

LAND USE COMMISSION
STATE OF HAWAII

Hearing held on December, 2019
Commencing at 9:35 a.m.
Maui Arts & Cultural Center
Haynes Meeting Room
One Cameron Way, Kahului, Maui

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

A04-751 Maui Land & Pineapple Company
Inc. (Maui, TMK 4-3-01:por. 31

To Consider Petitioner Maui Ocean View LP's
Motion to Amend Decision and Order dated June
30, 2006 to recognize Petitioner as the
successor to Maui Land & Pineapple Company,
Ltd; acknowledge proposed development layout
for Pulelehua; amend the 2006 D&O to allow
rentals as well as sales, development of a
private water treatment plant, development of a
private wastewater treatment plant, amend the
number of workforce housing units, and clarify
that development conditions do not apply to the
County of Maui Public Works Department

V. Recess

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair
3 NANCY CABRAL, Vice Chair
4 EDMUND ACZON
5 GARY OKUDA
6 DAN GIOVANNI
7 DAWN CHANG
8 LEE OHIGASHI
9 ARNOLD WONG

10 STAFF:

11 LINDA CHOW, ESQ.
12 Deputy Attorney General

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

16 MICHAEL HOPPER, ESQ.
17 Deputy Corporation Counsel
18 MICHELE McLEAN, Planning Director
19 ANN CUA, Planner
20 BUDDY ALMEIDA, Housing Administrator
21 For County of Maui Planning Department

22 Deputy Attorney General
23 RODNEY FUNAKOSHI, Planning Program Administrator
24 For State Office of Planning

25 GILBERT KEITH-AGARAN, ESQ.
Takitani Agaran & Jorgensen, LLP
PAUL CHENG, Petitioner
PRESCOTT CHENG, Petitioner
Attorney for Petitioners

MICHAEL C. CARROL, ESQ.
A. BERNARD BAYS, ESQ.
Bays Lung Rose & Holma
Attorneys for Motion to Intervene

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.

2 This is the December 4th, 2019 Land Use
3 Commission meeting.

4 Our first order of business is the adoption
5 of the November 20th through 21st, 2019 minutes.

6 Are there any individuals desiring to give
7 public testimony solely on the matter of the adoption
8 of the November 20th through 21st minutes? Seeing
9 none.

10 Commissioners, are there any comments or
11 corrections on the minutes?

12 Commissioner Cabral?

13 VICE CHAIR CABRAL: I'd like to comment on
14 what an amazingly good job Mr. Riley does on getting
15 those minutes to us, and how detailed they are. I
16 read them last night because I know he was working on
17 them last night, and I had to comment on what a great
18 job he does and I would move to accept them.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Cabral.

21 There has been praise and a motion to
22 accept. Does anybody wish to second both matters?

23 COMMISSIONER WONG: Second.

24 CHAIRPERSON SCHEUER: A motion was made by
25 Commissioner Cabral and seconded by Commissioner

1 Wong. Is there any discussion on the motion? Seeing
2 none, all in favor say "aye." Is there anybody
3 opposed? If not, the motion carries and is
4 unanimously adopted.

5 Our next agenda item is the tentative
6 meeting schedule.

7 Mr. Orodener.

8 EXECUTIVE OFFICER: Thank you, Mr. Chair.

9 Tomorrow we will again meet on Maui for
10 continuation of this matter, if necessary, Pulelehua
11 if necessary, and for the C. Brewer matter.

12 December 17th, we will be on Kaua'i for the
13 Hokua matter. December 18th, we will also be on
14 Kaua'i for a continuation of that matter, if
15 necessary.

16 January 8th, we will be on -- in Kona at
17 NELHA for the U of Bencorp matter, HHFDC; and on
18 January 9th, we will be on Oahu for the Gentry KS
19 Waiawa matter continuation of that matter.

20 On January 22nd, we will be on Oahu at the
21 Ko'olau Ballroom for the Hawaiian Memorial Park
22 matter. We'll also be on Oahu on January 23rd for
23 the Hawaiian Memorial Park matter at the Honolulu
24 Airport.

25 The February agenda remains open as does

1 the March agenda.

2 CHAIRPERSON SCHEUER: Thank you, Dan.

3 Commissioners, any there questions for our
4 Executive Officer on the tentative meeting schedule?

5 Commissioner Giovanni.

6 COMMISSIONER GIOVANNI: January -- or
7 pardon me, December 17 and 18 in Kaua'i, it says here
8 it's in Kaua'i. Is that the Sheraton in Poipu or in
9 Kapaa?

10 CHIEF CLERK: Coconut Beach.

11 COMMISSIONER GIOVANNI: Coconut Beach.
12 Thank you.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Giovanni.

15 Are there other questions? Seeing none.

16 A04-751:

17 Our next agenda item is an action meeting
18 on Docket No. A04-751 Maui Land & Pineapple Company,
19 Inc. (Maui), TMK 4-3-01, portion of lot 31 to
20 Consider Petitioner Maui Oceanview LP's Motion to
21 Amend the Decision and Order, dated June 30th, 2006,
22 to recognize the Petitioner as the successor to Maui
23 Land & Pineapple Company, Ltd.; acknowledge the
24 proposed development layout for Pulelehua; amend the
25 2006 Decision and Order to allow rentals as well as

1 sales, development of a private water treatment
2 plant, development of a private water -- wastewater
3 treatment plant, to amend the number of workforce
4 housing units, and to clarify that development
5 conditions do not apply to the County of Maui Public
6 Works Department.

7 Will the parties please identify themselves
8 for the record?

9 MR. KEITH-AGARAN: Gil Keith-Agaran for the
10 Petitioner. And with me at the table is developers
11 representatives Paul Cheng and Preston Cheng.

12 CHAIRPERSON SCHEUER: Thank you.

13 MR. HOPPER: Michael Hopper, Deputy
14 Corporation Counsel representing the Maui County
15 Department of Planning. With me are Planning
16 Director Michele McLean and Planner Ann Cua. We also
17 have Housing Administrator Buddy Almeida with us
18 today. Thank you.

19 CHAIRPERSON SCHEUER: Thank you, Mr.
20 Hopper.

21 MS. APUNA: Good morning, Chair and
22 members, Dawn Apuna for the Office of Planning. Here
23 with me today is Rodney Funakoshi.

24 CHAIRPERSON SCHEUER: Okay. Now, let me
25 update the record.

1 On September 25 and 26, 2019, the
2 Commission met here at the Maui Arts and Cultural
3 Center on this docket and voted to defer
4 decisionmaking on the Motion to Amend the Decision
5 and Order dated June 30, 2006.

6 Also at that meeting, the Petitioner filed
7 its Exhibit W, the County filed a List of
8 Deficiencies in the Amended Decision and Order, and
9 public testimony was received.

10 On October 28, 2019, the LUC issued its
11 order deferring decisionmaking on Maui Oceanview's
12 Motion to Amend the Decision and Order.

13 On November 14th through 15th, 2019, the
14 Commission received Petitioner's Memorandum on Legal
15 Issues; whether Pulelehua requires a Supplemental EIS
16 Supporting Good Cause to Amend the 2006 Decision and
17 Order, Exhibit A and Petitioner's Sixth Supplemental
18 Memorandum in Support of the Motion of the
19 Petitioner, Maui Oceanview LP, to Amend Decision and
20 Order; along with the following Exhibits A-3, A-4,
21 M-2, M-3, N-3, N-4, N-5, O-1, O-2, R-3, W, W-2, X, Y,
22 Z, and AA.

23 On November 19th, the Commission received
24 the Office of Planning's Response to Specific issues
25 identified by the Commission and copies of Public

1 Testimony sent to the Petitioner's address.

2 On November 26th, the Commission mailed the
3 December 4th and 5th, 2019 meeting agenda notice to
4 the Parties and to our Statewide, email and Maui
5 mailing lists.

6 From November 26th through December 3rd,
7 the Commission received and processed public
8 testimony on this docket to the record.

9 On November 27th, the Commission received
10 an untimely Notice of Intent to Intervene and a
11 Petition to Intervene along with Exhibits 1 through
12 6, which were filed by Michael C. Carrol, Attorney at
13 Law, at Bays Lung Rose & Holma on behalf of the
14 Kahana Hui Lot Owners Group.

15 Mr. Carrol also submitted public testimony
16 and Exhibits 1 through 4 in Opposition to the Motion
17 to Amend.

18 On December 3rd, 2019, the Commission
19 received Petitioner's Seventh Memorandum in Support
20 of the Motion and the Petitioner's Response from the
21 Kahana Hui's Motion to Intervene.

22 Before we take up the substance of the
23 Motion to Amend, I believe that on the advice of
24 counsel, we have the ability to take up the
25 previously mentioned Motion for Intervention at this

1 time.

2 Commissioners, does anybody object to
3 taking up the Motion to Intervene at this point in
4 the proceedings?

5 Commissioner Wong?

6 COMMISSIONER WONG: I want to move to go
7 into executive session to consult with the Board's
8 attorney on questions and issues pertaining to the
9 Board's powers, duties, privileges, immunities, and
10 liabilities regarding the Motion to Intervene.

11 COMMISSIONER ACZON: Second.

12 CHAIRPERSON SCHEUER: A motion has been
13 made by Commissioner Wong and seconded by
14 Commissioner Aczon to go into executive session to
15 discuss with our counsel this proposed Motion to
16 Intervene.

17 Is there discussion on the motion?

18 If not, all in favor say "aye." Is anybody
19 opposed? The Commission will go into executive
20 session on this matter.

21 (Executive session.)

22 CHAIRPERSON SCHEUER: Aloha. Again, thank
23 you to everybody for your patience on this matter.

24 Because of the obvious significant public
25 interest in this matter, the Commission wants to take

1 public testimony before proceeding with the
2 procedural matters before us on the Motion to
3 Intervene.

4 So I'm going to be using the following
5 procedure. I'm going to call the names of the next
6 two testifiers. If you're the person intending to
7 testify, you come up to the public witness box next
8 to our court reporter. If you're the second name,
9 you sit in the chair behind them for the next
10 witness.

11 I will swear you in. You'll affirm that
12 you are going to tell the truth. You'll state your
13 name and address for the record, and then you will
14 have three minutes to testify.

15 And at the conclusion of that, we'll see
16 where we are on the calendar and where we can pick up
17 on the procedural matters.

18 The first two testifiers signed up to
19 testify are Van Fischer and Tim -- sorry, I depend on
20 your ability to write clearly. So Tim, H-e-h-e-m-a
21 something, something.

22 So I'm demonstrating also, you press the
23 button, if the button is not lit, so that it is lit,
24 and you speak about -- if you notice how close I am
25 to the microphone? That's about how close you need

1 to be to be picked up, and there's a volume knob,
2 which you should turn to the right.

3 Aloha, good morning.

4 THE WITNESS: Good morning.

5 CHAIRPERSON SCHEUER: Do you swear or
6 affirm the testimony you're about to give is the
7 truth?

8 THE WITNESS: Yes, I do.

9 CHAIRPERSON SCHEUER: Okay. Please state
10 your name and address for the record and then
11 proceed.

12 VAN FISCHER

13 Was called as a witness by and on behalf of the
14 Public, was sworn to tell the truth, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 My name is Van Fischer, and I reside at
18 165 Ala Hoku Place, Lahaina.

19 I am a homeowner immediately adjacent to
20 this project. And I thank you for the opportunity to
21 share my thoughts. I apologize for reading my
22 testimony, but I want to make sure that I succinctly
23 convey my thoughts.

24 I am an ardent supporter of affordable
25 housing, and I own a business that refurbishes older

1 houses and sells them primarily to first time home
2 buyers. We sell only to full-time Maui residents.
3 We have placed 15 local working families in homes in
4 the last five years and currently have five homes
5 under construction. I am painfully aware of the
6 shortage of workforce housing.

7 First and foremost, I did not oppose the
8 original Pulelehua Town, and my family looked forward
9 to the Main Street of coffee shops, stores and
10 restaurants. The proposed changes completely
11 eliminated the entire urban village concept that was
12 fully vetted and approved.

13 I am also very concerned about the loss of
14 affordable market rate homes for local buyers and the
15 lack of reasonable buffers around my area given the
16 proposed changes.

17 We, as adjacent owners, were never notified
18 of these proposed changes.

19 When we did become aware of them, I
20 attended both open houses and met with Mr. Cheng. He
21 listened to my concerns about the affordability of
22 the market rate lots, and he assured me that we had
23 plenty of time to discuss them. He did not disclose
24 that the deadline to make changes was November 15th
25 and that the changes I was suggesting were never

1 going to make it into the final plan.

2 We took our concerns to Council Member
3 Paltin and the CPAC Chair Kai Nishiki, and we were
4 told that it was too late to make any changes. We
5 were stunned to learn they had been working with the
6 developer for six weeks on their changes. These
7 representatives on the West side never thought us --
8 thought to bring us into the discussions even while
9 they were giving their consent to a 50 percent
10 increase in lots along our south line and a
11 commercial shop and parking lot being placed 300 feet
12 from our homes.

13 When I pointed out that the market rate
14 homes were being designed in a way that would cause
15 most of them to likely be built out as million dollar
16 vacation, Ms. Nishiki's response was that she could
17 live with that. I cannot live with that.

18 Over the last several weeks, we have
19 proposed many ideas that would allow the developer to
20 make the market rate lots smaller and more geared
21 towards working families.

22 We requested a copy of the agreement that
23 was supposedly entered into between the developer and
24 Ms. Nishiki and the other participants. She didn't
25 respond. It was only after much consideration that

1 we felt we had no choice but to intervene.

2 In his Memorandum to Legal Issues on page
3 18, Mr. Cheng states that allowing him to convert the
4 urban village of Pulelehua to a massive apartment
5 complex will save him \$68 million in infrastructure
6 costs. If you're going to put \$68 million back in
7 Mr. Cheng's pocket, isn't it reasonable to ask that
8 he design the 100 market rate lots to be geared
9 towards working families as opposed to vacation
10 homeowners?

11 It is highly unlikely that a million dollar
12 vacation homeowner would add a HUD rate ohana and
13 share his yard with a local family.

14 CHAIRPERSON SCHEUER: Three minutes, please
15 summarize your testimony.

16 THE WITNESS: If at all possible, I would
17 request that you ask Mr. Cheng why he's not willing
18 to make reasonable changes that would benefit the
19 neighbors and the community as a whole.

20 Thank you for your time.

21 CHAIRPERSON SCHEUER: Thank you very much.

22 And the last bit of our procedures, because
23 of the nature of our proceedings, after you are done
24 testifying, I give the opportunity to ask questions
25 to the parties in this matter, the Petitioner, the

1 County and the Office of Planning.

2 Does the Petitioner have any questions?

3 MR. KEITH-AGARAN: No.

4 CHAIRPERSON SCHEUER: County?

5 MR. HOPPER: No questions.

6 CHAIRPERSON SCHEUER: OP?

7 MS. APUNA: No questions.

8 CHAIRPERSON SCHEUER: Thank you very much.

9 THE WITNESS: Thank you.

10 CHAIRPERSON SCHEUER: Mr. Hehemann, sorry
11 for slaughtering your name, followed by Bernie Bays.

12 THE WITNESS: My name is Tim Hehemann. I
13 live at 4260 Hine Way. I am --

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

17 THE WITNESS: Yes.

18 CHAIRPERSON SCHEUER: Okay. Please
19 continue.

20 TIM HEHEMANN

21 Was called as a witness by and on behalf of the
22 Public, was sworn to tell the truth, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 THE WITNESS: We were never notified of

1 these changes, so I'm just going to echo what Van
2 just said. And we are currently negotiating with
3 Paul, and we hope to come to a resolution.

4 CHAIRPERSON SCHEUER: Thank you very much.

5 Are there questions?

6 MR. KEITH-AGARAN: No.

7 MR. HOPPER: No questions.

8 MS. APUNA: No.

9 CHAIRPERSON SCHEUER: Thank you very much.

10 Bernie Bays, followed by Sharon Banaag.

11 THE WITNESS: Mr. Chair, Commissioners, my
12 name is Bernie Bays. Mike Carrol and I are
13 attorneys, and we represent the Intervenors.

14 CHAIRPERSON SCHEUER: Okay. Thank you, Mr.
15 Bays. Because you are actually appearing right now
16 as a public witness, I will swear you in.

17 Do you swear or affirm the testimony you're
18 about to give is the truth?

19 THE WITNESS: I do.

20 CHAIRPERSON SCHEUER: Thank you. Please
21 continue.

22 BERNIE BAYS

23 Was called as a witness by and on behalf of the
24 Public, was sworn to tell the truth, was examined and
25 testified as follows:

DIRECT EXAMINATION

THE WITNESS: As you know, I represent ten of the 16 lot owners in the Kahana Hui project, which is surrounded by the subject project, so obviously my clients have a direct interest in this project.

We are working with the developer right now, and have had some very productive discussions with him. So we are trying to work out a solution that addresses adequately my clients' concerns.

And Mr. Cheng has been open to those discussions, and we're making substantial progress in reaching a resolution.

I would ask that the Commission defer a decision on our Motion to Intervene as long as possible to give us an opportunity today to continue those discussions and define an agreement that we think will adequately address my clients' concerns. So we would ask that you accommodate us in that way.

I would disagree that our Motion to Intervene is untimely. I think this project and its composition has been a moving target with the latest agreements, so it would be difficult to determine at which time a Motion to Intervene should have been filed by my clients.

So I would strongly disagree that the

1 Motion to Intervene is untimely. And it's clear from
2 your own rules that a Motion to Intervene should be
3 granted if at all possible.

