

2012 NOV 14 A 9:58

Michele Lincoln
452 Aki Street
Lahaina, HI 96761
(808) 667-6652 home
(808) 385-3157 cel
lincolnmichele@yahoo.com

BEFORE THE LAND USE COMMISSION
OF THE
STATE OF HAWAII

In the Matter of the Application of) DOCKET NO: A12-795
West Maui Land Co. Inc. and) INTERVENER'S OBJECTIONS
Kahoma Residential LLC) TO PETITIONER'S PROPOSED
33 Lono Avenue) FINDINGS OF FACT,
Kahului, HI 96732;) CONCLUSIONS OF LAW, AND
TMK (2) 4-5-10:005) DECISION AND ORDER
Proposed Reclassification: Agriculture to) CERTIFICATE OF SERVICE
Urban)

INTERVENER'S OBJECTIONS TO PETITIONER'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

Michele Lincoln, Intervener in the proposed reclassification of Agriculture District to Urban District, to amend the Land Use District Boundary of certain land situated at Lahaina, Island of Maui, State of Hawaii submit the following objections to Petitioner's proposed findings of fact, conclusions of law, and decision and order to the Land Use Commission of the State of Hawaii.

The Response from Intervener Lincoln focuses on issues of main concerns including safety issues and critical importance to the rights of the citizens protected under the Constitution of the State of Hawaii, however, there are many other important issues that this Commission must address in its Findings of Fact, Conclusions of Law, and Decision and Order.

I. PROCEDURAL MATTERS

Intervener's Objection #1

69 p.12. The following Intervenor Michele Lincoln's witnesses' written direct testimony was received into evidence: Jan Imai (TR 9/7/12 at p.114); Herman Naeole (TR. 9/7/12 at p.114 and Ex 12) Cynthia Catagal (Tr. 9/17/12 at p. 114 and Ex. 10); and Elle Cochran (TR. 9/7/12 at p. 7).

The witness is Jane Imai not “Jan” and is “Exhibit 11” and her constitutional rights to a healthy environment will be jeopardized if the Kahoma property is rezoned. The witness Herman Naeole not “Naeole” will have his environment be at risk if the land is rezoned. He spoke for the community concerning the traffic from this project going into the existing neighborhood, that has substandard roadways and does not have sidewalks, which is a safety issue. The Naeole Family will also be “Culturally” negatively affected by the removal of the habitat of the Pueo, which is the family’s aumakua. The witness Cynthia Catagal not “Catagal” spoke to the promise of Open Space when the flood channel was rerouted and is confirmed by Councilmember Hokama when he spoke about the need for Open Space and the fact that the community of Lahaina expressed very vocally about this during the Kahoma Stream realignment. Finally, Elle Cochran’s Exhibit 9 was withdrawn and revised testimony was received as Exhibit 15. The concerns regarding the negative impacts to the community was not changed but additional information regarding the General Plan Committee for West Maui giving preliminary approval for at least 16,000 new

units in West Maui and other comments regarding County of Maui taxpayers being put in harm's way was included. (Imai TR. 124:8-18 Sept. 7, 2012, Naeole TR.132:5-19, 22-25 & 134:9-22 Sept. 7, 2012, Int. Lincoln Ex.10 8:1-19, Int. Lincoln Ex 1 17:3-17, Int. Lincoln Ex. 15).

II. FINDINGS OF FACT

Intervener's Objection #1

A. 7 p.14. The Petition Area is situated within Zone X, an area of minimal flooding as designated on Flood Insurance Rate Maps dated September 25, 2009 for the island of Maui. (Tr. 7/20/12 at pp. 4-5; Tanaka WDT at pp.4-5; Petitioners EX. 7)

D. 131.p. 33 The fifth standard is Petition area is suitable for urban use...and dangerous conditions arising from flood...or adverse environmental effects.

D. 135. P. 33 same as A. 7 (TR. 7/20/12 at p.54; Petitioner Ex. 7)

The Petition area is situated within Flood Zone X, which is considered moderate to low risk areas. The risk of being flooded is reduced but not completely removed. These areas submit 20% of National Flood Insurance Program claims and receive 1/3 of disaster assistance for flooding. Flash floods are the #1 weather-related killer in the U.S., they can roll boulders, tear-out trees, and destroy buildings and bridges. The Kahoma Flood Control Retention Basin Wall could be compromised in the event of an earthquake, major flood, or old age. Robin Knox stated "If a storm event exceeds the flood control structure design, those in the immediate vicinity of the structure will be in more danger than if there were no structure because the structure contains the water, increasing the velocity and depth over that of the flood plain." The Petitioner did not provide any exhibits or testimonies of experts to evaluate the consideration of the consequences

to the subdivision in the event of dangerous conditions arising from floods. The Petitioner stated “This is the Kahoma Stream Flood Control Channel… It certainly doesn’t have anything to do with our Petition at all.” The Commission Vice-Chair responded “Personally, I think it’s relevant because the channel abuts your property.” The Project is contiguous with a major flood control structure and is therefore not appropriate for residential dwellings. (Robin Knox WDT; Lincoln TR. 28:7-18 Oct. 4, 2012, Tanaka Tr. 225: 3-25, 226:1-25. 227:12-19, 228:3-25, 229:5-6 Aug. 23, 2012).

