM: Yes.

12 COMMISSIONER OKUDA: Because Southwest 7,  
13 as the lender, filed a lawsuit called a Complaint for  
14 foreclosure, correct?

15 MR. KIM: Yes.

16 COMMISSIONER OKUDA: And that was served on  
17 you, meaning you got a copy of that, right?

18 MR. KIM: Yes.

19 COMMISSIONER OKUDA: And then the lender,  
20 Southwest 7 filed what's called a Motion for Summary  
21 Judgment asking for a decree of foreclosure covering  
22 or dealing with the mortgage property, whatever that  
23 mortgage property was, correct?

24 MR. KIM: Yes.

25 COMMISSIONER OKUDA: You knew they were

1 asking for foreclosure from the court, right?

2 MR. KIM: Yes.

3 COMMISSIONER OKUDA: And you knew that the  
4 judge, I think it was Shackley Raffetto, granted that  
5 motion and issued the decree of foreclosure, correct?

6 MR. KIM: Yes.

7 COMMISSIONER OKUDA: And you knew that the  
8 court appointed a commissioner to auction off the  
9 property, correct?

10 MR. KIM: Yes.

11 COMMISSIONER OKUDA: In fact, you know that  
12 an auction took place, right?

13 MR. KIM: Yes.

14 COMMISSIONER OKUDA: And after that the  
15 lender filed what is called a Motion to Confirm the  
16 Foreclosure Sale, and you knew about that, correct?

17 MR. KIM: Yes.

18 COMMISSIONER OKUDA: So you did know that  
19 in the end title to the property was transferred to  
20 Southwest 7 as the high bidder at the end of this  
21 foreclosure case, correct?

22 MR. KIM: Yes.

23 COMMISSIONER OKUDA: And you didn't appeal  
24 from the issuance of the Decree of Foreclosure,  
25 correct?

1 MR. KIM: No.

2 COMMISSIONER OKUDA: Did you appeal or did  
3 you not appeal?

4 MR. KIM: No, I did not.

5 COMMISSIONER OKUDA: Okay, thank you.

6 CHAIRPERSON SCHEUER: Before I offer any  
7 other questions for Commissioners, for the benefit of  
8 the people, normally this is the part of the hearing  
9 we fly through and people just say who the parties  
10 are.

11 We will get to the substance of what's on  
12 our agenda after we have dealt with this issue.

13 Commissioner Cabral.

14 VICE CHAIR CABRAL: Mr. Kim, so you're  
15 saying that at no time did you go to court to have  
16 the property, the kuleana properties cleared of title  
17 from any other claim. I mean kuleana means somebody  
18 else in the family somewhere before may have had  
19 title, and you've never taken any action to actually  
20 have them cleared of all of those prior claims so  
21 that you would be able to have ownership transferred  
22 to your corporation or LLC?

23 MR. KIM: I did not know about anything  
24 until I contacted Mr. Sakumoto about this purchase,  
25 and he disclosed to me about the kuleanas that were

1 still in Hale Mua Properties' name.

2 VICE CHAIR CABRAL: So they are in your  
3 name, or they are actually still in the position that  
4 somebody else in history could come forward and still  
5 try and make a claim that they own them?

6 MR. KIM: Previous to this foreclosure  
7 action, we went through a clear title action with the  
8 state that lasted over a year with Title Guaranty.  
9 And we went through every single kuleana. We went  
10 through the long process of going through the courts,  
11 and publishing, et cetera. And then finally there  
12 was one person who was deemed to the heir, and they  
13 have a vested interest, and the court allowed us to  
14 pay them a pro rata share of what we purchased the  
15 whole property for. So that cleared the title.

16 And so, like I said, I was unaware about  
17 that we stayed named on these kuleanas until Mr.  
18 Sakumoto informed me about that, because I was trying  
19 to repurchase the property back from them.

20 VICE CHAIR CABRAL: Okay, thank you.

21 CHAIRPERSON SCHEUER: Commissioners,  
22 questions or discussion?

23 The issue is the status of Mr. Kim as a  
24 party, not the overall substance of the Order to Show  
25 Cause.

1 Commissioner Wong.

2 COMMISSIONER WONG: I wanted to ask our  
3 legal counsel, do we need a motion to accept him as a  
4 party?

5 MR. NISHIYAMA: I think you should.

6 COMMISSIONER WONG: Chair, can I make a  
7 motion to accept Mr. Kim as a party of this  
8 proceeding?

9 CHAIRPERSON SCHEUER: Yes, you may. Is  
10 there a second?

11 COMMISSIONER ACZON: I'm going to second it  
12 just to move on.

13 CHAIRPERSON SCHEUER: Commissioner Aczon  
14 seconded the motion.

15 Is there discussion on the motion to  
16 accept, or I might add, acknowledge Mr. Kim's status  
17 as party to these proceedings? Discussion.

18 Mr. Orodenker, would you do roll call  
19 vote -- sorry, hold on.

20 COMMISSIONER OKUDA: Mr. Chair, I'm  
21 inclined to vote for the motion. The reason for that  
22 is that if the record is deemed to include the  
23 foreclosure documents that were added to the record  
24 of the mortgage, the commissioner's deed do not  
25 include the kuleana parcels as part of the mortgage,

1 and so the foreclosure would not have transferred  
2 title to the kuleana properties to Southwest 7,  
3 meaning whoever is the original, or whoever is the  
4 owner of the kuleana property, that entity's interest  
5 would not have been divested by the foreclosure.

6 CHAIRPERSON SCHEUER: Thank you, Mr. Okuda.  
7 Mr. Sakumoto.

8 MR. SAKUMOTO: I'm sorry, Chair, I know  
9 this is very out of order, but I just wanted to be  
10 sure I understand.

11 Is the motion to recognize Mr. Kim as a  
12 party, or his company Hale Mua Properties LLC?

13 CHAIRPERSON SCHEUER: I think the motion  
14 was made as Mr. Kim, but I think the intention was  
15 Hale Mua.

16 MR. SAKUMOTO: Thank you. Sorry for  
17 interrupting.

18 CHAIRPERSON SCHEUER: Any further  
19 discussion on the motion? Mr. Orodener?

20 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
21 The motion is to accept Hale Mua as a party to these  
22 proceedings.

23 Commissioner Wong?

24 COMMISSIONER WONG: Aye.

25 EXECUTIVE OFFICER: Commissioner Aczon?

1 COMMISSIONER ACZON: Aye.

2 EXECUTIVE OFFICER: Commissioner Mahi is  
3 absent. Commissioner Okuda?

4 COMMISSIONER OKUDA: Yes.

5 EXECUTIVE OFFICER: Commissioner Ohigashi?

6 COMMISSIONER OHIGASHI: Yes.

7 EXECUTIVE OFFICER: Commissioner Chang?

8 COMMISSIONER CHANG: Aye.

9 EXECUTIVE OFFICER: Commissioner Cabral?

10 VICE CHAIR CABRAL: No.

11 EXECUTIVE OFFICER: Chair Scheuer?

12 CHAIRPERSON SCHEUER: Aye.

13 EXECUTIVE OFFICER: Thank you. Mr. Chair,  
14 the motion carries.

15 CHAIRPERSON SCHEUER: Okay, back to our  
16 regularly scheduled programming.

17 We have four parties here who have now all  
18 identified themselves. Let me update the record.

19 On May 29, 2018, the Commission received  
20 email correspondence from Petitioner's Representative  
21 Murray Smith, stating that Chris Brown would be  
22 representing the Cooper Trust on his behalf.

23 On May 30th, 2018, the Commission received  
24 email correspondence from Petitioner's Representative  
25 Thomas Millspaugh that Randall Sakumoto and Scott

1 MacKinnon would be Cooper Trust/Southwest 7.

2 On June 4th, 2018, the Commission mailed  
3 Notice of Order to Show Cause hearing to the  
4 Petitioner and to the Parties.

5 On June 5th, 2018, the Commission mailed  
6 and emailed Notice and Exhibit A to the Parties.

7 The Exhibit A had been omitted on June 4,  
8 2018 mailout.

9 On June 8, 2018, the Commission received  
10 Notice of Appearance of Counsel for Petitioner  
11 Southwest 7 LLC from Randall Sakumoto, Esq.,  
12 McCorriston Miller Mukai MacKinnon LLP.

13 On July 10th, 2018, the Commission received  
14 County of Maui, Department of Planning Department's  
15 Position Statement on LUC's Order to Show Cause.

16 On July 16, 2018, an LUC meeting agenda  
17 notice for July 25th, 2018 meeting was sent out to  
18 the Parties and Statewide and Maui mailing lists.

19 On July 18, 2018, the Commission received  
20 Petitioner's Position Statement on LUC's Order to  
21 Show Cause.

22 On July 19th, 2018, the Commission received  
23 OP's Position Statement on LUC's Order to Show Cause.  
24 Also on the same day, the Commissioner received a  
25 Stipulation of the Parties from the Petitioner.

1           On July 24th, 2018, the Commission received  
2 OP's Exhibits A through D to support their Position  
3 Statement.

4           On July 25th, 2018, the Commission met on  
5 Maui to hear this docket but -- we were planning to  
6 meet, but we cancelled the meeting due to lack of  
7 quorum and rescheduled the meeting to September 13,  
8 2018.

9           On September 4th, 2018, an LUC meeting  
10 agenda notice for September 13th meeting was sent to  
11 the Parties and Statewide and Maui mailing lists.

12           On September 1, 2018, the Commission  
13 received Maui County Department of Housing and Human  
14 Concerns correspondence.

15           Let me briefly run over our procedure.

16           First, I'm going to allow those desiring to  
17 provide public testimony for this docket to identify  
18 themselves. All such individuals will be called up  
19 to the witness box and will be sworn in prior to  
20 providing testimony.

21           Can I have a show of hands of number of  
22 people who are planning to testify at least at this  
23 time. Thank you.