4 So if we're not able to resolve this with
5 the developer, I would ask that the decision on this
6 be deferred, and that we give -- be given an
7 opportunity to intervene in these proceedings and
8 present the witnesses that we would have regarding
9 this project.

10 Thank you.

11 CHAIRPERSON SCHEUER: Thank you, Mr. Bays.

12 Are there questions for Mr. Bays from the
13 Petitioner?

14 MR. KEITH-AGARAN: No.

15 MR. HOPPER: No, Mr. Chair.

16 CHAIRPERSON SCHEUER: OP?

17 MS. APUNA: No questions.

18 CHAIRPERSON SCHEUER: Commissioners?

19 I apologize, I neglected to offer the
20 chance of the Commissioners to ask questions of the
21 witnesses of the previous two.

22 Commissioners, any questions?

23 Commissioner Wong.

24 COMMISSIONER WONG: Mr. Bays, just real
25 fast. Do you think if we give you -- if we do take a

1 lunch break, if the Chair decides, do you think that
2 will be enough time?

3 THE WITNESS: We have two issues. We have
4 largely resolved one of those.

5 Is that correct, Mr. Cheng?

6 MR. CHENG: That's correct.

7 THE WITNESS: We have largely resolved one
8 of those. And we're about -- with the authority I
9 just got from my client, I think we're about halfway
10 there on resolving the second issue. So I believe
11 that that would be possible, but Gilbert can correct
12 me if I am wrong.

13 COMMISSIONER WONG: Okay. Let's just see
14 what plays out today, and let the Chair decide.
15 Thank you.

16 CHAIRPERSON SCHEUER: Thank you.

17 The intention is, we're going to go through
18 public testimony, hear from everybody from the public
19 who wishes to testify today. We will see where we
20 are if we are at or reasonably near to lunch. It is
21 my inclination to allow a normal lunch period to the
22 parties to try and resolve these final issues.

23 Certainly, we don't want to snatch defeat
24 from the jaws of victory if not possible. Thank you.

25 THE WITNESS: Thank you, Mr. Chair.

1 CHAIRPERSON SCHEUER: Sharon Banaag,
2 followed by Aris.

3 Aloha, good morning.

4 THE WITNESS: Aloha. Good morning, Chair.

5 CHAIRPERSON SCHEUER: Do you swear or
6 affirm the testimony you're about to give is the
7 truth?

8 THE WITNESS: I do.

9 SHARON BANAAG
10 Was called as a witness by and on behalf of the
11 Public, was sworn to tell the truth, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 Good morning, Commissioners, my name is
15 Sharon Zalsos Banaag. I am a resident of 3866 Hana
16 Highway, Haiku. No affordable housing available in
17 Lahaina, so we had to move to Haiku. But I would
18 like to just give my support, and I just -- I thank
19 that the Commission supports this project.

20 You know, I come from a family who's lived
21 in Maui, born and raised, since before World War II,
22 Filipinos, and multi-generational families that had
23 to move out, move away from the island.

24 I am extremely excited to have heard about
25 this project because it's affordable, but it's not

1 just for housing per se. It's also rental, which
2 is -- let's be realistic, not everybody can be a
3 homeowner, so to have something like this is a
4 blessing to us.

5 In our family alone, in our property, we
6 have three families living right now hui in Haiku
7 because that's what's available, right? Two of those
8 families, so four people have to travel from Haiku
9 all the way to Lahaina -- not Lahaina, I'm sorry --
10 Napili and Kaanapali, every day, every day. And of
11 course we love OT, right? Overtime. So let's say
12 seven days a week, twice a day. So this project, it
13 screams just a blessing to us.

14 I would like to thank everybody who has
15 been a part of this. It's a long time, lots of years
16 in the making. Thank you for the developers for even
17 willing to meet us halfway. But from what I hear,
18 it's more than that. Thank you. Thank you.

19 My families in Haiku is okay; we're okay.
20 We'll do that. We'll do the traveling. We'll do the
21 driving. But we do have hundreds more that's living
22 right now in Lahaina. Those are the ones that I am
23 speaking for.

24 Because we have ten family members per
25 rental. Honokowai, Napili, and I'm pretty sure

1 anyone who's anybody who's been in Lahaina can check
2 out what the rentals look like. They're not nice.
3 They're not nice, but they're making do because
4 there's nothing affordable. There's nothing
5 available.

6 So maybe if we can all hui together as a
7 family and buy a big lot somewhere in, I don't know,
8 Laniupoko, but we cannot -- that's not really
9 reality, is it?

10 So I beg of you, please, I fully support
11 this project. I want our kids to be able to stay
12 here, and I want them to live in a nice place.

13 Thank you.

14 CHAIRPERSON SCHEUER: Thank you very much.

15 Are there questions for the witness?

16 MR. KEITH-AGARAN: No questions.

17 MR. HOPPER: No.

18 MS. APUNA: No.

19 CHAIRPERSON SCHEUER: Commissioners?

20 Commissioner Cabral.

21 VICE CHAIR CABRAL: Thank you for coming to
22 testify and representing your family and community.
23 My question is when you talk affordable rents -- I'm
24 curious. I mean, I'm from Hilo, and I handle rental
25 properties, so what kind of rents are you paying for

1 what size of house just so I have some perspective on
2 what's going on here?

3 THE WITNESS: You know, I wish they could
4 be here. We do have several -- my husband could
5 probably help you with that one. He's going to be
6 speaking right after me, but -- so I don't want to
7 even begin to speak numbers. I don't want to say,
8 perjure myself.

9 VICE CHAIR CABRAL: Okay.

10 CHAIRPERSON SCHEUER: Thank you. I wish
11 everybody who appeared before us had that same
12 sentiment.

13 Are there any other questions for the
14 witness? If not, thank you very much.

15 Aris Banaag, followed by Joseph Pluta.

16 THE WITNESS: Good morning.

17 CHAIRPERSON SCHEUER: Good morning.

18 Do you swear or affirm the testimony you're
19 about to give is the truth?

20 THE WITNESS: Yes.

21 CHAIRPERSON SCHEUER: Please proceed.

22 ARIS BANAAG

23 Was called as a witness by and on behalf of the
24 Public, was sworn to tell the truth, was examined and
25 testified as follows:

DIRECT EXAMINATION

Good morning again. My name is Aris Banaag. I currently reside at 386 Hana Highway in Haiku, but I'm -- I was raised in Lahaina my whole life. I went to school there, all my friends are still there. I have lots of family in Lahaina.

My heart is still in Lahaina. I'm a proud Lahainaluna graduate. When I went away for college, my parents had to sell the home that they bought at a really low rate at that time. When I came home, there was nothing left.

I couldn't live in Lahaina. At that time, that was back in 1996/'97. It was already high. We're looking at renting places for 18, 15 or \$1800 back then. And it was ridiculous.

I came home to nothing. I had to live with my bother in Kahului because he couldn't live in Lahaina either. I worked at Lahainaluna and Camp Third (phonetic). I was a therapist there. I was a counsellor. I worked. I drove from Kahului to Lahaina every day for eight years.

Then I moved up to Pukalani, because I had to find another place to live, and I couldn't -- I always wanted to go back home, but I couldn't. I live in Pukalani, and I drove to Lahainaluna for that

1 whole time until I finally decided I cannot live --
2 work in Lahaina any more. I found a job, and I work
3 at the college, which I had to take some time off to
4 be here. But I did so because I find it important.

5 There's so many families that have to
6 commute an extremely long distance. If you're
7 driving that drive to Lahaina from Kahului, that's
8 ridiculous. You're lucky if you make it there in one
9 hour if there's no traffic. That's sad.

10 And for once I hear about a development
11 that's going to go this far and beyond to do
12 something to actually help the community, and now
13 we're going to sit here and we're going to wait and
14 we're going to talk some more. I find it frustrating
15 as a resident. I find it frustrating for my family.

16 I have so much family in Lahaina that has
17 had to moved away. I had so many friends that I
18 graduated with, and no longer here because they can't
19 live here. I wish they could still be here. I wish
20 they could come back home. I wish we could have had
21 homes then, so we could move back into because I love
22 Lahaina.

23 I wish my kids right now -- I have three,
24 four kids. I wish they could see how wonderful
25 Lahaina is, but they cannot. We go to visit, and I

1 see how everything's changed and developed but we
2 can't never live there. We can't afford it. I can't
3 afford it.

4 I had to move all the way -- halfway across
5 the island to find a place that was affordable for me
6 and my family. And I had to do it because I had to
7 hui with my brother, so we could afford property
8 together. And that's the only way we could do it.
9 And like my wife said, it's true, not everyone can
10 afford a home, but renting one is possible. But with
11 the rental prices now -- when I was renting homes and
12 I was looking for homes to rent, you asked about
13 rental the prices.

14 In Lahaina it was going to cost me anywhere
15 between 1800 to 2000 just for like a one or two
16 bedroom. I like, what the hell? How can I afford
17 something like that?

18 I mean, I thought it was all of these
19 things right now. I find -- I read through the plans
20 what was offered. And I was like, wow, this is like
21 a blessing. This should be a model for all housing
22 developments from this point on.

23 CHAIRPERSON SCHEUER: If you can summarize,
24 please.

25 THE WITNESS: So I sit here and I

1 completely support this project, and I hope, too,
2 that everyone else here can see the benefits for the
3 opportunity.

4 Thank you.

5 CHAIRPERSON SCHEUER: Than you very much.
6 If you would remain seated for a moment.

7 Are there any questions?

8 MR. KEITH-AGARAN: No questions.

9 CHAIRPERSON SCHEUER: Questions, County,
10 OP?

11 MR. HOPPER: No.

12 MS. APUNA: No.

13 CHAIRPERSON SCHEUER: Commissioners?
14 Commissioner Cabral.

15 VICE CHAIR CABRAL: So you referenced
16 timeframe in '96 or so that the housing would have
17 been about 1500, and then you said 15 to 1800 for a
18 one or two bedroom.

19 Are those the current numbers that you
20 would be looking at, or have you not had to look --
21 been able to look lately for housing for that kind of
22 rent?

23 THE WITNESS: Some of my family members who
24 rent in Napili, Honokowai, they're renting about -- I
25 would say for my cousin has a two bedroom. He's

1 renting for about, I want to say 2200. Either 2000
2 or 2200 he's renting a two-bedroom apartment in
3 Honokowai area.

4 VICE CHAIR CABRAL: Okay. Thank you very
5 much for the information. That does give me some
6 perspective. Thank you.

7 CHAIRPERSON SCHEUER: I just want to share,
8 too, brief reactions to your testimony.

9 I appreciate your taking time off. I
10 sometimes at the beginning of our meetings with the
11 Land Use Commission share for people who are not
12 familiar with us. Just so you know, that there are
13 nine possible commissioners, we have eight seated
14 right now.

15 We're all volunteers as well, so we're not
16 working and getting paid. So on the one hand, we
17 definitely resonate with your idea of like, what,
18 we're going to talk some more about this, you know.
19 It's like a test. It's like we spend a lot of time
20 talking about matters, but we do take our duties
21 under the state constitution seriously and provide
22 due process to all parties who come before us.

23 So I appreciate your being here and taking
24 time off, and just know that we share that sentiment.

25 THE WITNESS: Thank you.

1 CHAIRPERSON SCHEUER: Joseph Pluta,
2 followed by Council Chair Kelly King.

3 THE WITNESS: Good morning.

4 CHAIRPERSON SCHEUER: Good morning.

5 THE WITNESS: Do you want to swear in
6 first?

7 CHAIRPERSON SCHEUER: Sure.

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

10 THE WITNESS: I do.

11 JOSEPH PLUTA

12 Was called as a witness by and on behalf of the
13 Public, was sworn to tell the truth, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 THE WITNESS: My name is Joseph Pluta. I
17 reside at 1612 Aina Kea Road in Wai'ikula, Lahaina,
18 Maui, and I've been here for -- in Maui for 40 years.

19 40 years ago when I first moved to Maui
20 from Honolulu, where I lived for ten years in
21 Honolulu, UH shirt still -- (indecipherable).

22 Thank you, Commissioners. I'm a volunteer,
23 too. I started the West Maui Taxpayers 40 years
24 ago -- I'm sorry, I will slow down.

25 40 years ago, I started the West Maui

1 Taxpayers Association as a volunteer, and I've been
2 -- I'm still currently the president. I wasn't
3 always all those 40 years, but I am currently the
4 president of the West Maui Taxpayers. And I've been
5 aware of the affordable housing crisis we've had for
6 many, many years in West Maui.

7 We have had meetings with the community
8 where we've inventoried our community and asked them
9 what the priorities are, so our Board of Directors
10 could follow what the communities' wishes were. And
11 affordable housing and health care and traffic, those
12 are the top three, and it's not changed for 40 years.

13 You know, it's amazing the crises
14 management seems to be what we're always dealing with
15 crisis management. And there's always -- every time
16 there seems to be a solution. There's always
17 something that comes up that creates a problem for
18 the implementation of what our proposed solutions.

19 In the 40 years that I've been following
20 the affordable housing crisis, I haven't come across
21 a development team that's been willing to meet with
22 the community as I've seen what's happened with this
23 current proposal here where people who had real
24 concerns.

25 I heard some earlier testimony. Their

1 willingness to meet with people and make changes to
2 their proposals to meet the concerns and objectives
3 is a breath of fresh air. I think they're a
4 wonderful development team. They've got a lot of
5 experience in doing what they do, and they're a
6 breath of fresh air to us.

7 The West Maui Taxpayer Board has looked at
8 their project and has enthusiastically supported it
9 100 percent. We highly recommend that you -- this
10 Commission approve this project without delay. The
11 crisis is still a crisis, getting worse day by day.
12 The faster this thing can be approved and moved
13 forward the better for everyone.

14 I'm happy to answer any questions, but we
15 strongly support this for many reasons. I've
16 submitted written testimony as well.

17 Thank you.

18 CHAIRPERSON SCHEUER: Thank you very much,
19 Mr. Pluta.

20 Are there any questions from the
21 Petitioner?

22 MR. KEITH-AGARAN: No questions.

23 CHAIRPERSON SCHEUER: Maui County?

24 MR. HOPPER: No, Mr. Chair.

25 CHAIRPERSON SCHEUER: Office of Planning?

1 MS. APUNA: No.

2 CHAIRPERSON SCHEUER: Commissioners? If
3 not, thank you --

4 Oh, Commissioner Giovanni.

5 COMMISSIONER GIOVANNI: Thank you for your
6 testimony. Since we -- our last meeting here on this
7 docket, do you feel that you've -- that the West side
8 community has had ample opportunity to meet with
9 and -- with the developer and to voice their
10 concerns?

11 THE WITNESS: Well, I believe that they
12 have. My opinion, yes.

13 COMMISSIONER GIOVANNI: Thank you.

14 CHAIRPERSON SCHEUER: Is there anything
15 further, Commissioners?

16 If not, thank you very much, Mr. Pluta.
17 Kelly King followed by Tiare Lawrence.

18 THE WITNESS: Aloha.

19 CHAIRPERSON SCHEUER: Aloha.

20 Do you swear or affirm the testimony you're
21 about to give is the truth?

22 THE WITNESS: I do.

23 KELLY KING

24 Was called as a witness by and on behalf of the
25 Public, was sworn to tell the truth, was examined and

1 testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: I tried to institute this at
4 the council level, but I was told we couldn't do
5 that.

6 Anyways, I want to thank you for having
7 this hearing today, and I'm here to speak in full
8 support as a council member, and I think you've heard
9 from several other council members on the project.

10 I'm not one of the council members that
11 supports affordable housing at all cost. I like
12 appropriate affordable housing, and I see that, you
13 know, reviewing the changes that have been -- have
14 happened in this project, I really want to thank the
15 developer for working with the community. I don't
16 think there's a -- I mean, I have worked with other
17 developers in South Maui, and we worked on some
18 projects for the very needy, the 60 percent and
19 lower, so there are developers out there that are
20 willing to meet with the community and willing to
21 work around the communities' need and even change
22 their projects.

23 And I've had that happen with a couple of
24 the projects that I worked on with developers in
25 South Maui, which is my district, so I appreciate the

1 fact that Mr. Cheng was willing to go back to the
2 drawing board and fashion something that community
3 could be supportive of.

4 I understand, because we get this at the
5 council level all the time, that people that live in
6 the direct neighborhood always have concerns,
7 and because that's never going to change, but this is
8 something that is beneficial to the entire community.

9 It's got the desirability of affordable
10 housing that we always talk about infill and density.
11 The numbers are going to help with our needs. We
12 talk about this need of 12,500 or more units in the
13 next five years.

14 And personally I believe that if we can do
15 projects like this that are large enough, they're
16 going to impact the existing rental rates and
17 existing prices and hopefully everything will become
18 more affordable. So I don't think we have to
19 necessarily build our way through the entire 12,000
20 units, but we need projects like this.

21 I wanted to share with you the 118 rental
22 units at Kaiwahine Village that I've been working
23 with Doug Bigley on. When we did the lottery, the
24 management company talked to a manager of one of the
25 apartment buildings where a lot of the lottery

1 winners actually came out of. And she said, it looks
2 like I'm going to have to lower my rents because now
3 I'm competing against these projects. And that was
4 music to my ears.

5 And I think that's what is going to happen
6 with this project is we're going to see with the
7 inventory and the pricing, we're going to see other
8 rentals dropping to heed that, but the affordability,
9 you know, it's going to take awhile.

10 But we have projects in Central Maui on the
11 books, and this project is going to help greatly with
12 that.

13 So I also wanted to thank you, because, you
14 know, I have a lot of background and interest in
15 what's happening with wastewater recycling and all
16 that, and I think that's really important and I like
17 the fact that rooftop solar is going to go on all of
18 the units. So I'll end there.

