

LAND USE COMMISSION

STATE OF HAWAI'I

Hearing held on September 13, 2018

Commencing at 9:00 a.m.

Maui Arts & Cultural Center

One Cameron Way

Kahului, Maui 96732

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

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

V. Adjournment

BEFORE: Jean Marie McManus, CSR #156

APPEARANCES:

JONATHAN SCHEUER, Chair
NANCY CABRAL, Vice Chair
DAWN N.S. CHANG
GARY Y. OKUDA
LEE OHIGASHI
ARNOLD WONG
EDMUND ACZON

STAFF:

RANDALL S. NISHIYAMA, ESQ.
Deputy Attorney General

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

RANDALL SAKUMOTO, ESQ.
Attorney for Southwest 7

STERLING KIM
For Hale Mua Properties, LLC

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

DAWN APUNA, ESQ.
Deputy Attorney General
LORENE MAKI, Planner
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. Orodénker?

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. Orodenger, 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. Orodanker?

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 Lunailo.

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. Orodenker, 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

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

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

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

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

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