24           Secondly, after public testimony, I will  
25 allow the Petitioner, Hale Mua Properties, the County

1 and State Office of Planning to present their case on  
2 the Order to Show Cause. Should it choose to do so,  
3 the Petitioner will be allowed to introduce evidence  
4 as to why the Petition Area should not be reverted to  
5 its original classification if necessary.

6 OP and the County will also be allowed to  
7 present evidence in support of their respective  
8 positions.

9 The Petitioner will then be given the  
10 opportunity to give closing arguments.

11 And at conclusion of oral arguments, and  
12 after questions from the Commissioners and the  
13 answers thereto, the Commission will deliberate on  
14 this the matter.

15 Are there any questions for our procedures  
16 today?

17 MR. SAKUMOTO: No questions, Mr. Chairman.

18 MR. KIM: No, questions.

19 MR. GALAZIN: No questions. Thank you,  
20 Chair.

21 MS. APUNA: No questions.

22 COMMISSIONER CHANG: Chair, may I ask a  
23 question?

24 CHAIRPERSON SCHEUER: Commissioner Chang.

25 COMMISSIONER CHANG: Mr. Kim, did you

1 receive all the documents that were just mentioned?  
2 Have you read any of the --

3 MR. KIM: I went to the LUC website and  
4 then I read it.

5 COMMISSIONER CHANG: So you read documents  
6 that the Chair just stated. Did you also read the  
7 stipulation that was agreed to by all the parties?

8 MR. KIM: No.

9 CHAIRPERSON SCHEUER: Joyclynn Costa.  
10 I'm going to swear you in and then you  
11 identify yourself and proceed.

12 Do you swear or the affirm that the  
13 testimony you're about to give is the truth?

14 THE WITNESS: I do.

15 JOYCLYNN COSTA

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

19 DIRECT EXAMINATION

20 THE WITNESS: My name is Joyclynn Costa,  
21 and I was involved in the Hale Mua property back in  
22 2005. I've been, a subject matter I would say, of  
23 this property for the last 12 years. And it's  
24 interesting that you mention the kuleanas, because  
25 within my fact findings, I found that kuleanas are

1 somewhat untouchable. And I'm not sure if this  
2 Commission is aware of council member back in Kona  
3 that is now questioning legitimacy and jurisdiction  
4 on kuleana, lands created from another country, which  
5 is the Royal Patents and Land Commission Awards.

6           Within the Doctrine of Political Question,  
7 it prohibits the United States from entering into or  
8 engaging into matters of lands created from another  
9 country. It is only reserved for the political party  
10 which is the president and the congress.

11           So when I got involved with Hale Mua, I  
12 decided to write to congress. And I sent letters off  
13 to late Senator Daniel Inouye. We were going up to  
14 the property to kokua kuleana up there. The ditches  
15 were overgrown and obstructed, and her taro patches  
16 were of no water.

17           As we were going up there since 2005, we  
18 were told that that was Hale Mua's property and we  
19 don't belong there.

20           So we started to clean the property, clean  
21 out the ditch and doing kuleana, we were going to be  
22 putting in taro patches, which is the rights that we  
23 have.

24           The kuleanas down below that we were  
25 assisting was then getting not adequate, but at least

1 some water to start her taro patches.

2 By 2006 we were then approached by the  
3 manager, the property manager, Jerry Toyama, who was  
4 acting on behalf of Sterling Kim, to announce that we  
5 were trespassing. We weren't just trespassing, but  
6 we were criminally trespassing.

7 So I would like to -- and I'm sorry I  
8 didn't make copies for you, but I can certainly scan  
9 them and send them on your website if you'd like.

10 So an official trespass, criminal trespass  
11 was given to us through the Maui Police Department  
12 via Jerry Toyama while we were on the property. We  
13 were told that if we were to continue to be on the  
14 property, we would be arrested.

15 November 12, 2006, we were. We even made  
16 the 10:00 o'clock news, Joe Moore was announcing that  
17 we had these activists coming up there claiming land.  
18 That's not what we were doing. We were certainly not  
19 trespassers. There was no title to be had.

20 And so we went to court. And it's odd  
21 because today is the 13th. April 13th on a Friday I  
22 went to court, and that trespass was dismissed.  
23 Sterling Kim could not hold trespass of not just  
24 myself, but there were 16 of us on that property,  
25 Hale Mua property.

1                   CHAIRPERSON SCHEUER: May ask you to  
2 summarize your testimony?

3                   THE WITNESS: So I would encourage this  
4 Commission to, number one, read the Doctrine of  
5 Political Question, examine the title that you are  
6 now making decision on, which is lands created from  
7 another country. Examine your oath of what you need  
8 to do.

9                   And there is a letter that has been sent  
10 from the United Nation Human Rights from Dr. Alfred  
11 Dedayas, D-E-D-A-Y-A-S. He's an expert, and he was  
12 told about this case of Hale Mua, and along with  
13 other information in the status of the Hawaiian  
14 Kingdom. And his conclusion was that the land should  
15 not be touched here, and that only kingdom law,  
16 Hawaiian law, should be applied to such lands.

17                   So you're talking about a bigger property  
18 as well as the kuleanas within. Part of the  
19 property, if you look at the history, is from Wailuku  
20 Sugar. There is a case in Wailuku Sugar when  
21 Lunalilo's father died, Kana'ina.

22                   It went to court because Lunalilo trustees  
23 came back for all of the land. But there was a sale,  
24 bill of sale. When they examined that bill of sale,  
25 it was for a life estate. So when Kana'ina died,

1 really Wailuku Sugar had no more title.

2           You guys talk about title. When I looked  
3 at the LUC says there is a quitclaim deed. I don't  
4 see a title. The title is still with the Royal  
5 Patent Land Commission Award and with Lunalilo.

6           CHAIRPERSON SCHEUER: I'm going to ask the  
7 parties, and if the Commissioners have any questions  
8 for you.

9           Mr. Sakumoto?

10          MR. SAKUMOTO: No questions, Mr. Chair.

11          CHAIRPERSON SCHEUER: County?

12          Mr. Galazin: No questions, Chair.

13          CHAIRPERSON SCHEUER: OP?

14          MS. APUNA: No questions.

15          CHAIRPERSON SCHEUER: Commissioners?

16          COMMISSIONER CHANG: Thank you so much for  
17 coming this morning.

18                 I want to ask you when you went up to the  
19 property, do you know whether the kuleana owners  
20 participated in the quiet title case?

21                 THE WITNESS: Not that I'm aware of. In  
22 fact, we had permission from kuleana to be there. I  
23 don't even live there. I don't have kuleana there.  
24 I went there to kokua. Arrested with no means to be  
25 there, and yet that couldn't stick by the purported

1 owner.

2 COMMISSIONER CHANG: Do you know whether  
3 those kuleana owners are still up there working on  
4 the land, or do you know whether there's anyone still  
5 working on the land?

6 THE WITNESS: Yes.

7 COMMISSIONER CHANG: Is it still in taro --  
8 what kind of use is it in?

9 THE WITNESS: Right now I think is just  
10 residential, but the taro patch is there. They were  
11 challenged, because they have a stream. And I think  
12 that's what divides the boundary, so adjacent owner  
13 now that has bought wanted to take the stream, but  
14 they said they need that for their taro patch.

15 Their mother has since died, Ms. Lymana  
16 (phonetic), but the daughter still resides on the  
17 property.

18 COMMISSIONER CHANG: Thank you.

19 CHAIRPERSON SCHEUER: Are there other  
20 questions, Commissioners? Because of my work on Maui  
21 water issues, I've known and worked with Joyclynn for  
22 many years. I'll just clarify as a statement, not  
23 really as a question. We're not determining title  
24 here. We're acknowledging what records exist within  
25 the State of Hawaii that assert that Mr. Kim, as well

1 as Southwest 7, owns title. We're not making a  
2 determination over that. Our kuleana in this is  
3 whether the entitlements associated with that  
4 property should continue to exist or should be  
5 removed.

6 THE WITNESS: That's all I say, it's almost  
7 moot to allow or consider entitlements when these  
8 properties are not within the jurisdiction. Thank  
9 you.

10 CHAIRPERSON SCHEUER: Mahalo.

11 I believe there is another person wishing  
12 to provide public testimony. Please come forward.

13 CHAIRPERSON SCHEUER: Do you swear or  
14 affirm that the testimony you're about to give is the  
15 truth?

16 THE WITNESS: Yes, it is.

17 CHAIRPERSON SCHEUER: Please introduce  
18 yourself and proceed.

19 HENRY KAHOLOKULA

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

22 DIRECT EXAMINATION

23 THE WITNESS: My name Henry Kaholokula. I  
24 was arrested 12 years ago at Hale Mua property for  
25 criminal trespass.

1           Through that case it became a pivotal case  
2 because we established lack of jurisdiction by the  
3 State of Hawaii and the County of Maui upon Hawaiian  
4 Nationalist, in general, not only for this  
5 trespassing case that we were arrested for, but for  
6 our rights being diminished. So for me it's like  
7 there is no case here.

8           I am heir to the titleholder. Okay? The  
9 title is with the dead. Hawaiian titles don't move,  
10 it's all allodial. We must understand that the  
11 titleholder, we are descendants of, because it's a  
12 Land Commission Award by the kingdom of Hawai'i given  
13 to the titleholder, the titleholder died, and he kept  
14 the title.

15           There is no movement of title in Hawai'i.  
16 I claim interest to titleholder, I don't claim title.  
17 I don't claim deed, I don't claim nothing. I claim  
18 interest. So I have interest in that area. I have  
19 interest on the Island of Maui.

20           Here's a case from Maliko Gulch, A&B trying  
21 to evict whoever is staying there now. I showed them  
22 transfer of title not lawful within the State of  
23 Hawaii.