19 Actually hadn't planned to testify in
20 person, but I was really busy yesterday and didn't
21 get my testimony in writing, so thank you.

22 CHAIRPERSON SCHEUER: Thank you very much
23 for being here.

24 Are there questions?

25 MR. KEITH-AGARAN: No questions.

1 MR. HOPPER: No questions, Chair.

2 MS. APUNA: No.

3 CHAIRPERSON SCHEUER: Commissioners?

4 Commissioner Cabral.

5 VICE CHAIR CABRAL: I'd like to thank you
6 for coming because -- and coming in person. We get
7 written testimony preferably prior to sitting here
8 and trying to read it, but it's nice to hear from
9 someone as involved as you are with obviously a lot
10 of knowledge and concern of what's going on, that --
11 that at your level that you understand and appreciate
12 the -- what's going to happen and in support of this
13 in a really positive way, so I appreciate that.
14 Thank you.

15 THE WITNESS: You're welcome.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Cabral.

18 Commissioner Giovanni.

19 COMMISSIONER GIOVANNI: I want to echo what
20 Commissioner Cabral said about the relevance and
21 importance of your coming forward so we could hear
22 you personally, and specifically to thank you for the
23 context.

24 You know, affordable housing is an issue on
25 all of our islands, and, you know, we go from island

1 to island, and to hear it locally from people who are
2 trying to work the problem on you're island is so
3 important, so thank you for coming.

4 THE WITNESS: You're welcome.

5 CHAIRPERSON SCHEUER: Thank you very much.

6 Nothing further, Commissioners? If not,
7 Tiare Lawrence, followed by Dick Mayer.

8 Aloha, good morning.

9 THE WITNESS: Hello, Commissioners, my name
10 is Tiare Lawrence, born and raised girl --

11 I solemnly swear to tell the truth and
12 nothing but the truth.

13 TIARE LAWRENCE

14 Was called as a witness by and on behalf of the
15 Public, was sworn to tell the truth and testified as
16 follows:

17 DIRECT EXAMINATION

18 THE WITNESS: Aloha, Commissioners, my name
19 is Tiare Lawrence, born and raised Lahaina girl.
20 Lahaina graduate in 2000. I'm one of the many that
21 long to move back home. I'm going to be honest. I
22 come frustrated today because of that -- the classic
23 NIMBY attitude that we see too often on our islands
24 by people who recently moved here who have no
25 generational connection to this aina.

1 You know, the Intervenor's are simply
2 concerned for their own welfare and interest before
3 those of our working class. The Intervenor's are
4 clearly concerned excessively or exclusively for
5 their own interest seeking or concentrating on one's
6 own advantage, pleasure or well-being without regard
7 for others, and it's simply a selfish act.

8 I hope the developer does not accommodate
9 these NIMBYs at Kahana Hui subdivision. I'm going to
10 be straight-up honest. We all know they want to
11 protect their use and privacy.

12 A project in this area has been on the
13 books for 15 years. We are in a critical housing
14 crisis. In 2015, 80 percent of the homes were sold
15 to out-of-state home buyers. Let that process for a
16 little bit.

17 This project will allow people like myself
18 to move back home. I lost my mother last week. And
19 over the course of that week, the whole family got
20 together and spent a whole week together. And I --
21 you know, I just -- it felt so good to be around
22 family every day, you know. And that's how we grew
23 up, but so much of us live on the other side now
24 because we can't afford to live on that side. You
25 can -- you can't find a two bedroom -- a decent

1 two-bedroom home for under \$2500.

2 Kala mai. This project will set a
3 precedent on how projects should move forward, and I
4 commend the developer for seeking community
5 engagement and seeking out community leaders from the
6 west side and throughout Maui for their input and
7 making the necessary changes to really truly address
8 our critical housing need on that side of the island.

9 This project was, you know -- I stated
10 that, but the state's job is not to protect rich
11 homeowners' views and privacy.

12 I humbly request the Land Use Commission to
13 stand strong behind the working-class families of
14 Maui and support this project. Please do not defer
15 this matter. We have waited for too long for truly
16 affordable rental and for sale lots. Mahalo nui.

17 CHAIRPERSON SCHEUER: Thank you, Ms.
18 Lawrence.

19 Questions for the witness from the
20 Petitioner?

21 MR. KEITH-AGARAN: No, chair.

22 CHAIRPERSON SCHEUER: County?

23 MR. HOPPER: No.

24 CHAIRPERSON SCHEUER: OP?

25 MS. APUNA: No.

1 CHAIRPERSON SCHEUER: Commissioners?

2 Commissioner Chang.

3 COMMISSIONER CHANG: Mahalo, I'm sorry to
4 hear of your mother's passing. Thank you for being
5 here.

6 It took a lot of courage to come here and
7 say what you did, so mahalo for being here, thank
8 you.

9 THE WITNESS: Mahalo.

10 CHAIRPERSON SCHEUER: Anything further,
11 Commissioners?

12 Thank you very much.

13 THE WITNESS: Thank you.

14 CHAIRPERSON SCHEUER: Dick Mayer followed
15 by Council Member Shane Sinenci.

16 Good morning.

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

19 THE WITNESS: I do.

20 DICK MAYER

21 Was called as a witness by and on behalf of the
22 Public, was sworn to tell the truth and testified as
23 follows:

24 DIRECT EXAMINATION

25 THE WITNESS: My name is Dick Mayer. I

1 live on 1111 Lower Kimo Drive in Kula.

2 I first want to say a little bit of
3 background for the Commissioners who don't know me.
4 I was formerly member of the Maui Planning
5 Commission. I was also the Vice Chair of the General
6 Plan Advisory Committee that put together the overall
7 Maui Island Plan which looked at the West side, all
8 the areas of Maui, to make its growth boundaries, et
9 cetera.

10 So I've had a lot of experience in these
11 kind of issues, and I could mention other things as
12 well.

13 I'm very pleased that the developer and Kai
14 Nishiki sat down and -- as well as other people --
15 sat down together to put this agreement forth. I was
16 one of the people at the last meeting that you had
17 who raised a number of objections and concerns.

18 They sat down, and they went through those
19 concerns and issues and have come together now with
20 an excellent agreement. No agreement will ever
21 satisfy either side completely a hundred percent, but
22 they compromised. They worked together, and I think
23 they'll come up with an excellent agreement.

24 I'm going to ask that the Commission, when
25 they issue a Decision and Order on this issue, make

1 sure that that agreement is incorporated into their
2 Decision and Order, that they make provision that it
3 will be protected as an agreement. If the developer,
4 for example, were to sell the property or transfer
5 ownership at some point, a long-term agreement for
6 many years that it be incorporated in there so that
7 the homeowners and the community will have the
8 protections that that agreement entails.

9 I would hope that the housing department of
10 the County of Maui would also endorse this agreement,
11 so they will have a vested stake in enforcing it. I
12 would like to also see the Commission really publicly
13 thank these people for getting together and doing
14 this -- making this kind of agreement. It's not
15 often that we get two sides on an issue like this to
16 really sit down and do some heavy negotiating with
17 lawyers and other people, accountants, what have you,
18 to come up with agreement like this, and it sets a
19 precedent for us on the island for all future
20 developments, and I would hope that you would urge
21 developers to do this.

22 The person representing the community, Kai
23 Nishiki, is not just a resident of West Maui, she was
24 elected by the committee that's now putting together
25 the West Maui Community Plan to be their Chair. So

1 this was not a small individual who's doing it, but
2 somebody who is a leader in the community and I think
3 represents the best interest of the community.

4 One last thing about the project and why I
5 think it's -- it should be endorsed as such. This is
6 a project north of Kaanapali. Many of the people who
7 work in Kaanapali, many thousands, in order of five
8 to 10,000 people, commute every day from Central Maui
9 to West Maui along that highway that most of you know
10 goes through Olowalu and over the Pali. That highway
11 is crowded, it's dangerous, et cetera.

12 This project is north of Kaanapali and
13 consequently the people working -- living and working
14 in these affordable houses as well as in some of the
15 market houses will be going south towards Kaanapali
16 to work, and that will greatly reduce traffic on the
17 Olowalu highway.

18 So in other words, it's in the prime
19 location for the housing project especially for
20 workers in West Maui, and I think that should be
21 taken into account when you make your Decision and
22 Order.

23 Thank you very much for your time and best
24 wishes on your decision.

25 CHAIRPERSON SCHEUER: Thank you, Mr. Mayer.

1 Are there questions for the witness from
2 the Petitioner?

3 MR. KEITH-AGARAN: No questions.

4 CHAIRPERSON SCHEUER: County?

5 MR. HOPPER: Nope.

6 CHAIRPERSON SCHEUER: OP?

7 MS. APUNA: No.

8 CHAIRPERSON SCHEUER: Commissioners?

9 If not, Mr. Mayer, since you are long
10 experienced with these kinds of matters, do you have
11 any thoughts about the timeliness of the Petition to
12 Intervene?

13 THE WITNESS: I think if anything this is
14 going to reduce the impacts on that community. The
15 previous -- as it stands now, the original Decision
16 and Order had a housing project that went all the way
17 around, not only next to their project, but above it
18 all the way over and across the project.

19 This is consolidating the development into
20 a more affordable infrastructure situation and less I
21 think of an impact than would have been allowed if
22 the developer had just taken the original 2006
23 Decision and Order. So I would urge you to reject
24 the intervention.

25 CHAIRPERSON SCHEUER: Thank you, Mr. Mayer.

1 Is there anything further for this witness?

2 Commissioner Okuda.

3 COMMISSIONER OKUDA: Thank you, Chair.

4 To follow up on the Chair's question, Mr.
5 Mayer, regarding intervention, one of the earlier
6 witnesses, the Intervenor's Attorney, Mr. Bays, made
7 certain statements about timeliness of intervention.

8 One of the things that we as a Commission
9 might have to consider is whether or not the
10 Intervenor should have brought this Petition to get
11 involved in this case a lot earlier than later, and
12 some might argue that, hey, we didn't know what was
13 going on.

14 Do you have any comment about whether --
15 and maybe you don't have a comment on that -- but
16 whether or not the Intervenor should have known
17 something was going on, and should have brought this
18 thing forth earlier so that if they really wanted a
19 seat at the table, they would have a seat at the
20 table when Ms. Nishiki and other members of the
21 community were attempting to work things out?

22 THE WITNESS: My understanding is that the
23 person who spoke first is a realtor who has spoken in
24 favor of affordable housing in West Maui representing
25 one of the developers for the South side of Lahaina,

1 and it is somebody who should be very aware of land
2 issues.

3 This matter has been before the Commission
4 now for several months. It was, I think, well-known
5 in the community that this was going on, the articles
6 in the Maui News about it.

7 I don't know the specific rule, whether
8 property owners adjacent to it, that would be your
9 rules, I don't know your rules in terms of notifying
10 every single resident or landowner in the area
11 whether that's something that you require for an
12 amendment to a Decision and Order. That was
13 something that would decide whether an intervenor had
14 any standing or not, I would think, but that's my
15 only amateur position on that.

16 COMMISSIONER OKUDA: Thank you very much.

17 CHAIRPERSON SCHEUER: Anything further,
18 Commissioners? If not, thank you very much, Mr.
19 Mayer.

20 THE WITNESS: Thank you.

21 Council member Shane Sinenci followed by
22 Rod Antone -- this is like a who's who of Maui today.
23 Aloha.

24 THE WITNESS: Aloha mai kakou.

25 CHAIRPERSON SCHEUER: Do you swear or

1 affirm the testimony you're about to give is the
2 truth?

3 THE WITNESS: I do.

4 SHANE SINENCI

5 Was called as a witness by and on behalf of the
6 Public, was sworn to tell the truth, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 Thank you for being here today. I'll read
10 a little bit of my testimony that I sent in.

11 I understand the critical need for
12 affordable housing for our people. Pulelehua is a
13 rare project supported by housing advocates,
14 environmental organizations, community leaders and
15 local residents.

16 Community leaders and the developer have
17 worked hard to make the project better than the
18 original 2006 proposal. The requested amendments
19 provide 300 affordable rental units, 400 additional
20 market rental units, and increases the total housing
21 units from 882 to 1000.

22 Thousands of condos and apartments have
23 been lost to vacation rentals in this area. Many
24 homes on the West side have been purchased by
25 offshore residents driving up prices and creating

1 resistance to affordable housing projects.

2 The Pulelehua housing project will allow
3 local people the opportunity to move back to West
4 Maui as you've previously heard. The project's
5 location is close to some of the largest employers of
6 Maui, including resorts in Kaanapali, Honokowai,
7 Kahana and Kapalua.

8 Affordable housing brings more workers into
9 the area, and that benefits everyone. This project
10 promotes the beneficial use of multi mode of
11 transportation by being close to the jobs. Many
12 residents will have the option to bike, walk, carpool
13 or take the bus. It will also alleviate traffic and
14 daily commutes to the other side and from workers
15 living on this part of the island.

16 As the new council member, we've worked
17 really hard to promote the 30-year affordable clause
18 in a lot of the housing projects. Part of us being
19 in this housing crisis has been the ten-year
20 affordable clause where a lot of markets will flip
21 after ten years and back into the market. So I'm
22 here to support the project. Mahalo.

23 CHAIRPERSON SCHEUER: Thank you very much.

24 Are there questions for the witness from
25 the Petitioner?

1 MR. KEITH-AGARAN: No, Chair.

2 CHAIRPERSON SCHEUER: Maui County?

3 MR. HOPER: No.

4 CHAIRPERSON SCHEUER: OP?

5 MS. APUNA: No.

6 CHAIRPERSON SCHEUER: Commissioners?

7 Commissioner Giovanni.

8 COMMISSIONER GIOVANNI: Thank you, council
9 member, for coming forward and testifying today,
10 appreciate it.

11 In your testimony you used the phrase:
12 This project is better than the 2006 proposal. This
13 Commission has learned through its previous hearings
14 on this matter that that original 2006 was infeasible
15 for certain reasons. It would never be built as it
16 was originally configured.

17 Is that your view that this is a better
18 project because it will be built or -- and because it
19 provides a 30-year clause?

20 THE WITNESS: Yes, I do. You know, looking
21 over this, the recent, the new design, I believe by
22 just having -- you know, for the developer, we've
23 seen a lot of times where the developer will, I
24 guess, dangle the market just to get the affordable
25 portions built.

1 So I think with these additions it pencils
2 out, and it still keeps the affordability, as you
3 said, in a 30-year clause.

4 COMMISSIONER GIOVANNI: Thank you.

5 CHAIRPERSON SCHEUER: Are there further
6 questions for the witness? If not, thank you very
7 much for being here.

8 Rod Antone, followed by Yuki Lei Sugimura,
9 which means I think we also have a council quorum in
10 addition to the LUC quorum. I'm not quite sure.

11 Aloha, Rod.

12 THE WITNESS: Aloha.

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

16 THE WITNESS: For the next three minutes,
17 yes.

18 ROD ANTONE

19 Was called as a witness by and on behalf of the
20 Public, was sworn to tell the truth, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 THE WITNESS: My name is Rod Antone. I'm
24 the Executive Director of the Maui Hotel Lodging
25 Association.

1 Obviously, we're here because we have a lot
2 of hotel workers who work in West Maui. And, you
3 know, like Aris was saying, they commute -- people
4 commute from Central Maui, sometimes from Up Country,
5 I mean, people drive all the way from Kula to go to
6 work.

7 So if our workers can have the opportunity
8 to live and work on the same side on West Maui, I
9 think that's an opportunity that can't be passed up.

10 We like the fact that it's a mix of rentals
11 and, you know, affordable housing, that no short-term
12 rentals will be allowed. And also I'd like to point
13 out because there is a lot of people in this room
14 that haven't always been on the same side of issues,
15 and we have all come together and stand together in
16 support of this project. And I know some of you from
17 the neighbor islands, but, I mean, that -- Maui has
18 been divided for a while, and it's a pleasure to be
19 in the room with these people and stand for -- stand
20 on the same side for once, and kudos to project
21 consultant Lahela Aiwohi for bringing us altogether
22 on that.

23 And that's my testimony. Oh, also
24 questions about how much housing cost on Maui. I
25 used to do research for the mayor's office, and a

1 good rule of thumb is 1000 per bedroom at least.
2 That is in the most affordable area in Kahului. If
3 you want to go to more desirable areas in Haiku,
4 Kihei, and all that, it goes up drastically.

5 VICE CHAIR CABRAL: Thank you very much.

6 CHAIRPERSON SCHEUER: Thank you. You still
7 have a minute and ten seconds of honesty from you, so
8 are there questions from the Petitioner?

9 MR. KEITH-AGARAN: No questions.

10 MR. HOPPER: No.

11 CHAIRPERSON SCHEUER: OP?

12 MS. APUNA: No.

13 CHAIRPERSON SCHEUER: Commissioners, this
14 is our chance.

15 THE WITNESS: As soon as I walk out the
16 door, I start lying again.

17 CHAIRPERSON SCHEUER: I'm only quoting you
18 back. This has nothing to do with your previous
19 career in retail, right?

20 Okay. Thank you very much.

21 THE WITNESS: Thank you.

22 CHAIRPERSON SCHEUER: Our next witness is
23 Council Member Yuki Lei Sugimura followed by Junya
24 Nakoa.

25 THE WITNESS: Thank you for allowing me to

1 be here. My name is Yuki Lei Sugimura. I'm a
2 council member. I live Up Country. I live at 4243
3 Lower Kula Road, Kula, Hawai'i.

4 CHAIRPERSON SCHEUER: I'm just going to --

5 THE WITNESS: Oh, I promise.

6 CHAIRPERSON SCHEUER: Do you swear or
7 affirm the testimony you're going to give is the
8 truth?

9 THE WITNESS: Yes.

10 CHAIRPERSON SCHEUER: Thank you.

11 THE WITNESS: I wish we could do that at
12 council, also.

13 YUKI LEI SUGIMURA

14 Was called as a witness by and on behalf of the
15 Public, was sworn to tell the truth, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 THE WITNESS: So I am here in support of
19 this project. And I want to commend you for getting
20 the community together. And I've been reading about
21 this in the Maui News and keeping abreast of it over
22 the years.

23 Originally I was disheartened when
24 Pulelehua could not be built, for whatever reason,
25 and for you to purchase it and bring it back to life,

1 I appreciate it. And for you to work with the
2 community and -- I heard about this because Tamara
3 Paltin who I work with, a council member. She called
4 me one afternoon very excited and, you know, was kind
5 of giving me the rundown, and I was excited to hear
6 of the parties coming together.

7 So thank you for allowing that. And thank
8 you, Kai Nishiki, Tamara, Lahela, and it is a breath
9 of fresh air for all the parties to come together.

10 Oftentimes in council we hear from the
11 other side saying I wanted this, but I wasn't given
12 the opportunity to, or the NIMBYs, whatever it could
13 be.

14 I want you to know that the Hawai'i
15 Community Foundation, Micah Kane, came and had a
16 meeting with the community recently and said that
17 Maui County has the worst housing project in the
18 State of Hawai'i, and they are focusing on our
19 problem and doing their effort to try to help the
20 housing projects come to life again or to encourage
21 more housing for our working families.

22 It is a huge problem. And when I heard
23 Micah Kane say that, I realized that our problem is
24 probably a lot deeper and bigger than what we hear of
25 in the council, and I appreciate the Land Use

1 Commissioners here, especially Lee Ohigashi, who's
2 from Maui, to spend your time to decipher all of this
3 and make the best decision for the working families
4 of Maui County or for Maui.

5 We have a lot of -- as you know, our
6 industry, our economic base is the visitor industry.
7 And South Maui and West Maui has the brunt of it.
8 And the workers do travel as far as you've been
9 hearing today. I can tell, because my house in Kula,
10 my neighbor works in Lahaina, and I can hear his
11 engine revving up very early in the morning. It is
12 very real.

13 I appreciate also some of the things that
14 we wish for in the council, and a lot of things that
15 we fund are the watershed projects. And I appreciate
16 your supporting the hui watershed project because
17 it's something that I think all of us care about
18 which is water and making sure that you know water is
19 life.

20 The other thing that, as you know, has been
21 a hot issue for us in Maui County are the injection
22 well issue, which south -- the West Maui injection
23 wells happen to be where the supreme court decision
24 was. And I hope that -- I'm not sure what your
25 decisions are, but I hope you can use some of the

1 reuse water --

2 CHAIRPERSON SCHEUER: Three minutes.

3 THE WITNESS: -- for your project. So we
4 appreciate you.

5 But thank you very much for allowing me to
6 do this, and I'm open for questions.

7 CHAIRPERSON SCHEUER: Thank you very much.

8 Are there questions for the witness?

9 MR. KEITH-AGARAN: No questions.

10 CHAIRPERSON SCHEUER: Maui County?

11 MR. HOPPER: No, Mr. Chair.

12 MS. APUNA: No.

13 CHAIRPERSON SCHEUER: Commissioners?

14 Commissioner Cabral, followed by
15 Commissioner Ohigashi.

16 COMMISSIONER CABRAL: I want to thank you
17 very much, obviously, all the council members for
18 coming in and participating in this.

19 And because I am from the Big Island and I
20 work in housing, in a private sense, I manage a lot
21 of properties.

22 I want to make a couple of comments that
23 you as council people are very powerful in the sense
24 that it -- I really recommend at our level in -- on
25 the Big Island that we look at every issue in our

1 building code. Is it really necessary? Yeah, in a
2 perfect world you'd have sprinklers, you'll have
3 this, you'll have that, but how many of our houses in
4 Hilo area, those wonderful little single-wall redwood
5 homes that everybody built 50, 60 years ago, that are
6 not able to be built today because they're not going
7 to meet all the building codes.

8 So is it really necessary that all of these
9 things be part of what you're required to do?

10 Because it's all a matter of dollars, right? That's
11 why the developer has to have super rich houses that
12 they have to -- he or she has to sell in order to
13 afford the ability to build affordable housing. It's
14 because you got to have that mix; otherwise, you
15 can't build anything.

16 So I really would recommend everybody
17 that's at the table to not just look at how many more
18 ways we can get affordable housing built with federal
19 monies and all these different things, and developers
20 giving up and compromising and all these things, is
21 to really look at your building codes and all of the
22 regulations that you tag onto everybody. Are they
23 really necessary? Is that what we're going to do
24 because if -- that's what I would recommend to help
25 the big picture. Thank you very much.

1 CHAIRPERSON SCHEUER: Thank you,
2 Commissioner Cabral.

3 What you just pointed out to me is that I
4 just realized my coffee mug has more walls than my
5 house does actually. Because I have a double wall
6 mug and a single wall house.

7 Commissioner Ohigashi.

8 COMMISSIONER OHIGASHI: It's not a
9 question; it's more like a disclosure. I have to
10 disclose now that Councilman Sugimura called me out,
11 and said she had -- I was in high school with her.

12 CHAIRPERSON SCHEUER: We will allow
13 additional three minutes for stories about
14 Commissioner Ohigashi.

15 THE WITNESS: I have a lot.

16 CHAIRPERSON SCHEUER: Six minutes. Is that
17 sufficient?

18 COMMISSIONER OHIGASHI: She has far evolved
19 from our status -- my status, well, in high school,
20 and -- but that won't affect my decision.

21 CHAIRPERSON SCHEUER: Okay. Thank you.

22 And just for the record, disclosures are
23 not necessary on witnesses, but we appreciate the
24 disclosure.

25 Are there any further questions for Ms.

1 Sugimura?

2 If not, our next signed up witness is Junya
3 Nakoa. And are there any other individuals desiring
4 to provide public testimony, please proceed to the
5 witness -- the next in line box in some order.

6 THE WITNESS: How's it? Junya Nakoa for
7 Napilihau, right by this project where the thing
8 going be built.

9 CHAIRPERSON SCHEUER: Okay. Do you swear
10 or affirm --

11 THE WITNESS: I swear I going to tell the
12 truth.

13 CHAIRPERSON SCHEUER: Thank you.

14 JUNYA NAKOA

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

18 DIRECT EXAMINATION

19 THE WITNESS: What you call, yeah, you know
20 all the stories about that couple that they live
21 Lahaina, went to school Lahaina, now they got to live
22 way up. Sorry about that. That's screwed up. I see
23 Tiare -- to Lahaina, strong but she got to live with
24 this type. No can afford over there.

25 And then talk, responding to the lady's --

1 the thing about how much cost for that, it's crazy.
2 I just moved my cousin to Honokowai because they
3 going to rent for there \$2,700 for two bedroom. I
4 seen the bugger; they're both crazy. But, yeah, so
5 it's nuts.

6 What you call -- what else -- oh, yeah,
7 yeah. Yeah, this developer, the guy right here. He
8 had plenty meetings. You know, had one a couple
9 years ago at the Hyatt. I went attend. He had two
10 in Lahaina, you know, for the community to come. So
11 this guy give us an opportunity to come talk story.
12 So the guys that like intervene, that weird whatever,
13 they had a chance to go, because I knew about it.
14 You know what I mean?

15 So I could have gone for that thing. I
16 went to the Hyatt one. So for this project, they
17 screwed up. You know what I mean?

18 Sorry, but one other testimonial --
19 testimony guys they talk. He wasn't rude. We try to
20 push one Workforce Housing Development not too long
21 ago, the guy, the one grumbling about this project.
22 No slow down this project, brother, you know what I
23 mean? Because we need the houses, and this project
24 is, sorry, but bad ass. It is awesome. It's what
25 we've been doing.

1 I've been working on trying to get
2 workforce housing for like 20-plus years. Sorry,
3 brother, the County guys, they got to deal with me
4 every time, Michele, this Cua lady, the Commissioner.
5 The brah behind here, there, he had to deal with me,
6 too, because I bother these guys every time about the
7 affordable workforce housing, and this developer is
8 doing what we like, you know, so it's bad ass. What
9 else?

10 Oh, yeah, the big one is injection wells.
11 Who -- I call the mayor about taking the injection
12 wells to supreme court. I made the guy come to
13 Lahaina and have a meeting about the injection wells
14 that we don't like them. So for him saying, he's
15 going to do use them and then going to use the --
16 sorry -- the dude (phonetic) water for the water
17 place, that's awesome. And that's what we should be
18 doing, that's the kanaka way. That's the right way
19 to do it.

20 Shuck, sorry. Yeah, brother, this project,
21 I support planning project, and I go against plenty
22 projects, like the Antone guy, Rob Antone. He knows
23 this project -- and sorry, I'm going to throw him
24 underneath the bus too. Lahela, she bring us all
25 guys together, you know, the two sides of them,

1 because I was the guy always on the outside, all the
2 time.

3 So Kai Nishiki, you deal with her, you
4 strong bugger, you. She going get on it, but I
5 respect Kai for what she did and this project, so
6 this bugger good.

7 CHAIRPERSON SCHEUER: Okay. Mahalo.

8 Are there questions for the witness?

9 MR. KEITH-AGARAN: No questions.

10 MR. HOPPER: No, Mr. Chair.

11 MS. APUNA: No.

12 CHAIRPERSON SCHEUER: Commissioners?

13 Mahalo nui.

14 THE WITNESS: I was ready for questions.

15 CHAIRPERSON SCHEUER: So our next two
16 witnesses are, Bruce U'u I believe, followed by
17 Albert Perez. Kala mai if I mispronounced your name.

18 THE WITNESS: Close enough, U'u.

19 CHAIRPERSON SCHEUER: U'u.

20 THE WITNESS: Close.

21 CHAIRPERSON SCHEUER: Do you swear or
22 affirm the testimony you're about to give us is the
23 truth?

24 THE WITNESS: Yes, I do.

25 CHAIRPERSON SCHEUER: Okay. Please state

1 your name and address for the record and proceed.

2 BRUCE U'U

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

6 DIRECT EXAMINATION

7 THE WITNESS: My name is Bruce U'u, also
8 known as Ulu. I live at 249 Kapaa Street, Paia,
9 Maui.

10 CHAIRPERSON SCHEUER: Please proceed.

11 THE WITNESS: Thank you for giving me this
12 opportunity to speak. I came in just to listen to
13 Mr. Cheng's proposal maybe just validate -- I work
14 under the Hawai'i Carpenters Union, so I -- you know,
15 we the guys trying to build the homes for members to
16 qualify.

17 And so we never got to discuss about
18 anything that the union can do. But what I can tell
19 you this is, I always be a proponent of affordable
20 homes. So even if you get the differences you have,
21 the part is when you understand and when you been
22 here, I would say generational, you understand the
23 feeling or the need of homes.

24 I went to the same workshop with Yuki Lei
25 when they said 52 percent of all homes are bought

1 from out of state. And I'm a former planning
2 commissioner. So as I sit on the commission, I hear
3 people talking. The difference always was the have
4 and have nots.

5 And that's the difference you have here at
6 times. So when you generational, you understand.
7 You're not looking for yourself. I'm looking for
8 down the line, like what the people talking here,
9 what we need in perpetuity is housing to sustain the
10 life that we need, because 48 percent of the people
11 are thinking of moving.

12 And when you hear the higher ups come up
13 there, or the people with money just so happen I'm on
14 my phone, thank God did this. The houses that the
15 people are opposing this project is valued at 2
16 million, 1.3, the have and have nots.

17 And to have them have a say on delaying
18 something that was due generational is an insult to
19 me also. Oh, wait, because -- we see this every day
20 looking out our kids, multi-generational family
21 homes, and we're going to wait for people own houses
22 two million with eight bedrooms, there are more
23 problems.

24 Their problem is different from our
25 generational problem. They don't feel the effects.

1 They look; they view. And for have pause because
2 this is so important to them. How important is it?
3 We part of the statistics that telling us we live in
4 the most crowded homes in the state. Maui has the
5 biggest problem. They're part of the problem. They
6 came, they saw, they part of the 52 percent, and now
7 they're saying, wait. We've been waiting for years,
8 brah.

9 So even though I not going to agree with
10 this guy all the way, so far I'm a proponent of the
11 affordable housing, and that includes this project.

12 Thank you.

13 CHAIRPERSON SCHEUER: Mahalo, Mr. U'u.

14 Questions for the witness from the
15 Petitioner?

16 MR. KEITH-AGARAN: No questions.

17 MR. HOPPER: No.

18 CHAIRPERSON SCHEUER: OP?

19 MS. APUNA: No.

20 CHAIRPERSON SCHEUER: Commissioners?

21 Commissioner Aczon.

22 THE WITNESS: Yes.

23 CHAIRPERSON SCHEUER: There's a question
24 for you from Commissioner Aczon.

25 COMMISSIONER ACZON: Mr. Chair, it's not a

1 question. Full disclosure.

2 CHAIRPERSON SCHEUER: Okay.

3 COMMISSIONER ACZON: I didn't know that Mr.
4 U'u was going to testify. Mr. U'u works for the
5 Hawai'i Carpenters Union, and I work for Hawai'i
6 Carpenters Apprenticeship and Training Fund.

7 Although we're separate entity, I don't
8 belong to the union, but we kind of work together on
9 some issues. But I can assure you that I can be
10 impartial for the--

11 CHAIRPERSON SCHEUER: Fair and impartial.

12 COMMISSIONER ACZON: -- fair and impartial
13 for this docket.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Aczon.

16 Thank you, Mr. U'u.

17 THE WITNESS: Thank you.

18 CHAIRPERSON SCHEUER: Albert Perez is our
19 next testifier.

20 Is anybody else wishing to provide public
21 testimony on this matter?

22 THE WITNESS: Good morning, Chair. Good
23 morning, Commissioners.

24 CHAIRPERSON SCHEUER: Good morning. Please
25 speak right into the microphone, Mr. Perez.

1 Do you swear or affirm the testimony you're
2 about to give is the truth?

3 THE WITNESS: I do.

4 ALBERT PEREZ

5 Was called as a witness by and on behalf of the
6 Public, was sworn to tell the truth, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 THE WITNESS: I'm Albert Perez. My
10 address 55 North Church Street in Wailuku, and I'm
11 the Executive Director of the Maui Tomorrow
12 Foundation. Maui Tomorrow Foundation helps shape
13 planning policies and projects that meet Maui's need
14 for truly affordable housing and adequate
15 infrastructures, and which work to supply, provide a
16 clean healthful environment for local residents and
17 their descendents to enjoy.

18 We are happy to support those projects,
19 which honor our community plans, meaningfully engage
20 the local community and incorporate the concerns of
21 the community.

22 Unfortunately, the 201H law has been used
23 to get around good planning laws that protect the
24 quality of life on Maui. And although truly
25 affordable housing is a top priority for Maui

1 Tomorrow, we don't support those that end run the
2 planning process and ignore community plans. The
3 tendency has been for developers to acquire land in
4 the ag zone because it's cheap, and they can make
5 more of a profit there.

6 Unfortunately, that increases the value of
7 the ag land and makes it harder for little farmers to
8 stay in business. So we are encouraging the County
9 Council to respect our community plans and respect
10 our farmers.

11 This project on the other hand, like the
12 Waikapu Country Town project, has followed the
13 process. We appreciate that. We also appreciate
14 that the Pulelehua project has been willing to work
15 with the community, and we've been part of that
16 process, led of course by Kai Nishiki, who has done
17 an amazing job here. We've had an opportunity to
18 provide input and help shape the project's design and
19 the affordable housing mix.

20 Initially, the Maui Land & Pine project was
21 going to provide 450 affordable homes. And then Mr.
22 Cheng's initial proposal was to go down to 280. And
23 now it's up to 500. So that's a good thing and we
24 are glad Mr. Cheng is willing to work with the
25 community.

1 We do have a couple of concerns. Well, one
2 concern. The County's best management practices for
3 drainage are inadequate, and we saw that in the
4 Mahana Estates Development in Kapalua. They followed
5 the County's best management practices, and it caused
6 some of the worst runoff in recent Maui history.

7 We urge Mr. Cheng to consult with a local
8 expert on practices that can reduce the risk.

9 MR. CHENG: I have.

10 THE WITNESS: Okay. He already did, so
11 that's wonderful.

12 I just want to say that we appreciate the
13 hard work that the community advocates led by Ms.
14 Nishiki, have invested in this settlement agreement
15 that will be presented to the State Land Use
16 Commission. It attempts to address the major
17 concerns raised by the community, revises earlier
18 plans and provides a substantial number of rental and
19 fee simple homes in the affordable price range.

20 CHAIRPERSON SCHEUER: Three minutes.

21 THE WITNESS: Mahalo.

22 CHAIRPERSON SCHEUER: It's like you've done
23 this before. Thank you, Mr. Perez.

24 Any questions for the witness?

25 MR. KEITH-AGARAN: No questions.

1 MR. HOPPER: No.

2 MS. APUNA: No.

3 CHAIRPERSON SCHEUER: Commissioners?
4 Commission Ohigashi.

5 COMMISSIONER OHIGASHI: I'm not sure. You
6 support the settlement agreement and the project?

7 THE WITNESS: Yes, we do.

8 COMMISSIONER OHIGASHI: That's Maui
9 Tomorrow?

10 THE WITNESS: Yes.

11 COMMISSIONER OHIGASHI: Thank you.

12 CHAIRPERSON SCHEUER: Commissioner Okuda.

13 COMMISSIONER OKUDA: Thank you, Mr. Chair.
14 Thank you, Mr. Perez.

15 I have a question that goes to some of the
16 testimony by the earlier witnesses about timeliness
17 of the Petition to Intervene.