24           So that's all my claim is. Any questions?

25           CHAIRPERSON SCHEUER: Thank you. Mr.

1 Sakumoto?

2 MR. SAKUMOTO: No questions.

3 MR. GALAZIN: No.

4 MS. APUNA: No questions.

5 CHAIRPERSON SCHEUER: Commissioners? Kala  
6 mai, Sterling Kim?

7 MR. KIM: No questions.

8 CHAIRPERSON SCHEUER: Are there any other  
9 individuals wishing to provide public testimony on  
10 this matter? Seeing none, I'm going to suggest that  
11 since I try to take breaks from time to time at the  
12 roughly 55-minute mark, this is a good time to take a  
13 break. After we come back, we will proceed with Mr.  
14 Sakumoto, five-minute break.

15 (Recess taken.)

16 CHAIRPERSON SCHEUER: We're back in.

17 We will begin with Randall Sakumoto and  
18 Southwest 7.

19 MR. SAKUMOTO: I actually provided my  
20 statement earlier in the proceedings when we were  
21 actually talking about who should be a party to  
22 today's proceedings, so I don't have much else to  
23 add.

24 Just to reiterate, however, we stand by the  
25 stipulation that was signed by the County of Maui and

1 the Office of Planning. So substantively I don't  
2 think anything has changed since that point.

3 CHAIRPERSON SCHEUER: Okay. Commissioner  
4 Ohigashi.

5 COMMISSIONER OHIGASHI: Is it your position  
6 then that there hasn't been substantial compliance?

7 MR. SAKUMOTO: Yes.

8 COMMISSIONER OHIGASHI: And in making that  
9 determination, you reviewed the records relating to  
10 the filings and the status of the proposed project;  
11 is that right?

12 MR. SAKUMOTO: We reviewed the records at  
13 the Land Use Commission and consulted with both  
14 County and Office of Planning as to their knowledge  
15 of compliance.

16 COMMISSIONER OHIGASHI: Has there been any,  
17 in your review, has there been any construction or  
18 any infrastructure done on the property?

19 MR. SAKUMOTO: To our knowledge, no.

20 COMMISSIONER OHIGASHI: Has there been any  
21 preliminary approvals granted towards that project?

22 MR. SAKUMOTO: We are aware that the County  
23 had granted some permits. I don't claim to know all  
24 of them. They were applied for by Hale Mua  
25 Properties.

1                   COMMISSIONER OHIGASHI: No further  
2 questions.

3                   CHAIRPERSON SCHEUER: Commissioner Chang.

4                   COMMISSIONER CHANG: Mr. Sakumoto, when did  
5 you become aware of Mr. Kim's interest or Hale Mua's  
6 interest in the property?

7                   MR. SAKUMOTO: Sometime after we filed the  
8 stipulation.

9                   COMMISSIONER CHANG: Did you make the  
10 stipulation available to Mr. Kim?

11                  MR. SAKUMOTO: I don't recall whether we  
12 gave it to him or not. I tried to keep him up to  
13 speed on what was happening, but I don't recall  
14 actually giving him the stipulation.

15                  COMMISSIONER CHANG: Did you let Mr. Kim  
16 know where the Land Use Commission was in the  
17 proceedings.

18                  MR. SAKUMOTO: I tried to do that, but I  
19 did not advise him like his attorney would have.

20                  COMMISSIONER CHANG: Thank you.

21                  CHAIRPERSON SCHEUER: Commissioner Okuda.

22                  COMMISSIONER OKUDA: Mr. Sakumoto, does  
23 your client have any agreement, either oral or in  
24 writing, at this point in time to sell any part or  
25 all of the property that was foreclosed back to Hale

1 Mua or Mr. Kim or any entity which he may be involved  
2 in?

3 MR. SAKUMOTO: To my knowledge, there's no  
4 such agreement.

5 COMMISSIONER OKUDA: Thank you. No further  
6 questions, Mr. Chair.

7 CHAIRPERSON SCHEUER: Commissioners,  
8 further questions for Mr. Sakumoto?

9 Mr. Sakumoto, so if I understood you  
10 correctly, in your earlier presentation, Mr. Kim is  
11 significantly indebted to your client.

12 MR. SAKUMOTO: There is a deficiency  
13 judgment that was declared by the court, and I  
14 believe the court declared the judgment debtors  
15 included both Hale Mua Properties and Mr. Kim.

16 CHAIRPERSON SCHEUER: So to the degree you  
17 might be able to express, is the intention of your  
18 client in your desire to, per the stipulation, see  
19 this property reverted and then presumably sell the  
20 property off; are you going to proceed to try to get  
21 control of Mr. Kim's interest?

22 MR. SAKUMOTO: The hope is that, right, we  
23 could acquire the interest that Hale Mua still owns,  
24 you know, through just a voluntary transaction.

25 CHAIRPERSON SCHEUER: And if a voluntary

1 transaction fails?

2 MR. SAKUMOTO: They would have to make a  
3 decision on whether they pursue their rights as the  
4 holders of the deficiency judgment, which like I  
5 said, is a lien under Hawai'i law.

6 CHAIRPERSON SCHEUER: Which would allow for  
7 remedy such as --

8 MR. SAKUMOTO: I think Hawai'i law allows  
9 for a foreclosure of a lien on real property, so it's  
10 like a mortgage foreclosure process, but it's not a  
11 mortgage, it's a judgment.

12 CHAIRPERSON SCHEUER: It would result in  
13 your having full control of the entire property that  
14 is the subject of these proceedings?

15 MR. SAKUMOTO: Yes, should that happen,  
16 that is the result.

17 CHAIRPERSON SCHEUER: Any further  
18 questions? Mr. Okuda.

19 COMMISSIONER OKUDA: Just to clarify the  
20 procedure that you're describing could be called an  
21 execution on a judgment, correct?

22 MR. SAKUMOTO: Correct.

23 COMMISSIONER OKUDA: And what would happen  
24 in execution sale is a person appointed by the court,  
25 or the sheriff, would basically auction off the

1 properties that are subject to the deficiency  
2 judgment lien to the highest bidder, correct?

3 MR. SAKUMOTO: Correct.

4 COMMISSIONER OKUDA: So your client might  
5 be the highest bidder or somebody else might be the  
6 highest bidder, correct?

7 MR. SAKUMOTO: That's possible, yes.

8 COMMISSIONER OKUDA: Okay, thank you.

9 CHAIRPERSON SCHEUER: Anything further for  
10 Mr. Sakumoto?

11 Mr. Kim, it's your opportunity to present  
12 your case.

13 MR. KIM: Commissioners, thank you very  
14 much for receiving me.

15 I have some presentation to make, showing  
16 you, since the original Land Use Commission that had  
17 extended this district boundary amendment had  
18 reviewed the Hale Mua project, it was back then a  
19 three-year process, but I know that none of you were  
20 sitting at the time, so I thought I might familiarize  
21 you with the location and the subdivision map showing  
22 what we are trying to do.

23 Back in 2004 when we first made the  
24 acquisition, the mayor had spoken with me about if I  
25 would be interested in doing an affordable housing

1 project with that property.

2           And so my response was that I would be more  
3 than happy to, but I stipulated that we need to have  
4 the directors from each of the departments available  
5 to help to do the conceptual plan of this project.  
6 Because, you know, like each department has its own  
7 process. It has its own needs.

8           So, you know, to try and satisfy everyone  
9 on such a project of this scale, it would take a lot  
10 of cooperation. And so we did have that meeting and  
11 we had all of the different division heads describing  
12 problems that they wanted to see mitigated, whether  
13 that was parks or traffic or Public Works or  
14 drainage. All of those matters were addressed during  
15 that conference.

16           And so the final conceptual drawing that  
17 I'll be showing is something that was incorporated by  
18 all of the different ideas that were proffered at  
19 that meeting. Particularly, like from the Planning  
20 Department, they didn't want to have the appearance  
21 of a high density subdivision right off the roadside,  
22 so all of the parcels that were located near the  
23 foothills of the mountain had to be large parcels so  
24 that the appearance wasn't going to be one of high  
25 density track housing.

1           We had 466 units that were going to be  
2 produced. Of those, 19 or more were two acres or  
3 more around the perimeter of the project towards the  
4 hillside. 51 percent were going to be affordable,  
5 70 percent of median income.

6           CHAIRPERSON SCHEUER: If I may, a couple  
7 thing. First of all, so you're going to -- you wish  
8 to give a PowerPoint presentation?

9           MR. KIM: Just going to show you the maps  
10 showing Maui, and then focusing in on where this  
11 location is. Then the map of the project showing the  
12 configuration of the subdivision.

13          CHAIRPERSON SCHEUER: Two things. First of  
14 all, we are in an Order to Show Cause hearing, right?  
15 The substance of one's case presumably would be  
16 focused on how, if you are arguing that the  
17 entitlement to the property should remain, how there  
18 has not been a violation of the conditions and terms  
19 placed on the property by the Land Use Commission.

20          MR. KIM: Thank you, Commissioner.

21          CHAIRPERSON SCHEUER: If you can focus your  
22 comments on that.

23                 Secondly, because normally these  
24 proceedings where people are very frequently  
25 represented by counsel, information is provided

1       beforehand for all the parties to review. I want to  
2       check to ask whether any of the parties object to  
3       your PowerPoint presentation. Mr. Sakumoto?

4                 MR. SAKUMOTO: No objection, Mr. Chair.

5                 MR. GALAZIN: No objection, Chair.

6                 MS. APUNA: No objection.

7                 CHAIRPERSON SCHEUER: Commissioner Wong.

8                 COMMISSIONER WONG: Just a question. Just  
9       for all parties, so that everyone has enough time to  
10      present their case, what is the time limit we're  
11      giving for each party to present, approximately?

12                CHAIRPERSON SCHEUER: Commissioner, thank  
13      you, Commissioner Wong. Mr. Sakumoto has already  
14      concluded, with the reversion of some time to  
15      respond.