18 One of the arguments that are made and can
19 be made is that, gee, we want to intervene now
20 because we really didn't know what was going on
21 regarding this, that there was not adequate notice or
22 knowledge in the community that this project was
23 taking place.

24 I mean, do you have any comment regarding
25 that that, you know, for example, the intervenors

1 might not have been placed on notice or have gotten
2 news through the grapevine or otherwise that
3 something was going on here?

4 THE WITNESS: I'm not an expert on your
5 intervention rules, but I do know that Ms. Nishiki
6 reached out to many other groups besides us, and I do
7 know that this has been your schedule.

8 And so if they had any concerns, this
9 project was right next to their homes apparently,
10 they could have been more involved, and they could
11 have requested intervention earlier.

12 And then if they didn't have any concerns,
13 then they didn't have to bring them forth. That's
14 sort of my lay take on the whole issue.

15 COMMISSIONER OKUDA: Thank you very much.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Okuda.

18 Commissioner Ohigashi.

19 COMMISSIONER OHIGASHI: Were you involved
20 in the various public hearings or public meetings
21 that with the developer?

22 THE WITNESS: I was not.

23 COMMISSIONER OHIGASHI: Do you know how
24 many there were?

25 THE WITNESS: How many public meetings?

1 COMMISSIONER OHIGASHI: Yes.

2 THE WITNESS: I don't know for sure. I
3 think there were a couple, but I'm not sure.

4 COMMISSIONER OHIGASHI: You're not sure.
5 Okay, thank you.

6 CHAIRPERSON SCHEUER: Are there any other
7 questions for Mr. Perez? If not, we have one more
8 witness in the chair.

9 Is there anybody else desiring to give
10 public testimony in this matter? If not -- Ms.
11 Nishiki, were you raising? After, okay.

12 Is there anybody other than the person who
13 is approaching the witness box and Ms. Nishiki
14 desiring to give public testimony?

15 Okay. One more, Council Member Paltin.

16 My intention is to close public testimony
17 on this matter after everybody who's in the room
18 right now has had a chance to give public testimony.

19 Aloha. Do you swear or affirm the
20 testimony you're about to give is the truth?

21 THE WITNESS: I do.

22 I have some handouts. There are nine
23 copies, and I have the tenth here that I'll leave
24 after I testify.

25 CHAIRPERSON SCHEUER: Thank you. So please

1 state your name and address for the record and
2 proceed.

3 KATHY KAOHU

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

7 DIRECT EXAMINATION

8 THE WITNESS: Aloha. My name is Kathy
9 Kaohu, and I live and work in Wailuku. I am
10 testifying this morning in my own personal individual
11 capacity.

12 I'm kanaka, and I'm a NIMBY. I'm a NIMBY,
13 which stands for "not in my backyard", because I
14 consider all of Maui my backyard, and my ohana's
15 backyard. I've lived and worked in some capacity in
16 every district of this island over the years, so,
17 yeah, my backyard.

18 I personally don't care for development or
19 tourism, because my view is, it's done for the sake
20 of profits or inventory for realtors. Most often
21 what's been built over the years have been for
22 out-of-state investors and speculation. Because of
23 the laws imposed on us by the occupying nation, our
24 hands are tied with our housing -- with us being able
25 to house our own first.

1 So under the label of nondiscrimination,
2 the units still go to the highest bidder.

3 I'd like to add some information to the
4 record and transmit some of the background associated
5 with some of the testimony that I pulled from your
6 website, and that's what I handed out.

7 One testifier. Sorry, I'm so nervous.

8 CHAIRPERSON SCHEUER: We haven't lost a
9 witness, ever. You should be fine.

10 THE WITNESS: One testifier -- and I'm
11 looking for the testimony -- a Mr. Moffett, states in
12 his testimony that he's on the list for this, for a
13 home in this project, and has been on the list for
14 ten years now, but a real property tax search shows
15 that this individual already owns five pieces of
16 property in West Maui. When is enough enough?

17 I'm looking at another testimony from an
18 Ellen Geary, concerned about -- sorry --

19 CHAIRPERSON SCHEUER: It's okay, but we
20 have your written now, so maybe if you give us the
21 sort of core of ideas you want us to understand.

22 THE WITNESS: A lot of the testifying --
23 testimonies coming in, these folks aren't full-time
24 residents here. They have multiple properties.
25 They're renting them out as short-term vacation

1 rentals and they've got their piece of the pie, so
2 why does this particular project bother them so much?

3 And that's kind of all I wanted to bring to
4 the table. They're not even full-time residents
5 here.

6 CHAIRPERSON SCHEUER: Mahalo.

7 THE WITNESS: In closing, I believe that
8 the checklist that everyone left the last LUC meeting
9 with has been accomplished and satisfied, and a
10 decision should be made today as planned.

11 I do support the project, and there will be
12 another opportunity at the Planning Commission level,
13 I believe, to -- for public, more public input.

14 CHAIRPERSON SCHEUER: Thank you.

15 THE WITNESS: Thank you.

16 CHAIRPERSON SCHEUER: Are there questions
17 from the Petitioner?

18 MR. KEITH-AGARAN: No, Chair.

19 CHAIRPERSON SCHEUER: Maui County?

20 MR. HOPPER: No.

21 CHAIRPERSON SCHEUER: OP?

22 MS. APUNA: No.

23 CHAIRPERSON SCHEUER: Commissioners?

24 Commissioner Giovanni.

25 COMMISSIONER GIOVANNI: Thank you for

1 coming forward today. It's not always easy to do.

2 So I take to heart your comment about all
3 of Maui being your backyard. I'd like to hear from
4 you in your own words, because you seem to be very
5 careful about what would be pono for Maui, is this
6 project, as it's currently configured, having gone
7 through the last couple of months of redesign, that
8 it fits your personal standard for what the type of
9 thing that makes sense for Maui?

10 THE WITNESS: It does in the sense that a
11 lot of the community is -- have all the opposing
12 sides that are usually seen in developments are all
13 on the same page. So I would respect that. That's a
14 huge one. And if they're satisfied with it, then I
15 support.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Giovanni.

18 Any other questions from the Commissioners?
19 If not, just checking with our court reporter. I
20 know we've been going for an hour and ten minutes,
21 but are we okay to try and wrap up the testimony?

22 COURT REPORTER: Yes.

23 CHAIRPERSON SCHEUER: Thank you.

24 Thank you very much for your testimony.

25 THE WITNESS: Mahalo.

1 CHAIRPERSON SCHEUER: Our next testifier is
2 Kai Nishiki. Is there anybody else -- oh, followed
3 by Council 0member Paltin. Is there anybody else
4 other than those individuals who wishes to give
5 public testimony on this matter?

6 Going once, going twice. If not, I intend
7 Ms. Paltin will be the last testifier on this
8 docket -- on our agenda today.

9 Do you swear or affirm the testimony you're
10 about to give is the truth?

11 THE WITNESS: I do.

12 KAI NISHIKI
13 Was called as a witness by and on behalf of the
14 Public, was sworn to tell the truth, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 THE WITNESS: Aloha, Chair, aloha,
18 Commissioners. Mahalo for your service. And I know
19 it's volunteer, so I know that it takes a lot to
20 review all the documents and fly over here, and so I
21 want to respect your time and thank you very, very
22 much.

23 When I first appeared before the
24 Commission, as you know, I didn't support this
25 project. And over time, Mr. Cheng and I have been

1 working on a settlement agreement that really
2 reflects many hours spent with our community and
3 hearing our concerns. And he has been very
4 responsive.

5 I told him of the tragedy of so many of our
6 ohana having to move away to the continent and just
7 out of West Maui because things are so expensive. I
8 told him about our high cost of living, the prices of
9 homes on West Maui, the prices of rentals in West
10 Maui. That our highway is falling -- our only
11 highway is falling into the ocean. That we don't
12 have beach access. That developers in the past have
13 come in and not respected our community and just
14 basically did what they wanted.

15 And he looked at me with tears in his eyes
16 and said, I don't want to be that person. I want to
17 be different. I want to contribute to the community.
18 And from that point forward, he was so responsive to
19 every issue that we brought forward.

20 And he has donated money to a trust,
21 \$1.6 million trust, that he will have no control over
22 at all, but will provide down payment for those who
23 wish to buy an affordable home not even in his
24 project, anywhere in West Maui. He is giving this
25 money to anyone who wants to buy an affordable home

1 even on Hawaiian Homelands. So he has really looked
2 at our community and said how can I help?

3 I can provide affordable housing. I can
4 provide affordable rentals.

5 These homes and apartments will be close to
6 work, close to jobs, close to shopping so that people
7 don't have to rely on their cars and contribute to
8 our huge traffic problem that we have on the West
9 side. He is donating money to facilitate moving our
10 only highway that comes into West Maui, and it's
11 falling into the ocean. He's donating a significant
12 sum to help West Maui residents have access to the
13 shoreline. He's making commitments that he won't
14 contribute to the wastewater issue in West Maui. He
15 is going to be reusing as much water as he creates
16 back to the project.

17 And I just want to say I am really sad to
18 see people like the Intervenor moving here and buying
19 a home and then trying to block our own residents
20 from that same opportunity. It hurts my heart. And
21 it hurts our community. And it fractures our
22 community when people come here, and they act like
23 that. So it's shameful and I really got to say shame
24 on you for doing that. Our community has come
25 together.

1 We have never come together in this manner
2 for a project like this. So I just want to ask you,
3 please, deny Intervenor status. There has been ample
4 opportunity in our community for our community to be
5 engaged in this process.

6 There was a meeting two years ago. It' a
7 very public process. Things are in the Maui News,
8 the Lahaina News. This process here is incredibly
9 public. Everyone has an opportunity.

10 So I don't think that there's any validity
11 to his claim.

12 CHAIRPERSON SCHEUER: Thank you, Ms.
13 Nishiki.

14 Other questions for the witness from the
15 Petitioner?

16 MR. KEITH-AGARAN: No, Chair.

17 CHAIRPERSON SCHEUER: Maui County?

18 MR. HOPPER: No.

19 CHAIRPERSON SCHEUER: OP?

20 MS. APUNA: No.

21 CHAIRPERSON SCHEUER: Commissioners?
22 Commissioner Ohigashi.

23 COMMISSIONER OHIGASHI: Since the last
24 hearing that we have had, how many community meetings
25 has there been, if you know?

1 THE WITNESS: There has been at least two
2 broad public meetings as well as numerous like talk
3 stories within our community, as well as numerous
4 meetings with community members and community
5 associations.

6 There is the West Maui Taxpayers
7 Association, West Maui Community Association, West
8 Maui Preservation Association, so he has done a
9 really, really good job in reaching out to the
10 community.

11 And also all of the meetings were
12 live-streamed on social media, and we know everyone
13 gets their news from social media now, so there has
14 been outreach pretty much in every way that people
15 get their news from.

16 COMMISSIONER OHIGASHI: Would you say that
17 you've attended most of the meetings?

18 THE WITNESS: Yes, I attended almost all of
19 them, even as far as back as two years ago when he
20 had a meeting.

21 COMMISSIONER OHIGASHI: Thank you.

22 CHAIRPERSON SCHEUER: Commissioner Cabral
23 followed by Commissioner Chang.

24 VICE CHAIR CABRAL: Thank you again for
25 attending again and again.

1 So am I correct in understanding what you
2 stated is that you would have previously -- you
3 opposed the development. But due to these
4 negotiations and ability of the developed Petitioner
5 to want to work with the community, you are now here
6 supporting this development?

7 THE WITNESS: Yes.

8 COMMISSIONER CABRAL: Okay. Thank you.

9 CHAIRPERSON SCHEUER: Commissioner Chang?

10 COMMISSIONER CHANG: Thank you very much,
11 Ms. Nishiki. I remember you sitting there last
12 couple months ago opposing this project.

13 Let me ask you: Are you familiar with the
14 Petition Kahana Hui Lot Owners?

15 THE WITNESS: Yes, I am. In fact, I
16 previously lived in a home in that neighborhood.

17 COMMISSIONER CHANG: And it seems like
18 you've been very active in engaging the community to
19 participate with these discussions with the owner.

20 Did you reach out to Kahana Hui Lot Owners
21 to participate in these open meetings?

22 THE WITNESS: I did not reach out to him
23 directly, but he was in attendance at the meeting in
24 -- two years ago, and I believe both of the community
25 meetings held in West Maui. And I also spoke with

1 him privately, and he conveyed to me many reasons of
2 why this development would impact him personally.
3 And at the end of our conversation, he had said, you
4 know, I really struggle to find any reasons that
5 would impact the community negatively. That my
6 reasons are mostly self-serving. And I said, well,
7 I'm glad that you can acknowledge that, that it's
8 basically about not wanting to have neighbors when
9 you previously did not.

10 But I told him, you know, when we live in
11 community, that it is important to understand that
12 when you live in community, that we have to make
13 decisions with the community's best interest, and
14 that sometimes we have to deal with things that are,
15 you know, a little uncomfortable.

16 Yeah, maybe I don't want to have a
17 neighbor, but because this benefits our community in
18 such a great way, that perhaps that he should
19 re-evaluate his position on the project.

20 COMMISSIONER CHANG: So when you say "he,"
21 is it -- who do you -- who are you referring to? Is
22 it just one individual or are there -- because
23 apparently there are numerous owners in this hui.

24 THE WITNESS: Yes. So Van Fischer and Tim
25 Hehemann are the ones that I met with. And they are

1 the two that are most vocal about the project. I'm
2 not so sure if the rest of the owners have as large
3 concerns as they do, but it just seems that the
4 concerns that they raise are very self-serving and a
5 bit outlandish.

6 I mean, I did hear from Van telling me that
7 he was concerned that someone might steal his
8 children off of the bike path, and I just thought
9 that he's really reaching to find reasons to oppose
10 the project, when it's all about just not wanting to
11 have neighbors which is a little shameful.

12 COMMISSIONER CHANG: So were these -- you
13 said the meetings were live-streamed. Have there
14 been articles in your local newspaper about this
15 project?

16 THE WITNESS: Yes, there have been several
17 articles in the Maui News and I believe even in the
18 Lahaina News. Yeah, there's been a lot of media
19 coverage on the project from the very beginning.

20 COMMISSIONER CHANG: I guess what I'm
21 trying to do is establish that the Intervenors, the
22 potential Intervenors have had opportunities to know
23 about the project.

24 So did Mr. Cheng publish in the paper when
25 he was going to have these meetings? How did the

1 community find out about these meetings you --
2 because you participated in most of them.

3 THE WITNESS: I believe they published in
4 various newspapers, on the website, on social media,
5 and there was a large community outreach just within
6 our community so that, you know, people could spread
7 the word that we made sure that most of the leaders
8 within the community knew what was going on.

9 CHAIRPERSON SCHEUER: Anything further,
10 Commissioner Chang?

11 COMMISSIONER CHANG: No. Just one last
12 question.

13 This Kahana Hui Lot Owners, is that ag? Do
14 you know if that's ag zoned? You apparently lived in
15 that area.

16 THE WITNESS: Yes.

17 COMMISSIONER CHANG: What kind of
18 agriculture are they doing?

19 THE WITNESS: I know that there is a
20 nursery in the area, and also I think one of the
21 Intervenors has a landscaping business. And I think
22 that our community fully supports ag activities and
23 has no issue at all supporting those continuing.

24 COMMISSIONER CHANG: Thank you very much.

25 CHAIRPERSON SCHEUER: Is there anything

1 further, Commissioners?

2 Ms. Nishiki, approximately how many hours
3 since the last meeting of the Land Use Commission on
4 this matter have you spent working on this?

5 THE WITNESS: We speak daily, and it's
6 probably -- so every single day I've probably spent a
7 few hours.

8 CHAIRPERSON SCHEUER: So roughly just --

9 THE WITNESS: Hundreds of hours.

10 CHAIRPERSON SCHEUER: Okay. Are you
11 compensated whatsoever for this work?

12 THE WITNESS: No. I am a community service
13 -- I do all of my work purely --

14 CHAIRPERSON SCHEUER: You're not
15 compensated for it?

16 THE WITNESS: -- through community service.
17 I'm not compensated in any way.

18 CHAIRPERSON SCHEUER: Thank you very much.

19 Anything further, Commissioners?

20 Thank you very much, Ms. Nishiki.

21 Our final testifier is Council Member
22 Tamara Paltin.

23 At the conclusion of council member's
24 testimony and questioning, if any, by the parties and
25 the Commissioners, we will go into a lunch recess.

1 I'll announce the amount of time. And during that
2 time, we are hopeful that the parties -- remaining
3 parties will come to agreement.

4 Do you swear or affirm the testimony you're
5 about to give is the truth?

6 THE WITNESS: I do.

7 CHAIRPERSON SCHEUER: Okay. Please.

8 TAMARA PALTIN

9 Was called as a witness by and on behalf of the
10 Public, was sworn to tell the truth, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: Aloha, mai kakou.
14 Commissioners, I want to thank you so much for all
15 your volunteer efforts and for returning to Maui to
16 hear from our community. I realize that you guys are
17 all volunteers, and having taken office this year, I
18 can understand the struggles a little bit better than
19 I could have one year ago in making decisions on any
20 matter regarding land use.