16                Mr. Kim, you told me during break that you  
17      believe you could complete in five to ten minutes.

18                MR. KIM: Yes.

19                CHAIRPERSON SCHEUER: Maui County.

20                MR. GALAZIN: We would not need more than  
21      five minutes.

22                CHAIRPERSON SCHEUER: Office of Planning  
23      always take forever (laughter).

24                MS. APUNA: Five minutes or less.

25                COMMISSIONER WONG: Thank you, Chair.

1                   CHAIRPERSON SCHEUER: Thank you.

2                   Mr. Kim, do you have anybody with you,  
3 because we record these proceedings, and we have a  
4 court reporter. If you're up at the laptop moving  
5 things, it will be hard to catch your voice on  
6 record.

7                   MR. KIM: I can get the computer on the  
8 screen and I can bring the mouse here and operate it.

9                   CHAIRPERSON SCHEUER: Please proceed.

10                  MR. KIM: Before I start that, I was trying  
11 to go over the history about why we were unable to  
12 provide the compliance that has been brought up by  
13 Mr. Ohigashi.

14                  Matter of fact is that when we finally  
15 completed the LUC and got the district boundary  
16 amendment, it was a year later that the recession  
17 came upon us, and we were unable to service the debt.  
18 And the bank that was going to finance the project,  
19 Central Pacific Bank, was unable to move forward.  
20 They almost went under themselves.

21                  So that being said, the loan that we had  
22 with Southwest 7, which was providing the financing  
23 for us to finish getting the entitlements and later  
24 the loan, came due. We went through the foreclosure  
25 process, and we have been negotiating ever since

1 about buying back the property and retiring the debt,  
2 because we still have faith in this project.

3 And so all these years we have been unable  
4 to find funding until this past month we met with  
5 Capital Partner who was able to provide the funding.  
6 So then that's why I got back in touch with Mr.  
7 Sakumoto.

8 During the foreclosure and since the  
9 property had supposedly reverted and we were no  
10 longer included in any of the hearings, then I had no  
11 idea about this matter about to show cause, et  
12 cetera. We were unable to do any work or meet any of  
13 the criteria that was set for us, like for  
14 compliance, but I would just say that now that we're  
15 negotiating, should we be successful in that  
16 acquisition, then we would definitely need to have  
17 this entitlement extended in order for this project  
18 to move forward. And if the entitlement is  
19 rescinded, then we won't have any further action that  
20 we can do regarding this project.

21 That being said, I'll just show you where  
22 it is and what it looks like.

23 CHAIRPERSON SCHEUER: Mr. Ohigashi.

24 COMMISSIONER OHIGASHI: I was going to ask  
25 Mr. Kim if he has hard copies of what he's going to

1 show us to provide to at least the court reporter,  
2 otherwise the record would not include anything that  
3 he has shown.

4 CHAIRPERSON SCHEUER: Thank you, Mr.  
5 Ohigashi. I was about to advise Mr. Kim that unless  
6 hard copies are delivered to us, they're not going to  
7 actually have the chance to be accepted as part of  
8 the record in this proceeding.

9 MR. KIM: Okay, I don't.

10 (Video presentation.)

11 MR. KIM: I guess we can all recognize the  
12 island, and there is, as I zoom in towards the  
13 Central Maui --

14 CHAIRPERSON SCHEUER: Again, you need to  
15 speak into microphone.

16 MR. KIM: As we zoom into the Central Maui  
17 area where Kahului is located, and zoom in the  
18 project site, you can recognize the airport is here,  
19 Kahului, Wailuku, and the project site is located at  
20 the foothills of the West Maui mountains there.

21 So the yellow pin establishes where it is.  
22 It's boundaries are the ditch that used to be owned  
23 by Wailuku Agribusiness, and then the Na Wai 'Eha  
24 Stream forms the boundary on the northern side of the  
25 project, 232 acres. Part of the off-site

1 improvements that were included is a bridge. There's  
2 two crossings, one here (indicating), and one here  
3 (indicating) where all the people who live North of  
4 the Iao Stream cross, and there's gridlock every day  
5 going to and from north of the Iao Stream.

6 So we were asked by the mayor to put in, as  
7 part of the infrastructure, a bridge that would be a  
8 third crossing across Iao Stream where the old mill  
9 used to be.

10 And then after that it would crossover and  
11 there would be an improvement on the Waiale Road  
12 where we would have three lanes and two lanes of  
13 contra flow in and out of this area, which would  
14 really mitigate traffic.

15 That was the main concern about what the  
16 mayor had wanted out of this project was that bridge.  
17 The legislature had already allotted it a warrant for  
18 reimbursement to Hale Mua Properties upon the  
19 completion of the bridge that is presently held by  
20 the County of Maui, because they would be unable to  
21 complete that bridge project through a governmental  
22 means at the same cost that we can privately.

23 So that monies is still in county's coffers  
24 for that bridge.

25 If you want to come to, this is looking

1 down from the mountain. This would be the Kahekili  
2 Highway, and this would be the views looking towards  
3 the ocean and towards Haleakala.

4 Now, this would be the configuration of the  
5 subdivision. So as you can see, what I mentioned  
6 about the Planning Department wanting to have like  
7 the large lots at the perimeter to take away from the  
8 high density look of the project, there would be 400  
9 and -- 466 total lots, 238 or 51 percent would be in  
10 this area which would be the affordable component  
11 which is 70 to 125 percent of the median income  
12 family of four, which roughly comes to about 300,000  
13 for three bedroom house, two bath and two car garage.

14 The rest of the properties would all be  
15 market properties which are going to be the driver  
16 for the profit to carry the affordables which are not  
17 going to make a penny.

18 This is the proposed site for a new  
19 elementary school which would replace the Waihe'e  
20 Elementary School, which has a lot of traffic due to  
21 the strict amendments -- I mean, exemptions since  
22 it's a year-round school. This would be the  
23 ballparks, and this would be where we would do our  
24 wastewater treatment for the entire area, not only  
25 for the subdivision.

1           So that concludes my presentation of the  
2 proposed project. Thank you very much.

3           CHAIRPERSON SCHEUER: I see a light, but I  
4 don't think it's at the end of the tunnel.

5           So when Mr. Kim resumes or takes his seat  
6 back, I'm going to ask the Parties and Commissioners  
7 if they have questions for Mr. Kim.

8           Just to confirm, Mr. Kim, you're done with  
9 your presentation?

10          MR. KIM: Yes, Commission, thank you for  
11 the opportunity.

12          CHAIRPERSON SCHEUER: You're welcome.

13          Mr. Sakumoto, questions?

14          MR. SAKUMOTO: No questions, Chair.

15          CHAIRPERSON SCHEUER: Maui County?

16          MR. GALAZIN: Thank you, Chair.

17           I think the questions that we would have  
18 would be, for Mr. Kim, what sort of timeline he would  
19 envision for actual commencement of construction and  
20 fulfillment of some of the outstanding conditions  
21 that have not been met yet.

22          MR. KIM: Commencement would be before the  
23 end of this year. The funds are already allocated,  
24 and should be we be successful in reacquiring the  
25 land, then the entitlements for the construction are

1 still active with the housing division being granted  
2 that entitlement along with Hale Mua Properties.  
3 That would be on the County level. This is the other  
4 level that would need to be accomplished for all the  
5 entitlements to be appropriate to move on  
6 immediately.

7 MR. GALAZIN: Furthermore, Mr. Kim, have  
8 you reviewed all of the conditions that are imposed  
9 and are you prepared to satisfy all of them within  
10 that same time frame?

11 MR. KIM: We are prepared to satisfy all of  
12 the conditions prior to commencement.

13 MR. GALAZIN: No further questions.

14 CHAIRPERSON SCHEUER: Thank you.

15 Office of Planning?

16 MS. APUNA: No questions.

17 CHAIRPERSON SCHEUER: Commissioner Cabral.

18 VICE CHAIR CABRAL: Thank you.

19 I really like maps. So to help clarify,  
20 your presentation here really is talking about the  
21 whole package all of the lands that you previously  
22 had title to, correct?

23 MR. KIM: Yes.

24 VICE CHAIR CABRAL: Do you know how many  
25 acres you have now that potentially Attorney Sakumoto

1 has indicated that he's recognizing you potentially  
2 have title to that were not included in the lands  
3 taken back by the Petitioner?

4 MR. KIM: No.

5 VICE CHAIR CABRAL: So your plans that  
6 you're referring to in terms of this presentation and  
7 in terms of your comments to the County are, if you  
8 got the whole project back, what you would be doing,  
9 you don't have any plans to do something with your  
10 smaller acreage pieces that you have title to --

11 MR. KIM: No.

12 VICE CHAIR CABRAL: -- claim to have title  
13 to? Okay. I'm somewhat confused. Thank you.

14 CHAIRPERSON SCHEUER: Commissioner Aczon?

15 COMMISSIONER ACZON: Just a quick question.  
16 Now that you claim that you have the funding  
17 available, I guess my question probably for both you  
18 and Mr. Sakumoto, what is the status of the  
19 discussion between the two parties on trying to buy  
20 back the property? Where are you guys now?

21 MR. KIM: We have submitted a term sheet,  
22 which Mr. Sakumoto has submitted to the  
23 representatives of Southwest 7, and we're waiting to  
24 hear back. But everybody is waiting to see what's  
25 going to happen with that matter because it may

1       become a moot point.

2                   MR. SAKUMOTO:  Commissioner Aczon, I think  
3       that's a fair representation.  We did get a term  
4       sheet which was from several years ago, and  
5       confirmation by Hale Mua that that is still the  
6       proposal that they're willing to proceed with, but my  
7       client did not respond to that.

8                   COMMISSIONER ACZON:  So right now we're in  
9       limbo on what Southwest's decision is?  There's no  
10      inclination --

11                   MR. SAKUMOTO:  I don't think that they --  
12      they are not inclined to proceed with the terms of  
13      that proposal.  I think if they were, they would have  
14      acted on it at this point.  But, you know, they have  
15      been trying to -- their interest is that of a lender,  
16      so they're not a developer.

17                   They actually don't have any interest in  
18      seeing the property developed, they just want to be  
19      repaid their loan.  And if that involves, through the  
20      sale of the property, whether it be to Hale Mua or to  
21      some third-party, I think that's what their main  
22      objective is, is to be able to liquidate land and be  
23      made whole on the loan that they made.  But there is  
24      no deal or agreement at this juncture.

25                   COMMISSIONER ACZON:  Thank you.

1                   CHAIRPERSON SCHEUER: Commissioner  
2 Ohigashi?

3                   COMMISSIONER OHIGASHI: Thank you.

4                   Commissioner Cabral sort of clarified for  
5 me, and the presentation sort of clarified for me  
6 initial question as to what percentage housing or of  
7 the project is on your portion or Southwest?

8                   I'm going to move forward. You mentioned  
9 that you have commitment by Capital Partners, is that  
10 the firm's name.

11                  MR. KIM: No.

12                  COMMISSIONER OHIGASHI: Are you willing to  
13 disclose what firm you had gotten to --

14                  MR. KIM: I have two, and so the first  
15 order would be whether or not we can get an extension  
16 on these entitlements. Second order is to conclude  
17 an agreement with Southwest 7. And then there's two  
18 entities that are prepared to move forward that I  
19 have letters of intent from, so that decision will be  
20 made after we take care of the first two items.

21                  Now, if you wanted to know what both of  
22 their names are, I can disclose distance that, is  
23 that what you would like?

24                  COMMISSIONER OHIGASHI: No, I was more  
25 interested if you would be able to provide to us a

1 letter of intent.

2 MR. KIM: Yes.

3 COMMISSIONER OHIGASHI: The next question I  
4 have is regarding the statements that are contained  
5 in your, I guess, an overview of the Hale Mua  
6 subdivision. Is this what you provided?

7 MR. KIM: Yes.

8 COMMISSIONER OHIGASHI: You said that in  
9 here that the approval of 201G by the County Council  
10 of the County of Maui was granted by resolution that  
11 has been supplied.

12 Did you supply the resolution?

13 MR. KIM: That overview letter was a letter  
14 that I had submitted for the lenders, so that has not  
15 been supplied to you.

16 COMMISSIONER OHIGASHI: Do you know the  
17 status of the 201G project?

18 MR. KIM: Yes.

19 COMMISSIONER OHIGASHI: What is the status?

20 MR. KIM: Status is that it's still an  
21 active entitlement that has been confirmed to the  
22 Housing Division of the County of Maui and Hale Mua  
23 Properties, and it did not have an expiration.

24 COMMISSIONER OHIGASHI: Now, the other  
25 question that I have is that you indicated that -- I

1 wasn't sure what you meant by when you mentioned my  
2 name about the substantial compliance hasn't been  
3 started, or things haven't been started because of --  
4 what was your reasoning?

5 MR. KIM: Because we were not the owners of  
6 the property per se, so we were not able to move  
7 forward with any of the compliance measures that had  
8 been decried by the Land Use Commission when the  
9 district boundary amendment was granted originally.

10 COMMISSIONER OHIGASHI: Since the time of  
11 the adoption of the district boundary amendment,  
12 you're telling us that you didn't have control of the  
13 property to actually do substantial -- or to begin  
14 compliance?

15 MR. KIM: No, the foreclosure proceedings  
16 began shortly after 2008, almost immediately after  
17 the district boundary amendment was granted.

18 COMMISSIONER OHIGASHI: I don't have any  
19 others questions.

20 CHAIRPERSON SCHEUER: Commissioner Chang.

21 COMMISSIONER CHANG: Thank you, Mr. Kim.

22 Are your, for Hale Mua LLC, are your  
23 filings up-to-date, DCCA, is it a company in good  
24 standing?

25 MR. KIM: Yes, it is.

1                   COMMISSIONER CHANG: Do you have legal  
2 counsel right now representing you?

3                   MR. KIM: I do as far as I have a real  
4 estate lawyer who is looking into maybe being  
5 involved with this matter of the land acquisition.

6                   COMMISSIONER CHANG: Is anyone counseling  
7 you at this point in time?

8                   MR. KIM: No.

9                   COMMISSIONER CHANG: Were you the applicant  
10 at the time of the Land Use boundary amendment in  
11 2007?

12                   MR. KIM: Yes.

13                   COMMISSIONER CHANG: So you where fully  
14 aware of all the conditions?

15                   MR. KIM: Yes.

16                   COMMISSIONER CHANG: I'm going to ask you,  
17 since you haven't read the stipulation, condition one  
18 is the affordable housing.

19                   Based upon the stipulation that was agreed  
20 upon by Southwest, the County and OP, they have  
21 indicated that the Maui Department of Housing and  
22 Human Concerns has informed the Department of  
23 Planning at Maui County that it has no record of a  
24 completed agreement for the affordable housing.

25                   Would you disagree with that?

1           MR. KIM: You know, I would, because I was  
2 going to have the Housing Division Chief that was at  
3 the time when we had the resolution passed and the  
4 201G granted, then the subsequent Director, but  
5 they're both unavailable today. So they were going  
6 to speak to that, but they could not make this  
7 meeting.

8           COMMISSIONER CHANG: Do you have any  
9 independent document of the County approving that or  
10 a completed agreement?

11          MR. KIM: I have the resolution.

12          COMMISSIONER CHANG: Condition No. 3,  
13 public school facilities. The State Department of  
14 Education advised the Office of Planning that neither  
15 the original petitioner nor the successor -- sorry --  
16 executed an educational contribution agreement in  
17 fulfillment of Condition 3.

18           Are you aware -- did you complete an  
19 educational agreement, contribution agreement with  
20 the Department of Education?

21          MR. KIM: No, because we were at the  
22 planning stage when this foreclosure took place.

23          COMMISSIONER CHANG: Condition No. 5 is the  
24 transportation improvements. And the stipulation  
25 says that:

1           The first annual report notes that the  
2 original Petitioner submitted a revised Traffic  
3 Impact Analysis Report to DOT on November 13, 2007.  
4 However, the Successor Petitioner has no record  
5 evidencing that the original Petitioner received  
6 approval of the TIAR from DOT.

7           Did you receive an approval from the DOT?

8           MR. KIM: Excuse me, I can't answer that  
9 question. I would have to check the records.

10          COMMISSIONER CHANG: Okay.

11          Condition No. 6 was related to civil  
12 defense. The State Department of Defense has advised  
13 Office of Planning that neither the original  
14 Petitioner nor the successor has fulfilled the  
15 Condition 6.

16          Do you recall what Condition 6 on the LUC,  
17 on your approval was?

18          MR. KIM: No.

19          COMMISSIONER CHANG: Do you recall entering  
20 into any kind of discussions with civil defense  
21 related to that?

22          MR. KIM: I don't think we began any  
23 dialogue with them yet.

24          COMMISSIONER CHANG: Condition No. 7  
25 relates to archaeological monitoring.

1           Do you know whether there's been any --  
2 have you done any archaeological work on the  
3 property?

4           MR. KIM: Yes, we did.

5           COMMISSIONER CHANG: What kind of work did  
6 you do?

7           MR. KIM: We had archaeologists come and  
8 examine the site. And we had a report from them, but  
9 basically it boils down to that all of the property  
10 was in sugarcane for over 100 years, and then  
11 macadamia nuts now for the last 15, although they  
12 were never harvested.

13           And so they only check the peripheral areas  
14 where there may be remains that would not have been  
15 disturbed by the farming activity for all of those  
16 years, and they found nothing.

17           COMMISSIONER CHANG: Do you know in that  
18 report whether there was any assessment of  
19 traditional customary practices?

20           MR. KIM: I can't recall. We still have  
21 the report though.

22           COMMISSIONER CHANG: Condition No. 19 was  
23 related to annual reports. It says in 2008 it was  
24 the submission of the first report.

25           Have you submitted any report since then?

1 MR. KIM: No, I haven't.

2 COMMISSIONER CHANG: Condition No. 21,  
3 evidence of clear title. It says the Successor  
4 Petitioner has not provided and Successor Petitioner  
5 has no record evidencing that the original Petitioner  
6 provided a report establishing clear title to the  
7 reclassified area to the Commission, OP or the  
8 County.

9 Did you submit a clear title report to  
10 these parties?

11 MR. KIM: I was under the impression that  
12 we did. We had Carlsmith Ball do the clear title  
13 action, and I was positive that report was submitted.  
14 It wasn't, then I don't know why.

15 COMMISSIONER CHANG: As far as those things  
16 that I've just read to you, you might have -- let me  
17 take that back.

18 With respect to those stipulations that I  
19 just read to you, you have no independent basis to  
20 dispute the party's agreements represented by  
21 Southwest or the County of Maui if they say they did  
22 not receive the title report? Do you have any basis  
23 to support that they did receive it?

24 MR. KIM: I would have to check with the  
25 attorney who handled it. What I understand, Mr.

1 Leutenecker is retired. I would have to go back to  
2 the firm be and get that.

3 COMMISSIONER CHANG: Thank you very much.

4 CHAIRPERSON SCHEUER: Commissioners?  
5 Commissioner Cabral.

6 VICE CHAIR CABRAL: I appreciate that  
7 affordable housing is clearly what everyone's looking  
8 for in some way, shape or form, so I appreciate your  
9 efforts previously and onward for that.

10 In terms of your future plans, of which  
11 you're representing that's your desire to move  
12 forward with this, can you really briefly tell me a  
13 little bit about what a 201G is?