21 I testified in opposition to this project
22 in September, and the primary reason was because of
23 the low number of affordability compared to what the
24 previous plan had offered. And respecting the job of
25 what it is, and I did meet with the two Intervenors

1 and I can talk about it if you have questions.

2 But I wanted to focus on, you know, the
3 parameters that we have to work within as
4 decisionmakers. And it wasn't a brand new project
5 that came to our community, it was the 2006 project
6 amended now to what it is.

7 And, you know, I did read through a lot of
8 the opposition testimony, and they said that they
9 liked the original plan and they had opportunity to
10 input in that.

11 From my recollection of the original plan,
12 it was created over a two-day sherritt, and it was
13 created over 14 years ago.

14 Our needs have changed drastically in the
15 last 14 years, and there's professionals in the area
16 of urbanism that say that we need a mixture of
17 houses. We need affordable rental. We need market
18 value rentals. We need multi-family homes. We need
19 single-family homes. We need all of this, and that's
20 what's being provided.

21 The community meetings were well attended.
22 There were about 60 to 80 people at each one. Folks
23 came up to me, and they said that they only heard
24 about it because of posts that I do for my council
25 member page on social media.

1 The main thing is you heard about it and
2 attended. You know, it doesn't matter how you heard
3 about it. But if you heard about it and attended.
4 That's good, right? You don't need to have a
5 personal invitation.

6 What I wanted to speak about is from my
7 knowledge of what the 2006 plan is. It's way more
8 dense around the Kahana Hui Subdivision in the 2006
9 version. This version that's before us today is much
10 less dense and single story. So if you're making the
11 decision whether or not to amend what was originally
12 presented and you're taking into account the
13 Intervenor, the 2006 version is much worse regarding
14 their concerns.

15 So I mean we as decisionmakers don't have
16 the ability or the parameters to just say anything.
17 We need to work within the parameters what we're
18 given.

19 And so, you know, based on what was
20 presented in September, it was significantly
21 different than 2006. To me this is significantly
22 similar but better.

23 Thank you.

24 CHAIRPERSON SCHEUER: Thank you very much,
25 council member.

1 Are there any questions from the
2 Petitioner?

3 MR. KEITH-AGARAN: No, Chair.

4 MR. HOPPER: No, Chair.

5 MS. APUNA: No, Chair.

6 CHAIRPERSON SCHEUER: Commissioners?

7 Commissioner Giovanni.

8 COMMISSIONER GIOVANNI: I recall from your
9 previous testimony that one of your primary concerns
10 was that the percentage of units that would be
11 affordable was drastically low, and now you've gone
12 back to the drawing board, and there's a new plan.

13 How do you feel about the current plan?

14 THE WITNESS: I think the percentage was
15 hit and then some, because of the additional
16 offerings, the 1.6 housing fund for down payments.
17 And in learning about planning and professional
18 planners and how they do it, you know, community
19 cohesiveness is really important.

20 One of the best things I like about it is
21 there's no opportunity for short-term rental.
22 There's not like any gated subdivision or gated
23 houses. If there is any kind of disaster, it's going
24 to be all people that live there as a community
25 helping each other.

1 You know, I'm sure they would even help
2 their neighbors in neighboring subdivisions, and, you
3 know, I have had constituents reach out to me and I
4 live in Napili. And they're like, aren't you
5 concerned about you're going to be driving through
6 that traffic every day with a thousand extra homes?

7 And, you know, we're tasked with creating
8 homes for our people here which is in dire need in
9 West Maui.

10 Talk about what rentals cost. One of my
11 daughter's classmates for hula rents a two bedroom on
12 Kaanapali Hillside for five grand. And, you know,
13 people will say, well, that's Kaanapali Hillside,
14 what do you expect? There's nothing else available.

15 There's not like a big range of things to
16 choose from. You've got your high end and you've got
17 your tiny little apartment and you got to try find
18 something, or drive two hours every day.

19 When I first met with Mr. Cheng, I said,
20 you know, we could go head to head and cause a big
21 divide in the community, but that's not what I want
22 and so I hope that we can work together.

23 And I kind of just let Mr. Cheng and Ms.
24 Nishiki go at it, and I'm really thankful for their
25 diligence and their persevering.

1 When I met with the Intervenors, what Mr.
2 Fischer had -- I met with Mr. Hehemann and Mr.
3 Fischer in my office. And what Mr. Fischer said that
4 the only way that he knew about the September Land
5 Use Commission was also from my posting. I got some
6 fans on social media. And he said that he thought
7 that the hearing was in Oahu because State Land Use
8 Commission, but no.

9 We're in the age of internet. And as a
10 developer, and now somebody that hired a lawyer, I
11 kind of found it amazing with the intensity of how
12 against the project he was that he wouldn't have sent
13 an email in September, you know, or done some
14 research at that time.

15 There are a lot of people that I know who
16 submitted testimony in opposition. And I was frankly
17 surprised because I feel that some of them are
18 actually testifying against their own best interest,
19 and I'm not sure that they were told all the benefits
20 and the renegotiated deal that has been put forth.

21 I wonder if they had just seen my September
22 posting and are going off of that.

23 And maybe these Kahana Hui folks are
24 drumming up support from all of their, you know,
25 co-workers in real estate, or people that they paddle

1 with because it doesn't make sense the testimony that
2 I read in opposition.

3 You know, I don't -- I have voted against
4 projects before where it looked as though there were
5 concerns from people that don't want it in their
6 backyard. And the reason that I have voted that way
7 is never because I support people that don't want
8 people living next to them, the reason I vote against
9 projects is because I have real concerns about water.
10 I have real concerns about fire. I have real
11 concerns about these types of things.

12 The people that brought up concerns about
13 fire, if you look at the recent fire that we had in
14 this exact area, which I don't know the cause, but it
15 started above the airport kind of underneath the
16 power lines, so something like that, but the fire
17 came right up to the houses. And what we've heard
18 from the fire safety, Mr. Haki (phonetic), for our
19 County is that less dry brush is less chance of fire.
20 And so these neighborhoods that are neighboring it
21 are surrounded by dry brush right now.

22 And with his commitment to reuse
23 100 percent of the wastewater that they create, he's
24 going to landscape the area so the houses won't be
25 surrounded by dry brush as they are right now. And I

1 think that's a big benefit to our County Fire
2 Department and the neighbors.

3 I wish I would have brought a picture of
4 how the fire looked and what the surrounding areas
5 are, but you can see. You know, the fire came right
6 up, in fact, to Kahana Hui Lot Owners, to Mahinahina,
7 and so forth, so I'm not sure the concerns that I
8 read about fire, like what is being done for fire
9 protection. Was that a significant response to your
10 question?

11 CHAIRPERSON SCHEUER: Are there anything
12 further, Commissioners?

13 Commissioner Ohigashi.

14 COMMISSIONER OHIGASHI: I just want to be
15 clear. You said in September you met with Mr.
16 Fischer and Mr. Hehemann?

17 THE WITNESS: I don't think it was
18 September. I think it was November.

19 COMMISSIONER OHIGASHI: November.

20 THE WITNESS: And it was in response to a
21 text that he -- Mr. Fischer had sent to my personal
22 cell phone saying that he wanted to meet them. He
23 sent it on the weekend, and I offered to meet the
24 following Monday because we had a cancellation in our
25 committee meeting schedule, so I had an opening.

1 COMMISSIONER OHIGASHI: So I was wondering,
2 when you mentioned September, I was curious whether
3 that -- I think in your testimony or your
4 statement --

5 THE WITNESS: This meeting that we had or
6 you folks had in September, I was opposed to the
7 project.

8 COMMISSIONER OHIGASHI: Okay.

9 THE WITNESS: And then I don't think I met
10 with Mr. Fischer till last -- late November, because
11 he had showed meet the layout that was preferable to
12 him. And I remembered in your guys' September
13 meeting that you had said that, you know, how in
14 September you were receiving documents up until the
15 last day, and it wasn't easy to read, and that you
16 had set a deadline for November 15th to receive
17 documents for it.

18 And so that's when I let Mr. Fischer and
19 Mr. Hehemann know that, you know, yeah, this is an
20 interesting proposal, but I don't think that Mr.
21 Cheng will be able to change his plans because you
22 guys requested all documents in by November 15th.
23 And at that point, he became pretty upset.

24 And, you know, I was a little bit surprised
25 with how much that they didn't want these houses to

1 be next to them, that they're coming in so late in
2 the game. You know, it's not like any of this was a
3 secret.

4 My original feeling about the 2006 Maui
5 Land & Pine was it was never really intended to be
6 built. It was just to get the Kapalua Mauka portion.
7 It was the affordable requirement for Kapalua Mauka.
8 And they had just used it, kind of pimped out their
9 workers to come testify for Pulelehua so that they
10 could ask Kapalua Mauka and say, we're going to meet
11 our affordable requirement at Pulelehua. Don't worry
12 about that. Just pass it because you already passed
13 Kapalua Mauka, so we need to put the affordable
14 somewhere, so you got to pass Pulelehua, too.

15 And then shortly thereafter, they closed up
16 shop. Everyone got unemployed, and nobody really
17 talked about Pulelehua again. So I'm not usually a
18 proponent of development at all cost, but we need
19 housing and the ones that are on the books should be
20 moved forward.

21 CHAIRPERSON SCHEUER: Thank you very much.

22 If there is nothing further? No.

23 Thank you very much, council member.

24 Public testimony on this matter is now
25 closed. It is 11:57 a.m., and we are going to break

1 until 1:15 p.m. We're going to go from 1:15 till
2 3:00. We cannot go beyond 3:00 p.m. today.

3 If we're not through by 3:00, we will
4 reconvene on this matter tomorrow morning. So we're
5 going to go into recess until 1:15.

6 (Noon recess taken.)

7 CHAIRPERSON SCHEUER: Good afternoon,
8 aloha. We are back on the record after the lunch
9 break. It is 1:21 p.m.

10 I believe the Petitioner has something to
11 say.

12 MR. KEITH-AGARAN: Yes, thank you, Mr.
13 Chair, and thank you for the indulgence of the
14 Commission.

15 We appreciate the opportunity you gave us
16 to try to work something out. I think we basically
17 have an agreement on principle, but we want to make
18 sure that the language is what -- where we want it to
19 be.

20 So if possible, if the Commission has, you
21 know, other business they could do, and allow us a
22 half an hour just to take a look at the language, and
23 we can come back.

24 But I think we have an agreement in
25 principle to dispose of the intervention.

1 CHAIRPERSON SCHEUER: And if it's possible,
2 can I call up counsel for the Intervenor to just
3 affirm that on the record? Mr. Bays.

4 MR. BAYS: Mr. Chair, we're very close to
5 an agreement. If we have just a little more time,
6 I'd like to make sure there are no misunderstandings.

7 CHAIRPERSON SCHEUER: The Commission
8 doesn't have any work at the Commission that we can
9 do. Certainly, we all have our 500 unanswered emails
10 that we could attend to in a half hour, but I don't
11 want to do an undue convenience to anybody, so I'm
12 going to check first with the parties, the other
13 parties, the County and Office of Planning if they
14 are agreeable to that as well as my fellow
15 Commissioners.

16 Maui County?

17 MR. HOPPER: We would not object, Chair.

18 CHAIRPERSON SCHEUER: Office of Planning?

19 MS. APUNA: OP would not object either.

20 CHAIRPERSON SCHEUER: Okay. Commissioners?
21 Commissioner Wong.

22 COMMISSIONER WONG: Chair, as you see the
23 agenda for the second day --

24 CHAIRPERSON SCHEUER: Yes.

25 COMMISSIONER WONG: -- could we move it up

1 while they try and work on the details?

2 CHAIRPERSON SCHEUER: So I appreciate this,
3 yes. We have a status report tomorrow regarding a C.
4 Brewer related docket. However, it been delayed for
5 two reasons, one is the way the agenda is listed for
6 that docket, that we have to hear that tomorrow; and
7 secondly, I do not see that party here.

8 COMMISSIONER WONG: Oh, I'm talking about
9 the election of the Second Vice Chair.

10 CHAIRPERSON SCHEUER: Oh. Mr. Wong, you're
11 now pointing out that I did not carefully read the
12 entire agenda. Thank you for that.

13 COMMISSIONER WONG: Certainly.

14 CHAIRPERSON SCHEUER: Yeah, we could
15 actually take a vote to move that up in the agenda to
16 move off of this item, take that matter up during the
17 next half hour, but we would need a motion to do it.
18 Hold on.

19 Yes, Commissioner Cabral?

20 VICE CHAIR CABRAL: I see also though that
21 we have the Maui Land & Pineapple on the agenda to
22 reconvene tomorrow morning with that if necessary.
23 Should we hear our Petitioner testimony today of our
24 people who have come to testify or present
25 information to us, and then allow for any changes in

1 the -- with the agreement between the perspective
2 Intervenor and the Petitioner to take place -- be
3 announced tomorrow?

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Cabral. And I appreciate the attempt to
6 be as efficient as possible with our time; however,
7 because the Petition to Intervene presents certain
8 issues that would determine the flow of any future
9 proceedings that might occur. So to be straight, if
10 for instance, they don't come to an agreement, and
11 then we take up the Petition to Intervene, and we
12 grant the Petition to Intervene, we will deprive the
13 Intervenor of the chance to participate as an
14 Intervenor in the Petitioner's presentations.

15 VICE CHAIR CABRAL: Okay.

16 CHAIRPERSON SCHEUER: Plus, I think they
17 need to actually -- can't be in two places at one
18 time. They need to work on the language over the
19 next half hour. So...

20 VICE CHAIR CABRAL: Okay. Thank you.

21 CHAIRPERSON SCHEUER: Commissioner Chang.

22 COMMISSIONER CHANG: The question I have is
23 assuming that the Petitioner and the Intervenor work
24 out some language, is both the County and OP going to
25 be given an opportunity to review the language prior

1 to it being presented to the Commission?

2 CHAIRPERSON SCHEUER: Petitioner?

3 MR. KEITH-AGARAN: As we're structuring
4 this agreement, it doesn't concern issues that would
5 concern either Office of Planning or the County.

6 CHAIRPERSON SCHEUER: In your
7 determination?

8 MR. KEITH-AGARAN: Yes.

9 CHAIRPERSON SCHEUER: So, is this --
10 Commissioner Ohigashi.

11 COMMISSIONER OHIGASHI: So is it my
12 understanding then that the settlement that you're
13 working on would only be involving your client and
14 Mr. Bays' client, and it would be an agreement
15 between the two of you solely?

16 MR. KEITH-AGARAN: Yes.

17 COMMISSIONER OHIGASHI: Okay.

18 COMMISSIONER GIOVANNI: I have a similar --

19 CHAIRPERSON SCHEUER: Commissioner
20 Giovanni.

21 COMMISSIONER GIOVANNI: And furthermore,
22 would it have any effect on the agreement that you've
23 reached with Ms. Nishiki?

24 MR. KEITH-AGARAN: No.

25 COMMISSIONER GIOVANNI: Thank you.

1 CHAIRPERSON SCHEUER: Commissioner Chang?

2 COMMISSIONER CHANG: I guess in all due
3 respect, I understand that the Petitioners may feel
4 like it has no impact to the other parties, but I am
5 concerned that they're not given an opportunity to
6 review it and they can make their own determination
7 that there's no -- that it has no impact on them.

8 My concern is, if there's an agreement
9 between the Petitioner and the Intervenor, and then
10 it comes back to the Commission and either the
11 County, Kai Nishiki or OP have some issues, then
12 where does that put us?

13 CHAIRPERSON SCHEUER: Commissioner
14 Ohigashi.

15 COMMISSIONER OHIGASHI: What I understand
16 is -- in my feeble way of asking the question the
17 first time, is that this agreement would only be
18 enforceable between the two of you and not -- the
19 County wouldn't be able to enforce it or County
20 wouldn't be able to say who's wrong or even to state
21 OP wouldn't be able to say it was wrong or even the
22 Land Use Commission would be saying. It would be
23 merely a contractual agreement between the two
24 parties.

25 It doesn't affect the actual settlement

1 agreement that you have with Ms. Nishiki; is that
2 right?

3 MR. KEITH-AGARAN: That's correct.

4 COMMISSIONER OHIGASHI: Okay. So from what
5 I see, it is not our business, necessarily, to know
6 what is in that agreement so long as it does -- it
7 doesn't entrench -- so long as you keep your
8 agreement with Ms. Nishiki and to follow the
9 conditions outlined by the Commission; is that right?

10 MR. KEITH-AGARAN: That's right.

11 CHAIRPERSON SCHEUER: The Chair will note
12 at this point that Office of Planning and the County
13 have not objected to taking a half hour for the
14 parties to come to a decision. They have not waived
15 any or state -- any statements on the record
16 regarding their interest, if any, in the decision.

17 There are questions that are coming up from
18 the Commissioners which really have to do with I
19 believe the Commission's powers, duties, privileges,
20 liabilities and immunities as it might relate to this
21 matter, and so I would be willing to entertain a
22 motion to go into executive session for an executive
23 session to last approximately one half hour to
24 discuss this matter.

25 Commissioner Cabral.

1 VICE CHAIR CABRAL: So moved.

2 CHAIRPERSON SCHEUER: A motion has been
3 made by Commissioner Cabral.

4 COMMISSIONER WONG: Second.

5 CHAIRPERSON SCHEUER: Brief recess.

6 (Recess.)

7 CHAIRPERSON SCHEUER: We are back on the
8 record. There is a motion in front of us to go into
9 executive session to consult with the Board's
10 powers -- Board's attorney on our powers, privileges,
11 duties, liabilities and immunities as they relate to
12 an agreement between -- a potential agreement between
13 the potential Intervenor and the Petitioner.