14 And then also comment if you talked with  
15 anyone with HUD with any kind of Section 8 money  
16 coming back for them or tax credit from the money to  
17 help your construction.

18 MR. KIM: Second question first. We've  
19 talked to the USDA, which guarantees and offers loans  
20 there also trying to look for other federal programs  
21 that can assist in this project.

22 The first part was?

23 VICE CHAIR CABRAL: 201G.

24 MR. KIM: 201G was a measure drafted by the  
25 state legislature back in that day. So it was in

1 2005, I believe, that it was stimulating affordable  
2 housing. The project had to have 51 percent of the  
3 product in affordable housing. And it was stipulated  
4 that it had to start at 70 percent of median income  
5 for a family of four up to 125 percent.

6 It also stated that the entitlement would  
7 be different in that, since this process did not go  
8 through the Planning Commission, I mean the Planning  
9 Department of the County, it was handled through the  
10 County Council. So the County Council had 60 days to  
11 act on the measure of approving a project of this  
12 nature, or it would automatically be approved.

13 And so since it was unique in that way, the  
14 entitlement ran to the co-applicants which were the  
15 County of Maui Housing Division and ourselves, Hale  
16 Mua Properties LLC.

17 So consequently none of the entitlements  
18 for this high density housing, which also excluded a  
19 lot of the subdivision rules that could be waived for  
20 a project of this type, such as sidewalks on one side  
21 instead of both sides of the street.

22 And so the process meant that the zoning  
23 did not change on the underlying property. So the  
24 land was zoned agricultural, and the entitlements  
25 that were granted by the council were only granted to

1 the Housing Division and to our LLC.

2 So the zoning never changed, and this  
3 district boundary amendment doesn't change the zoning  
4 either, it just made an exemption for urban use of  
5 the property, which is the highest and best use.

6 VICE CHAIR CABRAL: Thank you.

7 CHAIRPERSON SCHEUER: Commissioners,  
8 furthers questions? Commissioner Chang.

9 COMMISSIONER CHANG: One final question.

10 In 2007 what was your estimated cost to do  
11 the proposed development?

12 MR. KIM: The total development I would say  
13 was about \$216 million. Phase I at that time was  
14 approximately \$44 million for Phase I which would be  
15 156 homes, of which an even number of affordable and  
16 market homes were going to be constructed.

17 We elected to start with the smaller number  
18 because we were working on the windward side of the  
19 property. So as we would continue with the  
20 development, we wouldn't be creating dust for the  
21 people who already had homes constructed.

22 COMMISSIONER CHANG: And in today's -- in  
23 2018 what is your estimated cost to develop the same  
24 project?

25 MR. KIM: Surprisingly, it's very similar

1 to what it was back then.

2 Right before the recession it was quite a  
3 boom, so the prices were a little inflated compared  
4 to the present economic situation now. And further,  
5 the vertical construction of the homes actually would  
6 be almost exactly the same with the products that  
7 I've been researching, which would be a ZIPS product  
8 which is modular type of construction. They go -- a  
9 house takes three days to go up.

10 COMMISSIONER CHANG: Thank you for your  
11 answer.

12 CHAIRPERSON SCHEUER: Commissioner Okuda.

13 COMMISSIONER OKUDA: Follow up question.

14 Mr. Kim, do you have a binding loan  
15 commitment from any lender?

16 MR. KIM: I do not, because the caveat in  
17 the Memorandum of Understanding that I have would be  
18 hinging upon the outcome of this decision.

19 COMMISSIONER OKUDA: Subject to that, what  
20 is the amount of the loan that any lender last said  
21 it would commit, subject to the outcome of this  
22 hearing?

23 MR. KIM: \$47 million.

24 COMMISSIONER OKUDA: Thank you.

25 CHAIRPERSON SCHEUER: Commissioners?

1           Mr. Kim, you're the manager of Hale Mua  
2 Properties LLC?

3           MR. KIM: Yes.

4           CHAIRPERSON SCHEUER: Are you also a  
5 member?

6           MR. KIM: Yes.

7           CHAIRPERSON SCHEUER: Are there any other  
8 members?

9           MR. KIM: No.

10          CHAIRPERSON SCHEUER: Has that changed at  
11 all since the original petition went through?

12          MR. KIM: No.

13          CHAIRPERSON SCHEUER: You have nothing with  
14 you today documenting your lending commitment? You  
15 have no information that you provided for us today  
16 documenting the lending commitment that you're  
17 asserting?

18          MR. KIM: I provided that to the mayor, but  
19 I did not provide it to this body.

20          CHAIRPERSON SCHEUER: The mayor is not  
21 here. I have nothing further.

22          Maui County, and then we will take a break.

23          MR. GALAZIN: Thank you, Chair.

24          As stated in the original stipulation as  
25 gone through by some of the members today, there are

1 a number of conditions that have not been met.  
2 However, we are recently become aware of Hale Mua's  
3 potential continuing interest in the property and in  
4 construction of the project itself. While we have  
5 stipulated to not opposing reclassification, the  
6 County would also not be opposed to seeing the  
7 project go forward if it were something to happen  
8 expeditiously.

9 Just one moment, please. I'll let the  
10 director speak.

11 CHAIRPERSON SCHEUER: I'm going to swear  
12 you in.

13 Do you swear or affirm that the testimony  
14 you're about to give is the truth?

15 MS. McLEAN: Yes, I do.

16 MICHELE McLEAN

17 Was called as a witness by and on behalf of the  
18 County of Maui, was sworn to tell the truth, was  
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: The Commission has our  
22 written statement where the Department does not  
23 oppose the reclassification of the reclassified area  
24 back to its former designation. And we listed  
25 specific conditions that had not been complied with.

1           We do note that many of the conditions are  
2 related to the physical development of the property.  
3 And because development has not yet occurred,  
4 compliance with those conditions has not  
5 theoretically been triggered, although technically  
6 they do remain unfulfilled.

7           Mr. Kim's interest in proceeding with the  
8 project is very new information to us. We apologize  
9 for not being able to submit revised statement  
10 reflecting what the Deputy Corporation Counsel just  
11 stated.

12           The County was and continues to be  
13 supportive of the project if it can proceed promptly,  
14 expeditiously in the immediate future and in  
15 compliance with all conditions.

16           Until today we didn't have any information  
17 as to the validity, or timeline of the project still  
18 moving forward. We're encouraged to learn about it,  
19 but we simply don't have enough information at this  
20 time to give a definitive statement other than the  
21 County does support the project if it is able to move  
22 forward expeditiously and in compliance. Thank you.

23           CHAIRPERSON SCHEUER: Is that it, County?

24           MR. GALAZIN: Yes, that's it. Thanks.

25           CHAIRPERSON SCHEUER: Mr. Sakumoto,

1 questions for the County, comments?

2 MR. SAKUMOTO: No questions.

3 MR. KIM: No questions.

4 CHAIRPERSON SCHEUER: Office of Planning.

5 MS. APUNA: No questions.

6 CHAIRPERSON SCHEUER: Commissioners?

7 Commissioner Ohigashi.

8 COMMISSIONER OHIGASHI: So my understanding  
9 with your statement was that because there has been  
10 no commencement, these conditions remain unfulfilled,  
11 is that correct?

12 THE WITNESS: That's not exactly right.  
13 Many of the conditions relate to the development of  
14 the property, to the physical development of the  
15 property.

16 COMMISSIONER OHIGASHI: And there has been  
17 no commencement?

18 THE WITNESS: Because there has been no  
19 commencement, then theoretically those have not been  
20 triggered.

21 COMMISSIONER OHIGASHI: So Condition No. 1  
22 regarding affordable housing, which your department  
23 reported to us, says: There is no record of a  
24 completed agreement or -- construct 77 affordable  
25 units within five years of the issuance of this

1 order.

2 So your statement with that is that it  
3 required -- that agreement needed to be done after  
4 commencement, or shouldn't that be done before  
5 commencement?

6 THE WITNESS: Thank you for the question.

7 Some conditions should have been fulfilled  
8 and were not. Having affordable housing agreement,  
9 providing title report, providing compliance report.  
10 None of those relate to you actual development.  
11 Those should have been fulfilled. A condition that  
12 says you shall provide housing within five years,  
13 that has not been fulfilled.

14 But conditions relating to drainage  
15 improvements, archaeological monitoring during ground  
16 altering activities, because there has been no ground  
17 altering activities, then, again, theoretically, the  
18 condition for monitoring hasn't yet been triggered.

19 So there are many conditions that have not  
20 be fulfilled that could have been fulfilled. Others  
21 that relate directly to construction.

22 COMMISSIONER OHIGASHI: Thank you.

23 CHAIRPERSON SCHEUER: Other questions for  
24 the County? I have a question.

25 In this document Draft Environmental

1 Assessment for this project was prepared in 2005.  
2 Would you consider the findings in the Draft and  
3 Final EIS still fresh enough, usable enough to assess  
4 the impacts of this project should it be developed?

5 THE WITNESS: I believe the Department of  
6 Housing and Human Concerns was the accepting agency  
7 for that, so they would be the ones to appropriately  
8 respond to that question.

9 I would have to take a look at the document  
10 to give you a clear answer, but it would not surprise  
11 me if we would say, yes, that document is still  
12 applicable and fresh enough to apply.

13 CHAIRPERSON SCHEUER: Are you familiar with  
14 the case from the environmental that adequacy and  
15 timeliness and relevance of the EIS done for the  
16 Turtle Bay project?

17 THE WITNESS: Yes.

18 CHAIRPERSON SCHEUER: And you think that  
19 this is still, despite the development that's  
20 occurred in this particular area of Maui over the  
21 last decade, that changing actual conditions, you  
22 think that you're inclined to believe the document is  
23 still relevant?

24 THE WITNESS: I am.

25 CHAIRPERSON SCHEUER: Any other questions?

1 Commissioner Chang.

2 COMMISSIONER CHANG: Thank you.

3 Director McLean, so I just want to clarify  
4 as I understood your clarification with Mr. Ohigashi,  
5 notwithstanding the enumerated conditions on the  
6 stipulation, there are many other conditions that  
7 have not been satisfied?

8 THE WITNESS: That is correct.

9 COMMISSIONER CHANG: Thank you.

10 CHAIRPERSON SCHEUER: Since you promise to  
11 be brief, let's do Office of Planning, and then we  
12 will take a break.

13 MS. APUNA: Thank you, Chair.

14 OP is a party to and agreeable to the terms  
15 of this stipulation. OP's position is that based on  
16 agency review and feedback, certain conditions of the  
17 Decision and Order remain unfulfilled, specifically:

18 Condition 3 with regard to execution of an  
19 educational contribution agreement.

20 Condition 5, implementation of traffic  
21 mitigation measures.

22 Condition 6, civil defense fair share of  
23 cost of adequate civil defense measures.

24 And Condition 7, archaeological monitoring  
25 and consultation.

1           OP's position, along with the position of  
2 the Petitioner and County as well as the stipulation  
3 demonstrate a lack of substantial commencement of  
4 this project. OP therefore did not -- does not  
5 oppose the Commission's reversion of the property to  
6 its former classification.

7           CHAIRPERSON SCHEUER: Mr. Sakumoto, any  
8 questions or comments for OP?

9           MR. SAKUMOTO: No questions.

10          CHAIRPERSON SCHEUER: Mr. Kim?

11          MR. KIM: No questions.

12          CHAIRPERSON SCHEUER: Maui County?

13          MR. GALAZIN: No questions.

14          CHAIRPERSON SCHEUER: Commissioners?  
15 Commissioner Aczon.

16          COMMISSIONER ACZON: In light of the  
17 development given by -- in light of the developments  
18 that Mr. Kim provided us today, is Office of Planning  
19 agreeable to entertain Mr. Kim moving forward with  
20 the project or opposed?

21          MS. APUNA: I think we don't have enough  
22 information or assurances to alter our current  
23 position.

24          CHAIRPERSON SCHEUER: Commissioners, sorry  
25 Mr. Aczon.

1                   COMMISSIONER ACZON:   What kind of  
2 assurances would you need from them?

3                   MS. APUNA:   I think the whole -- the  
4 purchase or, you know, the whole transaction that  
5 should come in order for him to get the property  
6 back, that's up in the air and we have no assurances  
7 of that.   That's pretty much it.

8                   COMMISSIONER ACZON:   Thank you, Mr. Chair.

9                   CHAIRPERSON SCHEUER:   Commissioner Chang.

10                  COMMISSIONER CHANG:   Thank you.

11                  Does the Office of Planning, as clarified  
12 also by Director McLean, the stipulation only  
13 identifies, I think it was five conditions that  
14 weren't complied with.

15                  Is it the position of the Office of  
16 Planning that, notwithstanding those five enumerated  
17 conditions that have not been complied with, that  
18 there are many other conditions that have not been  
19 complied with?

20                  MS. APUNA:   Yes.   I think there is other  
21 representations that were made in the Decision and  
22 Order and other conditions that were not complied  
23 with.

24                  And additionally, I think the stipulation,  
25 the agreement by the Petitioner that things have not

1 been done, and that there has not been substantial  
2 commencement is enough for us to continue with our  
3 position.

4 CHAIRPERSON SCHEUER: Any other questions  
5 from the Commissioners?

6 Let's take a ten-minute recess. Reconvene  
7 at 11:07.

8 (Recess taken.)

9 CHAIRPERSON SCHEUER: We're back in  
10 session.

11 Do you have any final closing statements,  
12 Mr. Sakumoto?

13 MR. SAKUMOTO: Just very short one, Mr.  
14 Chair.

15 I think the record that was created today  
16 established that, you know, the things that were  
17 stipulated to are for the most part still the case.  
18 A number of conditions were not performed. And there  
19 was no substantial commencement of the use of the  
20 land.

21 And so our position is unchanged from the  
22 way we stated it in the stipulation, which was if the  
23 Commission makes a motion to exercise its remedies to  
24 revert the classification, you know, we don't object.  
25 We don't actually see a basis to oppose that, given

1 what I just said. So, that's been our position from  
2 the beginning. That pretty much summarizes it at  
3 this point.

4 CHAIRPERSON SCHEUER: Thank you, Mr.  
5 Sakumoto.

6 Mr. Kim, two things, first thing is, given  
7 the unusual timing of your appearance in front of the  
8 Commission.

9 At the previous Order to Show Cause hearing  
10 I asked Mr. Sakumoto as Petitioner on behalf of the  
11 Petitioner and Southwest 7 whether he agreed to the  
12 Commission's policy of the reimbursement of fees.

13 By stepping in as a party, I now need to  
14 ask you whether you agree to that position that as a  
15 party you are responsible for reimbursement of fees  
16 to this Commission?

17 MR. KIM: Can you explain what that would  
18 be?

19 CHAIRPERSON SCHEUER: I'm going to defer to  
20 Executive Officer to add clarification to that.

21 EXECUTIVE OFFICER: Thank you, Mr. Chair.

22 The Petitioner, in a situation like this,  
23 is responsible for fees associated with the hearing  
24 which include court reporter fees, venue fees and any  
25 other fees associated with the hearing, not including

1     airfare for the Commissioners, anything like that,  
2     just those costs.

3             MR. KIM: I accept.

4             CHAIRPERSON SCHEUER: I'll also allow you  
5     to make any closing statement that you might want to  
6     make.

7             MR. KIM: I'm just grateful for the  
8     opportunity to come forward. And I know this is the  
9     11th hour, and I'm just happy that we had the  
10    opportunity to finally find funding and have a  
11    dialogue about the reacquisition. And just I know  
12    that we haven't been in compliance, and the reason is  
13    we've been absent. But just beseech this body to  
14    give this project a chance. And we will comply and  
15    we will be held to meeting the different stipulations  
16    that have been unfulfilled until now.

17            CHAIRPERSON SCHEUER: Thank you.

18            Commissioners, do you have any more  
19    questions for any of the parties before we go into  
20    formal deliberations?

21            Hearing none, the Commission will now  
22    conduct formal deliberation concerning whether or not  
23    the Commission has reason to believe there has been a  
24    violation of the Decision and Order and the  
25    Commission should order the Petitioner to show cause

1 why the Petition Area should not be reverted to its  
2 former land use classification -- excuse me, one  
3 moment.

4 Put anything in front of me, I'll start  
5 reading, apparently.

6 And for the transcript, that last statement  
7 was a joke, since you won't be able to see my smile.

8 COMMISSIONER OHIGASHI: Mr. Chairman, short  
9 recess, please.

10 CHAIRPERSON SCHEUER: Short recess.

11 (Recess taken.)

12 CHAIRPERSON SCHEUER: We're back in  
13 session. I'm going to blame that on Hurricane  
14 Olivia.

15 The Commission will now conduct formal  
16 deliberations concerning whether or not the Petition  
17 Area should be reverted to its former land use  
18 classification, or more appropriate classification.

19 I would note for the parties and the public  
20 that during the Commission's deliberation, I will not  
21 entertain any additional input from the parties or  
22 the public unless those individuals or entities are  
23 specifically requested to do so by me. If called  
24 upon, I would ask any comments be limited to the  
25 questions at hand.

1           Commissioners, I want to confirm that each  
2 of you have reviewed the record and transcript for  
3 any meeting that you may have missed, and are  
4 prepared to deliberate on the subject matter.

5           After I call your name, would you please  
6 signify with either "aye" or "nay" that you're  
7 prepared to deliberate on this matter.

8           Commissioner Aczon?

9           COMMISSIONER ACZON: Aye.

10          CHAIRPERSON SCHEUER: Commissioner Chang?

11          COMMISSIONER CHANG: Aye.

12          CHAIRPERSON SCHEUER: Commissioner Cabral?

13          VICE CHAIR CABRAL: Aye.

14          CHAIRPERSON SCHEUER: Commissioner

15 Ohigashi?

16          COMMISSIONER OHIGASHI: Yes.

17          CHAIRPERSON SCHEUER: Commissioner Wong?

18          COMMISSIONER WONG: Aye.

19          CHAIRPERSON SCHEUER: I am also prepared to  
20 deliberate on this matter.

21                 Our goal today is do determine, by way of a  
22 motion, the Commission's decision on whether there  
23 has been a violation of the Decision and Order, and  
24 that the Petitioner has failed to perform according  
25 to the representations made seeking the land use

1 reclassification and whether to revert the property  
2 to its former land use classification, or to be  
3 changed to a more appropriate classification.

4           Commissioners, what is your pleasure?

5           COMMISSIONER OHIGASHI: I move to revert  
6 the property to the original land use classification.  
7 The parties have admitted orally and in writing that  
8 there has not been substantial commencement in this  
9 matter.

10           In addition, the stipulation on file has  
11 indicated, as well as confirmed somewhat by Mr. Kim,  
12 that there has been a failure to complete any of  
13 those conditions outlined in the stipulation.

14           Finally, I believe that testimony has been  
15 given by the County of Maui that there may be  
16 other -- County of Maui and Office of Planning that  
17 there may be other conditions that haven't been met  
18 under the terms and conditions of the previous Land  
19 Use Commission order.

20           Therefore, my motion is to revert.

21           CHAIRPERSON SCHEUER: A motion has been  
22 made to revert the property to its original land use  
23 classification by Commissioner Ohigashi. Is there a  
24 second?

25           COMMISSIONER CHANG: Mr. Chair, I second

1 the motion, but I would like to move into executive  
2 session to consult with counsel.