14 Is there any further discussion on the
15 motion? If not, all if favor say "aye." Is there
16 anybody opposed? Seeing none, the Commission will go
17 into executive session.

18 If we leave executive session, we will not
19 reconvene before 2:00 o'clock in open session.

20 (Executive session and recess.)

21 CHAIRPERSON SCHEUER: Good afternoon. We
22 are back on the record.

23 Mr. Keith-Agaran?

24 MR. KEITH-AGARAN: Thank you, Mr. Chairman.
25 I'm pleased to say that we were able to reach an

1 agreement with the Intervenor.

2 CHAIRPERSON SCHEUER: Mr. Bays? The
3 parties who Petitioned to Intervene, to be correct.

4 MR. BAYS: Yes. My name is Bernie Bays.
5 My partner, Mike Carrol, and I represent the
6 Intervenor, and I'm happy to also report that we
7 were able to reach a settlement agreement with the
8 Petitioner. And based upon that agreement, we would
9 withdraw our Petition to Intervene. Thank you.

10 CHAIRPERSON SCHEUER: Okay. Thank you very
11 much.

12 So the Petition to Intervene has been
13 withdrawn. Does the County or Office of Planning
14 want to say anything on this matter?

15 MR. HOPPER: I think if there's going to be
16 changes to the site plan or other things because of
17 this agreement, you know, we would still reserve the
18 ability to review that with the Commission and
19 provide comments.

20 But as far as the actual agreement, we
21 don't feel the need to review and approve the actual
22 agreement at this time. I think that's generally
23 practiced. But to get that on record, I think that's
24 our view of the proceedings.

25 CHAIRPERSON SCHEUER: Okay. Office of

1 Planning?

2 MS. APUNA: We don't have any other
3 comments, but we concur with the County as far as we
4 don't need to review the agreement.

5 CHAIRPERSON SCHEUER: Okay. So does it
6 change the site plan or anything that we're going to
7 be acting on as the Commission?

8 MR. KEITH-AGARAN: Well, you haven't
9 accepted the changes from the agreement with the
10 community.

11 CHAIRPERSON SCHEUER: We are now going to
12 proceed on it.

13 MR. KEITH-AGARAN: So it doesn't change
14 that agreement or the site plan that is before you.

15 CHAIRPERSON SCHEUER: Okay. Great. Okay.
16 So having dispensed with the Petition to Intervene
17 because it was withdrawn, we can now actually proceed
18 onto the main case.

19 Commissioner Wong.

20 COMMISSIONER WONG: Chair, just a question
21 about time for today. What time are we going to be
22 recessing?

23 CHAIRPERSON SCHEUER: So, again, as I
24 announced earlier, we're planning to recess by
25 3:00 o'clock. So we have already dispensed with

1 public testimony on all these matters, and so we are
2 at the point in the proceedings where Mr.
3 Keith-Agaran will start to present his case.

4 Do you have a sense of what you might be
5 able to productively do in the next 50 minutes or so?
6 I'm not saying that you have to complete everything
7 in the next 50 minutes, because this is on the agenda
8 for tomorrow, but we have at least 50 minutes
9 available to us to meet.

10 MR. KEITH-AGARAN: I can provide at least
11 an update with my client on what agreements he has
12 with the community, and that will probably give you a
13 sense of whether or not the Commissioners have
14 questions about the agreement.

15 CHAIRPERSON SCHEUER: Okay. Then how would
16 you proceed with your case tomorrow from there?

17 MR. KEITH-AGARAN: I believe that's -- that
18 was it.

19 CHAIRPERSON SCHEUER: Okay. Okay.

20 MR. KEITH-AGARAN: So during the deferral
21 period, as described by some of the testifiers, my
22 client did have an opportunity to meet with members
23 of the community, and they've entered into an
24 agreement that I think was submitted this week. It
25 was finally signed, and it was submitted as an

1 attachment to our latest filing.

2 Generally, what the agreement does is it
3 adds 100 units of multi-family apartments for sale to
4 workforce buyers. It also makes a number of
5 multi-family rentals, 300, rather than 280. The 125
6 Kapalua Mauka units are still within that total 300.

7 There will be covenants and deed
8 restrictions for Pulelehua to ban short-term rentals
9 or bed and breakfast operations.

10 Workforce housing renters within Pulelehua
11 will be exempted from paying homeowner association
12 fees. Three of the single-family residential lots
13 will be offered for sale at the cost of developing
14 the lots to a nonprofit organization involved in
15 constructing and maintaining affordable housing,
16 either a land trust or Habitat for Humanity, one of
17 those types of entities.

18 The single-family lots, 99 single-family
19 lots and the largest state lot, while they will all
20 have the right to build an accessory dwelling unit,
21 there'll be a deed restriction requiring that rental
22 to third-party nonrelatives to the homeowner in
23 perpetuity will be limited to workforce rental rents.

24 With regard to the school development, Maui
25 Oceanview is committed to meeting with local

1 developers who have built schools for the State of
2 Hawai'i to explore alternatives for financing
3 constructing the school. I think they were thinking
4 along the lines of whatever Dowling did in South
5 Maui, Tim Dowling.

6 At least one of the pocket parks will
7 include pet friendly features, and Maui Oceanview
8 will establish a fenced dog park by the time
9 Pulelehua is 50 percent built out, or I think
10 400 units are occupied, I think was the intent.

11 The development will follow smart growth
12 principles. And Maui Oceanview also will be
13 contributing funds to create a source to fund down
14 payment loans for eligible purchasers to buy
15 workforce housing units.

16 And if the Commission has questions for my
17 client, and I believe one of our consultants who
18 helped with the community engagement is also here and
19 can answer questions.

20 CHAIRPERSON SCHEUER: Are there questions
21 for the Petitioner from the County?

22 MR. HOPPER: No.

23 CHAIRPERSON SCHEUER: From the Office of
24 Planning?

25 MS. APUNA: No questions.

1 CHAIRPERSON SCHEUER: Commissioners?

2 Commissioner Ohigashi.

3 COMMISSIONER OHIGASHI: Referring to your
4 Exhibit BB Agreement, I was reading over the
5 enforcement sections. Does your client have any
6 objections to adopting or incorporating the
7 settlement agreement into the Decision and Order that
8 the Land Use Commission may issue in this case?

9 MR. KEITH-AGARAN: No.

10 COMMISSIONER OHIGASHI: The reason why I
11 say that is, it seems as though that the parties have
12 some exclusive remedies that they can take, for
13 instance, like they have to go to the -- it has to be
14 determined by the second circuit court in this
15 matter. There are specific performance agreements
16 that can be -- the question is that by putting it in
17 the D&O, the County and -- the County may be able to
18 implement the terms and conditions of that.

19 MR. KEITH-AGARAN: My clients have no
20 objection. I don't know how the County or State
21 would feel about it.

22 COMMISSIONER OHIGASHI: I don't know if
23 they would even implement it, but put in the D&O that
24 is the mechanism that the County can use to enforce
25 the terms of this agreement.

1 MR. KEITH-AGARAN: My client has no
2 objection to including it.

3 COMMISSIONER OHIGASHI: I just wanted to
4 ask you that.

5 CHAIRPERSON SCHEUER: Commissioner Wong?

6 COMMISSIONER WONG: Can I hear what the
7 County would say about that?

8 CHAIRPERSON SCHEUER: Yes.

9 MR. HOPPER: I thank you, Mr. Chair.

10 We would have concerns with that, because
11 both with the Land Use Commission incorporating in
12 the D&O and with the County having to enforce it.
13 Through private agreement, parties can agree to
14 things that if it's imposed by the government may not
15 be legal, frankly. Because if you're looking at
16 nexus and rough proportionality of the conditions,
17 every single one of them would have to meet those
18 requirements in order to be imposed as a valid
19 condition. For example, \$100,000 payment to be made
20 to an organization in the agreement. The County
21 wouldn't be enforcing that. We would consider that
22 to be a private agreement between the parties.

23 If there's particular aspects of the
24 agreement that deal with the site plan and other
25 things that you would want to incorporate as a

1 specific stand-alone condition, we can certainly look
2 at those. Right now, in fact, the housing agreement
3 between the County and the landowner is being
4 discussed with the Department of Housing and Human
5 Concerns and the County, and certain things like
6 providing excess numbers of units from what is
7 required, perhaps changing the income distribution to
8 be more favorable to lower income levels, is
9 something that can be done.

10 There are other things such as hiring a
11 private group of consultants to advise and choose
12 affordable housing buyers, and other things may not
13 be something the County can implement in its
14 ordinances and may be things that would not be
15 appropriate for Land Use Commission conditions.

16 And so the County is dealing with this with
17 the affordable housing agreement right now
18 recognizing that it's great to have an agreement
19 between parties.

20 And if that agreement is going to be
21 enforced by those parties, that's great. But the
22 County coming onto enforce the terms of a private
23 agreement that it did not sign, didn't review before
24 signing, and may not be able to enforce certain
25 sections of it effectively, we would have a concern

1 with just broadly saying this whole agreement's going
2 to be adopted as a condition.

3 And in the draft conditions that we have
4 right now are affordable unit numbers, income
5 breakdowns as we believe in most the recent D&O. We
6 have basically a statement that there will be an
7 affordable housing agreement entered into in
8 accordance with the County's workforce housing
9 ordinance, which the County is bound by, but we would
10 have a concern with just blanketly attaching that
11 agreement and saying, okay, County, you enforce this
12 agreement between the two parties now.

13 So we would have a concern with that as a
14 broad issue. Not to mention, you may want to discuss
15 with your AG if all the terms of that agreement are
16 appropriate land use conditions that you would place
17 on a project in general.

18 CHAIRPERSON SCHEUER: Commissioners?

19 Commissioner Ohigashi.

20 COMMISSIONER OHIGASHI: So essentially what
21 you're saying is that if we put it as a condition and
22 you believe that you can't agree, or it's not
23 enforceable, you probably won't enforce it, but I
24 understand that. That's not the question.

25 The question is really you have the

1 opportunity to enforce it. And if you don't decide
2 to enforce it because of whatever reason you choose,
3 that's not our Commission's decision. Wouldn't it be
4 your decision to -- we're not -- we are -- we put it
5 in the D&O because they agreed to it, and they've
6 agreed to it to be a condition. It seems to me that
7 they don't have any objection to it. A person who
8 would be concerned about picking it up or persons who
9 would be concerned about it would be the Applicant or
10 the Petitioner who is willing to be bound by it.

11 And the question just turns, is that if we
12 put it in there, you understand that the only persons
13 that can enforce it would be the County, may enforce
14 it may be the County as well as the two parties.
15 That's my only question.

16 If you decide to take the position that you
17 don't want to enforce anything in that agreement,
18 that is the County's position. I can't do anything
19 about that. Am I correct? So it's your prerogative.

20 My question essentially is that, yes, I
21 understand your -- well, maybe it's not a question,
22 maybe it's a comment. I understand your position
23 that you don't want to enforce it, and that's fine
24 with me. But they've agreed to the -- those
25 conditions being part of the D&O. And it would

1 appear to me that if it is part of the D&O, that they
2 should understand that we are not going to be able to
3 enforce it. But because it's a D&O, the County has
4 the opportunity to enforce it also.

5 MR. HOPPER: The County I don't think gets
6 to pick and choose which conditions it enforces. And
7 what we're saying is that we believe it would be
8 illegal to enforce portions of this agreement. I
9 don't think we would have the legal authority to do
10 that.

11 And so rather than not consider that at
12 this point, I think that's important to look at it.
13 It is common to have agreements between private
14 parties.

15 COMMISSIONER OHIGASHI: I understand your
16 position.

17 MR. HOPPER: Okay. Well, I think --

18 COMMISSIONER OHIGASHI: I understand your
19 position. I understand your position.

20 MR. HOPPER: Yeah, it would be
21 unenforceable is our position.

22 CHAIRPERSON SCHEUER: Commissioner Cabral.

23 VICE CHAIR CABRAL: I was trying to write
24 them down, and I see we do have them here also, the
25 paperwork presented today on some of these

1 conditions. And the one where you are indicating
2 that you're waiving the ability for the homeowners
3 association to collect future association dues from
4 these -- the units designed for affordable
5 multi-family residential rental units and accessory
6 dwelling units on the property, I'm -- and because
7 your accessory dwelling units would be restricted
8 to --

9 MR. CHENG: The lots.

10 VICE CHAIR CABRAL: -- the lower rent as
11 well as the multi-family. Obviously, you're having
12 that be low rent. And when you're talking low rents
13 and affordability, you're basing that on County
14 levels?

15 Are you getting financing through HUD
16 Housing and Urban Development to build your
17 low-income housing, or are you doing that all your
18 own?

19 MR. CHENG: It hasn't been decided yet.
20 There could be a HUD component, a HUD financing
21 component to the affordable units. We're just going
22 to look at it -- I do business with both, you know,
23 that's -- and that, yes, I have no trouble whatever
24 you all decide, however you want to enforce it. I
25 plan to honor every word of this, and so however

1 makes you all happy, is okay with me.

2 VICE CHAIR CABRAL: I am concerned about
3 your homeowners association or exemption from certain
4 groups, because I manage a lot of those, so the
5 reality of my world is that you're going to -- unless
6 you have like a master association and then
7 sub-associations that are responsible for their own
8 clean up of their common areas, otherwise your market
9 rent properties are going to be potentially burdened
10 by constantly mowing the lawn of the exterior of your
11 affordable properties.

12 And I'm just concerned about the potential
13 inequities about that increasing burden of cost over
14 time. So I just would recommend you kind of look at
15 how you structure that. Because you can have a
16 master association that they would not have to pay
17 into, and then each division would have their own
18 division that they would pay into for their own lawn
19 care and their own rubbish pick up, and their own --
20 depending on what's being paid for, I'm just saying,
21 you know, and you're going to continue to -- who's
22 going to maintain ownership of the rental units?

23 MR. CHENG: Me.

24 VICE CHAIR CABRAL: You, okay. So you the
25 owner don't have to pay the fees because the tenants

1 don't usually, in residential, pay the homeowners
2 fees for that.

3 MR. CHENG: That's right. So we as
4 landlord will just maintain the whole place. In the
5 HUD formula, as you are familiar with the AMI groups
6 and rent levels and all that?

7 VICE CHAIR CABRAL: Yes.

8 MR. CHENG: If you read into the bowels of
9 it, the affordable renter cannot pay more rent than
10 what HUD allows you to pay for your income group.

11 VICE CHAIR CABRAL: Correct.

12 MR. CHENG: You cannot stick little
13 surcharges onto people. There's -- especially
14 utilities and HOA fees.

15 So I agree to set the rent no higher than
16 what HUD allows in any given year for Maui County for
17 any given particular income group that we're dealing
18 with.

19 VICE CHAIR CABRAL: Okay. Thank you.

20 One of the things, too, I'm aware is you
21 need to be cautious that once you involve federal
22 money, then potentially residents in the federal
23 housing system anywhere else in the United States can
24 come be on your waiting list and role up and
25 suddenly, you know, I'm in New York City. It's cold

1 this winter. I think Maui looks nice.

2 And so you want to be real --

3 MR. CHENG: Careful.

4 VICE CHAIR CABRAL: -- wise --

5 MR. CHENG: Okay.

6 VICE CHAIR CABRAL: -- on how you have your
7 tenant waiting list or how you solicit for your
8 people to have a long, long list.

9 So work with your housing providers or
10 whoever is going to be your contract person on making
11 sure you try and -- I don't know. The federal
12 government has a million rules, yeah.

13 MR. CHENG: Yeah.

14 VICE CHAIR CABRAL: So just be real careful
15 there, but --

16 CHAIRPERSON SCHEUER: Can you confine your
17 comments towards the docket that's in front of us?

18 VICE CHAIR CABRAL: Yes. Well, it is a
19 condition he has in here. I'm concerned that it's
20 going to become one that's not going to be wise or
21 enforced in the future, so thank you.

22 MR. CHENG: Thank you.

23 CHAIRPERSON SCHEUER: Commissioners?
24 Commissioner Chang.

25 COMMISSIONER CHANG: Mr. Cheng, I really

1 applaud you for working with the community. I mean,
2 we were here September, and many of these -- many of
3 the community members provided public comments
4 against the project, and we instructed you to go back
5 and you genuinely -- and you did, you genuinely
6 engaged, and you came up with this, from my
7 perspective, awesome settlement agreement with them.
8 But maybe this is a question for your counsel.

9 I guess I, like Commissioner Ohigashi, I am
10 -- how do we make this settlement agreement a
11 condition where it is really an agreement between
12 parties, one that lacks enforcement? I mean, the
13 agreement is with -- between -- it's between Maui
14 Oceanview and on one hand and the West Maui
15 Preservation Association. It is not between any
16 regulatory agency, but is a private agreement. Who
17 enforces this?

18 And how is -- I mean, these are wonderful
19 conditions, so I am just perplexed at how LUC makes
20 this a condition and who enforces those conditions.

21 Again, it's the same questions that
22 Commissioner Ohigashi made, but how did you foresee
23 this thing implemented and executed?

24 MR. KEITH-AGARAN: The way we structured --
25 we've structured it in the proposed D&O that the

1 parties are still discussing is that the changes in
2 the number of units and how those units are going to
3 be distributed, as well as items that we know are
4 allowed under the workforce housing ordinance, will
5 be included in the D&O and in the housing agreement.

6 There are other items which may need
7 additional approvals, whether it's from the County
8 Council by resolution to consider. But there are
9 certain items that are clearly just between my client
10 and certain private parties, including donations to
11 certain groups, and any enforcement of those items
12 would have to be between himself and those groups.