3 CHAIRPERSON SCHEUER: Let's first -- there  
4 is a second to the motion. Now we can move into  
5 discussion of the motion. I understand you would  
6 like to make a motion to move --

7 COMMISSIONER CHANG: Yes.

8 CHAIRPERSON SCHEUER: Would you like to  
9 specifically state --

10 COMMISSIONER CHANG: I would like to move  
11 into execute to confer with our counsel on our legal  
12 duties, powers, duties, privileges, immunities and  
13 liabilities.

14 CHAIRPERSON SCHEUER: Is there a second on  
15 Commissioner Chant's motion to go into executive  
16 session?

17 COMMISSIONER WONG: Second.

18 CHAIRPERSON SCHEUER: Commissioner Wong has  
19 seconded. All in favor? Is there anybody opposed?  
20 Hearing none, the Commission is going into executive  
21 session.

22 (Executive Session.)

23 CHAIRPERSON SCHEUER: We are back on the  
24 record. Before us is a motion to revert the  
25 property.

1           Commissioners, discussion. Commissioner  
2 Cabral.

3           VICE CHAIR CABRAL: For my clarification,  
4 and perhaps others, can you tell me what the time  
5 line of that becoming official? That might be a  
6 question to Dan our Executive Officer. Thank you.

7           EXECUTIVE OFFICER: After these proceedings  
8 are concluded we will then prepare an order to be  
9 adopted by the Commission. Given our calendar, that  
10 would probably be about -- next time would be a  
11 couple months. Then we would return and the  
12 Commission would adopt the order at that time.

13          VICE CHAIR CABRAL: And following that  
14 then, the parties involved have a right to appeal  
15 that key decision, correct?

16          EXECUTIVE OFFICER: Yes, that's correct.

17          VICE CHAIR CABRAL: Thank you.

18          CHAIRPERSON SCHEUER: Is there further  
19 discussion on the motion? Commissioner Wong.

20          COMMISSIONER WONG: Chair, I'll be speaking  
21 in favor of this motion, just because hearing all the  
22 parties and what they stated regarding this issue  
23 that there was no substantial commencement or any  
24 other of the conditions that I believe we should  
25 revert this. Thank you.

1           CHAIRPERSON SCHEUER: Commissioner Aczon,  
2 if you wish to say something.

3           COMMISSIONER ACZON: Mr. Chair, I'm really  
4 torn about this docket, because as you know, Hawai'i  
5 really needs affordable housing. And I thought --  
6 well, especially Maui, but I thought I saw some  
7 liberal quote that they get this project going, but  
8 Mr. Kim, he didn't really provide us with concrete  
9 evidence that this project can move forward.

10           Therefore, I'm inclined to agree with the  
11 Maui Commissioner to revert this property, and  
12 hopefully some other entity can move this thing  
13 forward.

14           CHAIRPERSON SCHEUER: Commissioner Okuda.

15           COMMISSIONER OKUDA: Thank you, Mr. Chair.

16           I'm inclined to vote in favor of the motion  
17 for this reason. I think what Mr. Kim and others in  
18 the affordable housing area are attempting to do  
19 makes a lot of sense. And we all know development is  
20 really a tough game, and there's things that have to  
21 be done. And it's really very hard to predict things  
22 that may or may not happen.

23           But in this case we are bound by certain  
24 things that have happened, particularly the  
25 foreclosure action. And unless and until title to

1 the property is transferred out of Southwest 7,  
2 frankly speaking, Southwest 7, under the  
3 Commissioner's Deed, is the owner of the substantial  
4 portion of the Petition Area, and so without their  
5 agreement as far as not reverting the property, it  
6 really creates a real, I think, lack of evidence in  
7 the record not to revert the property.

8 So for those reasons, and the other reasons  
9 in the record, I'm inclined to vote in favor of the  
10 motion.

11 CHAIRPERSON SCHEUER: Thank you.

12 Commissioner Ohigashi -- excuse me, Okuda, kala mai.

13 Commissioner Chang.

14 COMMISSIONER CHANG: Thank you very much.

15 I greatly appreciate all the parties and Mr. Kim  
16 coming today. It is with disappointment, I think.  
17 As a commissioner I take very seriously -- there were  
18 decisions made at a particular time to support a  
19 project, especially as everyone has said, affordable  
20 housing.

21 So it is with, again, a very heartfelt, but  
22 I think the evidence, and more importantly the  
23 stipulations by all the parties, that not only the  
24 conditions enumerated in the stipulations were not  
25 completed, but there were other conditions as well

1 that were not completed.

2 I believe Mr. Kim has good intentions. And  
3 perhaps should this property, title issues be  
4 resolved, will be able to pursue this under another  
5 opportunity.

6 It does concern me also that reversion is  
7 back to ag. I think all the surrounding properties  
8 demonstrate that this is perhaps the best use of this  
9 property may be for housing.

10 So, again, I think with the reversion, it  
11 does mean that it will go back and someone will have  
12 to come forward and start the process for housing.

13 But, again, I have appreciated everybody's  
14 coming forward to us today, and trying to present a  
15 position that is supported by all the parties. Thank  
16 you.

17 CHAIRPERSON SCHEUER: Commissioner Cabral.

18 VICE CHAIR CABRAL: I'm going to join in  
19 support of the motion somewhat in conflict with, I  
20 think we are all saying that we want this project to  
21 move forward. And I think that that we will be  
22 seeing this parcel of land in some way, shape or form  
23 in the very near future, two months or more, are in  
24 the future coming back to coming to where more  
25 housing can be developed in some way, shape or form.

1           Again, it's unfortunate that things didn't  
2 work out, but obviously a long history here. I think  
3 perhaps this is the best way since the Petitioners  
4 themselves are somewhat supportive of the reversion.

5           Maybe the best way to clean up the history  
6 is to let it move forward in that direction. So I'll  
7 be voting in favor of the motion.

8           CHAIRPERSON SCHEUER: Thank you,  
9 Commissioner Cabral. Commissioner Ohigashi.

10           COMMISSIONER OHIGASHI: As the maker of the  
11 motion, and with some knowledge of Mr. Kim from my --  
12 the fact that I lived here all my life and I know  
13 Sterling Kim and his family and I don't find Mr. Kim  
14 to be disingenuous. I find him to be very genuine  
15 wanting to do this.

16           However, when I take a look at the fact  
17 that the majority of the project is now in the hands  
18 of Southwest, and that they haven't withdrawn their  
19 support of the stipulation, they indicated -- counsel  
20 has indicated that no real deal has been reached at  
21 this point in time, I have to conclude that there is  
22 probably -- that even if we extend this, that there's  
23 nothing will be commenced on the property given that  
24 going in different direction that appeared to be  
25 headed by the parties.

1           So I believe that if this reversion takes  
2 place, that at least there is a potential like the  
3 other commissioner said, that someone can take  
4 control of the entire parcel and make a proper or  
5 good or a new -- may be the best word would be new  
6 direction for this parcel.

7           But I want to make clear I have the respect  
8 of Mr. Kim, and especially respect for his family.  
9 And known him for a long time and the family, and  
10 great support of the university. Thank you.

11           CHAIRPERSON SCHEUER: Thank you,  
12 Commissioner. Any other Commissioners?

13           I will also be voting in favor of the  
14 motion. I'm really going to echo all the sentiments  
15 of my fellow commissioners, including really thanks  
16 for the attempts to move this project forward, though  
17 clearly unsuccessful by Mr. Kim over the years.

18           The only thing I'll add the reason I feel  
19 it's particularly appropriate for us to take this  
20 action is that when the Land Use Commission moves  
21 land into the Urban District, we do so really  
22 deliberately and really thoughtfully, and we do so  
23 with the right information in hand, including  
24 relevant environmental reviews. And we do so -- and  
25 when we do so, we place conditions to make sure

1 important public trust interests are met, and one of  
2 those really critical conditions is the timing  
3 condition. Clearly this project has not met those  
4 conditions. So I believe we have an obligation in  
5 fulfilling our mission that when it's clear that a  
6 project has not moved forward, no matter how much we  
7 like conceptually the idea, that we move to revert.

8 With that, Mr. Orodener, please poll the  
9 Commission.

10 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
11 The motion is to revert the property to its original  
12 land use classification.

13 Commission Ohigashi?

14 COMMISSIONER OHIGASHI: Aye.

15 EXECUTIVE OFFICER: Commissioner Chang?

16 COMMISSIONER CHANG: Aye.

17 EXECUTIVE OFFICER: Commissioner Aczon.

18 COMMISSIONER ACZON: Aye.

19 EXECUTIVE OFFICER: Commissioner Okuda?

20 COMMISSIONER OKUDA: Yep.

21 EXECUTIVE OFFICER: Commissioner Wong?

22 COMMISSIONER WONG: Aye.

23 EXECUTIVE OFFICER: Commissioner Mahi is  
24 absent. Commissioner Cabral?

25 VICE CHAIR CABRAL: Aye.

1 EXECUTIVE OFFICER: Chair Scheuer?

2 CHAIRPERSON SCHEUER: Aye.

3 EXECUTIVE OFFICER: Thank you. Mr. Chair,  
4 the motion passes unanimously.

5 CHAIRPERSON SCHEUER: If there is not any  
6 further business to discuss, I declare this meeting  
7 adjourned.

8 (The proceedings adjourned at 11:56 a.m.)

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## CERTIFICATE

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

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on September 13, 2018, at 9:00 a.m., the  
6 proceedings contained herein was taken down by me in  
7 machine shorthand and was thereafter reduced to  
8 typewriting under my supervision; that the foregoing  
9 represents, to the best of my ability, a true and  
10 correct copy of the proceedings had in the foregoing  
11 matter.

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

15 Dated this 13th day of September, 2018, in  
16 Honolulu, Hawaii.

17  
18  
19 /s/ Jean Marie McManus  
20 JEAN MARIE McMANUS, CSR #156  
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22  
23  
24  
25