13 COMMISSIONER CHANG: But yet you're making
14 it a condition of the agreement. I have no doubt
15 your client has been extremely genuine and forthright
16 with us, and I'm hoping he would -- and he's
17 committed that he's not going to -- he's going to
18 standby these.

19 But if for some reason something happens,
20 what are the assurances that these provisions will be
21 implemented, and who enforces them? Is it Maui
22 Preservation or you're looking at --

23 MR. KEITH-AGARAN: Well, they are the other
24 party. I mean, that's the way the agreements work.
25 They would need to enforce items that he has not

1 fulfilled.

2 COMMISSIONER CHANG: So have you separated
3 those items that are enforceable by government agency
4 versus those items that are subject to the private
5 arrangement between Maui Preservation and Maui
6 Oceanview?

7 MR. KEITH-AGARAN: I believe in the D&O we
8 tried to do that, but there are certain things that
9 we included in the D&O that are basically statements
10 of his intentions to do. I mean, basically the
11 donations, for example, for the studies to move the
12 highway, the donations for the fund for down
13 payments. That's mentioned in there, and I assume
14 that that's just a statement of what he intends to
15 do.

16 COMMISSIONER CHANG: And I'm assuming that
17 those intentions form the basis of the settlement
18 agreement as well. Okay.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Chang.

21 Commissioner Okuda.

22 COMMISSIONER OKUDA: Mr. Keith-Agaran,
23 don't agree with me if you disagree, but tell me what
24 you think about this.

25 The settlement agreement names West Maui

1 Preservation Association, Incorporated, as one of the
2 parties, correct?

3 MR. KEITH-AGARAN: Yes.

4 COMMISSIONER OKUDA: And so the corporation
5 which is basically community members would have the
6 right to step in and enforce this agreement if for
7 some reason it's not carried out or followed,
8 correct?

9 MR. KEITH-AGARAN: That's the general way
10 these agreements would work.

11 COMMISSIONER OKUDA: Yes. And I know we
12 sometimes look towards government as being the party
13 that's going to protect us all. But would you --
14 would it be a mischaracterization if I were to
15 suggest a description that what this situation has
16 shown here is that it really wasn't the government or
17 any of us here at the Land Use Commission that
18 protected the community or led to this agreement, it
19 was basically community members, is that a fair
20 statement? By community members, I also include the
21 Cheng family.

22 MR. KEITH-AGARAN: I think that you pushed
23 it, the Commission pushed it because of what you
24 asked for during the deferral period, but I would
25 think that generally, yes, that's a correct

1 assumption.

2 COMMISSIONER OKUDA: Yeah, because it was
3 like-minded people, and when I say "like minded," I
4 mean like-minded people who cared about the community
5 from all facets who came together, did hard things to
6 basically work that out.

7 So the reason for my question is basically
8 this, there really isn't anything really necessarily
9 structurally wrong or erroneous to maybe for looking
10 down the road for potential enforcement, and frankly,
11 right now, if I had my cracked crystal ball, I don't
12 foresee that your clients, you know, wouldn't
13 perform, so maybe we're talking about a theoretical
14 esoteric stuff that would never happen.

15 But there's nothing really structurally
16 wrong or even policy wrong or even factually wrong
17 given what happened here, where maybe this is the way
18 to really protect the community and enforce this
19 agreement. Meaning, instead of relying on us, on
20 government to keep an eye on what's going on, we rely
21 on the people on all sides who worked together to put
22 this agreement together.

23 And, basically, if something can't be
24 worked out or there's a breach, we rely on the West
25 Maui Preservation Association, Incorporated, which I

1 assume, you know, will have continuing members going
2 into the future and maybe this is something we -- I
3 mean, do you see anything necessarily wrong by maybe
4 continuing to leave our trust in the community?

5 MR. KEITH-AGARAN: No, I think in response
6 to Commissioner Ohigashi's question he asked whether
7 we had any objection to attaching this to the D&O,
8 and we don't. If you decide not to, that's the
9 Commission's choice.

10 COMMISSIONER OKUDA: Thank you very much.

11 CHAIRPERSON SCHEUER: Commissioner
12 Giovanni.

13 COMMISSIONER GIOVANNI: So on this point,
14 my reading of the settlement agreement paragraph 27
15 and 28, you anticipate the potential for
16 disagreements, potentially even defaults, and it
17 encourages both parties to work together to resolve
18 them.

19 And in the case that they can't resolve
20 them, it does have a dispute resolution process that
21 could lead to the second court -- circuit court of
22 Hawai'i, so I think it's there. And I think that's
23 in my view preferable than trying to go back to some
24 government agency for enforcement of an agreement
25 such as this.

1 Having said that, I would like to find a
2 way that this agreement, this settlement agreement is
3 part of our record and our decision. Whether or not
4 it's explicitly enforceable or not, it's a
5 particularly relevant document that influences our
6 decisionmaking.

7 CHAIRPERSON SCHEUER: Thank you,
8 Commissioner Giovanni.

9 Commissioners, if I may ask the Petitioner,
10 one of the five items that this Commission requested
11 the parties work on in our last September meeting was
12 work towards a stipulated D&O among the parties.

13 Can you advise us to the progress on that?

14 MR. KEITH-AGARAN: I have provided another
15 draft to both State and to the County, and I think
16 we're still trying to work through the language. So
17 we haven't reached agreement yet, but I believe on
18 some of the major conditions, I think we have
19 agreement on that. Right?

20 CHAIRPERSON SCHEUER: The County and OP can
21 respond.

22 MR. HOPPER: Yes, that's an accurate
23 understanding, because, I mean, these meetings,
24 community meetings took place I think in early
25 November, 15th was the deadline. The D&O was a

1 moving target for awhile, and so we're still
2 continuing to work with the Petitioner on it, and I
3 think we have most of the, you know, key condition
4 language now.

5 We've provided some comments from
6 additional agencies, and I think we're working toward
7 a D&O.

8 We would also note that after the
9 Commission makes its decision, it's not uncommon to
10 further -- have further discussions on the precise
11 language of the D&O depending on what conditions you
12 may impose.

13 So, you know, we would think that would
14 happen after approval potentially, but that's where
15 the status is right now. I think we've made
16 significant progress though.

17 CHAIRPERSON SCHEUER: Office of Planning?

18 MS. APUNA: Yes. I think that we did
19 receive different drafts of the proposed D&O
20 throughout the deferral period including up until
21 this last week, or this past week. The State hasn't
22 been able to necessarily allow other agencies to
23 review the draft because of the timing. We do agree
24 on certain conditions, but we have not been able
25 to stipulate yet as well.

1 CHAIRPERSON SCHEUER: Commissioner
2 Ohigashi.

3 COMMISSIONER OHIGASHI: So within the D&O,
4 stipulated D&O, does it contain the relevant portions
5 of the settlement agreement?

6 MR. KEITH-AGARAN: When you say,
7 Commissioner, just to be clear, when you say
8 "relevant," in other words, the stipulated D&O has --

9 COMMISSIONER OHIGASHI: Let me put it this
10 way. Let me rephrase the question.

11 Would it have those items that Deputy
12 Corporation Counsel here indicated that are supported
13 by the record and are not -- aren't supported, and
14 there is a nexus, too?

15 MR. KEITH-AGARAN: If I understand what
16 you're asking, I believe the D&O includes the changes
17 in terms of the number of units for additional
18 workforce for sale and for rent. It includes -- it
19 will include the conditions related to some of the
20 development issues including the enclosed pet park,
21 for example.

22 COMMISSIONER OHIGASHI: So what I'm trying
23 to get at is that, you know, in order to avoid the
24 problems that Deputy Corporation Counsel has
25 indicated, does -- would the D&O, the proposed D&O or

1 proposed stipulated D&O that you guys have been
2 working on, would that include all the necessary
3 portions of the settlement agreement thereby negating
4 any need for us to incorporate the terms of the
5 settlement agreement?

6 MR. KEITH-AGARAN: I think generally, yes,
7 but some of the settlement needs to be incorporated
8 into the housing agreement, and I think it's in the
9 housing agreement language that --

10 COMMISSIONER OHIGASHI: I'm just talking
11 about the stipulated D&O. I'm just worried about
12 that right now.

13 MR. KEITH-AGARAN: Well, okay. It should
14 be. But, again, just to be clear, the housing
15 agreement has some areas where I think the
16 Corporation Counsel has concerns about, that there's
17 language that is proposed to implement some of the
18 things in the settlement agreement that raise
19 questions about the ability of the County to either
20 agree or to enforce them.

21 COMMISSIONER OHIGASHI: And if they don't
22 agree and enforce them, does that negate the terms of
23 any kind of development?

24 MR. KEITH-AGARAN: No. My understanding is
25 that the -- it's understood that we would try our

1 best to incorporate some of these terms, but they
2 were going to be subject to making sure that they
3 were -- they could be legally done.

4 COMMISSIONER OHIGASHI: Going back then, is
5 the proposed stipulated order -- I'm trying to get a
6 mechanism to satisfy Mr. Okuda --

7 MR. KEITH-AGARAN: Well, I'll give an
8 example. In the settlement agree, there's discussion
9 about using manage-appreciation to set prices in
10 perpetuity in the future. That is something that we
11 would need to have the County agree to.

12 My understanding is in the housing
13 ordinance, it's not the usual process for setting
14 sales prices, resale of units that have been
15 purchased. That's something that will need approval
16 either through the housing department or through the
17 County Council.

18 COMMISSIONER OHIGASHI: Assuming that, for
19 example, does your settlement agreement, that
20 specific case, lay out any mechanism to resolve the
21 issue if you cannot get the County to approve?

22 MR. KEITH-AGARAN: You know, either going
23 to court or -- but it doesn't stop us from trying to
24 get the counsel to agree that this is something that
25 the County would allow in this instance.

1 COMMISSIONER OHIGASHI: I understand,
2 because that terminates the agreement?

3 MR. KEITH-AGARAN: No. I mean --

4 COMMISSIONER OHIGASHI: What I'm getting at
5 is, Corporation Counsel says, we don't want to be
6 part of this agreement, or we don't want to be bound
7 by this agreement because we feel there are several
8 things that are -- that we cannot enforce it and make
9 it illegal. Okay? But there's certain things in
10 that agreement that requires the County to -- for you
11 to reach an agreement with the County.

12 And what I'm getting at is, is that we're
13 just substituting one long process for additional
14 long processes. In other words, the agreement has
15 set up a situation where we have problems in
16 getting -- going through hoops, jumping through the
17 hoops to get the approval and would have to go to
18 council.

19 So the main concern I have is that we want
20 to adopt as much as we can of the settlement
21 agreement and to speed up the process. And if you're
22 telling me this is the only way we have to go, then I
23 understand that.

24 So I'm going to go back to my original
25 question. I'm sorry, I'm just going to go back to my

1 original question.

2 Can you incorporate within a proposed
3 stipulated D&O all the necessary -- as much as
4 possible, in terms and conditions of the settlement
5 agreement, that way negating our need to refer to it
6 in any kind of motion?

7 CHAIRPERSON SCHEUER: Does the Petitioner
8 or the parties want a few minutes recess to discuss
9 this? Are you --

10 MR. KEITH-AGARAN: No, I think we're fine.

11 CHAIRPERSON SCHEUER: Okay.

12 MR. KEITH-AGARAN: I believe that the
13 approach really is that the things that will be
14 included in the D&O are things that we know are
15 clearly something that is legal within the housing
16 ordinance and the rest of the County requirements.
17 The other items will need to be privately enforced
18 between parties.

19 COMMISSIONER OHIGASHI: So my preference,
20 and I can't speak for everybody here, would be for
21 the parties to work out what exactly -- take from the
22 settlement agreement and put it and what exactly do
23 you leave out. And then you at least tell us what
24 you're doing so we can make a proper determination in
25 that fashion. And that's all I think that all of us

1 want. All of us want to make sure that the terms
2 that is necessary in the D&O that are in the
3 settlement agreement be included.

4 MR. KEITH-AGARAN: No. That's understood,
5 and I think that's what I tried to do with the D&O.
6 The additional items that would require additional
7 approvals by the County and the County Council, for
8 example, that's something that I proposed in the
9 proposed amendment housing agreement.

10 And once the County tells me whether or not
11 we can do that, or whether it's going to be just left
12 to either private enforcement or some other
13 mechanism.

14 COMMISSIONER OHIGASHI: So my last question
15 then would be: Does that hold up -- should that
16 holdup the issuance of a D&O at this time?

17 MR. KEITH-AGARAN: I don't believe so
18 because I think the intent is --

19 COMMISSIONER OHIGASHI: -- or we can have
20 stipulation?

21 MR. KEITH-AGARAN: No, I don't think so,
22 because I think it's understood that we just need to
23 reach an amended housing agreement. If that amended
24 housing agreement doesn't include some of these
25 items, because legally they cannot be included, then

1 they will -- you know, the amended housing agreement
2 won't have those provisions.

3 MR. CHENG: I'm just going to give you one
4 example. I appreciate what you're saying and totally
5 understand.

6 For example, like there is agreement in
7 there for to us contribute some monies to several
8 organizations to support their cause like the highway
9 sinking and all that. The County doesn't have such a
10 rule. That's what he meant by if the County finds it
11 illegal because they cannot force citizens to
12 contribute to a highway study, but it's a private
13 agreement that I'm happy to agree to and have agreed
14 to and fully negotiated.

15 That's what the difficulty, I think -- you
16 know, so our approach has been that to the extent
17 that the County doesn't have such a law or rule or
18 you all don't have such a law or a rule, then it's a
19 private matter and it's fully agreed to, and is
20 resolvable by lawsuits as addressed in 27 and 28.
21 That's the approach.

22 So to the extent that -- like for what he
23 was saying, we are going far above the current County
24 minimum for affordable which is 25 percent as I said
25 last time. Now, we're 50 percent. Well, they can't

1 force people to do it because 25 percent is the law.
2 But the fact that we are agreed to it, they're happy
3 to say that. I think that's what he meant as well.
4 If that makes any sense.

5 CHAIRPERSON SCHEUER: Let me put my neck
6 out. I don't want to cut off any of my fellow
7 Commissioners from speaking, but let me put my neck
8 out and kind of summarize where I think we are right
9 now.

10 We're in a good place, right? We are way
11 better off than we were in September through the hard
12 work of all of the parties, the developer and the
13 community members. The prime directive -- sorry for
14 the Star Trek reference -- but the prime directive
15 from the Commission in September was for meaningful
16 engagement with the community, and that clearly has
17 been done.

18 So while it feels a little awkward at this
19 point, and we know we have to adjourn by no later
20 than 3:00, we're just trying to figure out how to
21 properly pass a motion to adopt the D&O that is legal
22 from the perspective of the Land Use Commission,
23 legal from the perspective of the County, and honors
24 the spirit of the various agreements that has been
25 reached by the Petitioner and various community

1 members.

2 So that's where we're at. I have a sense,
3 due to the timing and the particular legal issues
4 that have arisen, that we're not necessarily going to
5 make it across that finish line by 3:00 o'clock
6 today.

7 We do have this on the agenda for tomorrow,
8 and I believe it might be possible, given that we're
9 adjourning fairly early, that the parties might spend
10 a little bit of time together after we bang the gavel
11 today, work out any further clarity that might be
12 possible on what the stipulated D&O might look like,
13 what things will remain outstanding and perhaps even
14 some suggestions on how this Commission might pass a
15 meaningful motion to address that and put all of this
16 into effect as far as it concerns things within our
17 kuleana.

18 Is that a fair statement of where we are,
19 my fellow Commissioners?

20 Mr. Hopper.

21 MR. HOPPER: Just a quick statement. I
22 don't want to create an impression that on the issues
23 relative to the settlement agreement have been
24 incorporated into the draft D&O that we've looked at
25 that we have problems with them. In fact, the draft

1 D&O conditions that we've read I don't think we have
2 any issues with the legality of those conditions that
3 I can think of.

4 It doesn't incorporate all of the terms of
5 the agreement or the agreement in total. So if we're
6 going with whatever we've looked at so far from the
7 proposed stipulations, we don't have, I don't think,
8 outstanding objections on that matter.

9 If there's going to be something to add in
10 additional terms from the agreement to add a
11 condition, we would want to review those.

12 But as far as what's been proposed by the
13 Petitioner, I don't want to create an impression that
14 it has a bunch of things in the proposed stipulated
15 D&O that are objectionable because they're parts of
16 the agreement that we can't enforce.

17 It's just the discussion of adding the
18 whole agreement as a blanket thing would change what
19 the parties have been reviewing thus far.

20 CHAIRPERSON SCHEUER: Thank you, Mr.
21 Hopper. I at least did not understand that to
22 be what you are -- I agree with your statement. I
23 did not --

24 MR. HOPPER: Okay.

25 CHAIRPERSON SCHEUER: -- perceive that you

1 were trying to state that you had problems with the
2 existing stipulated motions.

3 What I believe would be helpful for this
4 Commission is to agree there are other things that
5 still have to be moved into the stipulated D&O to
6 have some sort of sense of that that as we go through
7 conclusion of the Petitioner's remarks tomorrow, any
8 presentation by the County and any presentation by
9 OP, that we will fully vet those and then be able to
10 craft a meaningful resolution, if indeed we are going
11 to take action on this tomorrow.

12 Is that good? Okay. With that then, I'm
13 going to recess our hearing, and we will reconvene in
14 this meeting room tomorrow at 9:30 a.m. Thank you.

15 (The proceedings recessed at 2:50 p.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on December 4, 2019, at 9:30 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

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

Dated this 4th day of December, 2019, in Honolulu, Hawaii.

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