Intervener's Objection #2

A 9. P.14 The productivity for the land underlying the Petition Area was classified as B72i by the University of Hawaii Land Study Bureau. The Bureau's classification system rates lands on the scale of “A” to “E” reflecting land productivity characteristics. Lands designated “A” are considered to be of the highest productivity with “E” rated lands ranked as the lowest productivity. The B72i designation means that the land is moderately suited to machine tillability and productive if irrigated. In the absence of irrigation the land would have a lower productivity classification. (Singleton WDT at pp.14-15).

The Petition Area is located next to the Kahoma Flood Control Channel and there are Stream Channel Alteration Permits and low-flow diversion plans available. In the words of the Petitioner’s Engineer “To divert water? Certainly, water is diverted everywhere.”(Tanaka Tr. 229:16-25, 230:1-15 Aug 23, 2012). Based on the figures provided by Paul Singleton and using the water figures for mango tree production, it would possible to propagate about 400 mango trees with single 5/8 inch water line/meter. (Singleton WDT 9:11- 24, 10:1-20).

Intervener's Objection #3

The Petitioner's Findings of Fact A 11, 12, 13, 14, 15 pp 15-16, B 43 p.20, D 55, 56, 57, 58, 59,
60 pp. 22-23 and 158 p.36, should be omitted.

The fact that water is available to the Petition Area and that in 1977 the very stony WdB, silty clay EaA, rock land rRk was able to be productive land for sugar cane cultivation as pictured on Petitioner's Exhibit 23 Page 6. Petitioner's FOF # 36 Before the late 1980's, the Petition Area was part of a larger parcel used for sugar cane cultivation. The Petitioner's Exhibit 23 page 6 shows the proximity of the sugar cane fields to the same existing neighborhood to the south. When the Petitioner's representative, Rory Frampton, was questioned about the Petition Area he was asked "they burned sugarcane back then to harvest it"? Frampton answered "Yes." The follow-up question "So you're saying that close to houses and proximity to everything they did that sort of..." Frampton answered "Prior to 1977, yes." Farming the Petition Area with its proximity to the existing neighborhood has been successful in the past. (Frampton TR. 182:3-18 July 19, 2012).

Historically, it has been productive agriculture for hundreds of years and in the words of the Petitioner's consultants, Earl Ray Kukahiko, "They were the ones that really helped the King. They were the suppliers of all the food." The interviewer responds "Again, when the foreigners came, the valley people were the ones who supplied the sailors with food and water, all the needs. I appreciate you confirming that it was the lifestyle and kuleana of the West Maui people. All these valley's used to supply the newcomers." (Petitioner's Appendix E CIA).

Intervener's Objection # 4

52. The State Agriculture Functional Plan suggests that agriculture properties are important and should be protected unless agriculture uses are not present or feasible. (TR. 7/19/12 at pp131 and 187-189).

53. The Petition Area has not been farmed commercially since 1990. (TR. 7/19/12 at p. 190; Bigelow WDT at pp. 4-5).

54. The Petition Area is not presently used for agriculture. (TR. 7/19/12 at p190; Bigelow WDT at pp. 4-5).

The Petitioner had 1500 acres of agriculture land in August of 2000 yet only has “gardens” and no major agriculture production. The Petitioner has never tried to farm this land or much of their hundreds of acres of Agriculture Zoned land. The agriculture land at Launiupoko has become an agriculture subdivision. The Petitioner has attempted to build other subdivisions at Pu’unoa and continues to try to rezone agriculture land to urban use with the Kahoma Project. The Petitioner is a developer and not a farmer which is evident in their usage of the hundreds of Agriculture Zoned land they have been responsible for and have paid agriculture taxes on since 1990. The fact that this land is not in agriculture production as well as their other agriculture land is a matter of the choice of the Petitioner. The Petitioner’s representative Rory Frampton states “I think it was their choice even longer than that to not have the lands in agriculture use.” When asked if the Petitioner has ever tried any sort of farming on the land Frampton answered “to my knowledge, no.” (Bigelow Tr. 54:19-21, 72:17-25, 73:1-25, 74:1-18 Sept. 6, 2012; Frampton Tr. 183:19-25, 184:20-25, 185:1-10 July 19, 2012)

Intervener's Objection #5

A 14 p.15 The Petition Area would not be a candidate for designation as important agricultural land because it is not a large contiguous tract of land, it is sandwiched in an urban area, it has a lot of rocks in the soil, and it is not a good place to engage in commercial farming.

The Petition Area would be a candidate for designation as important agriculture land because Agriculture Districts shall include Agriculture Parks and Open Area Recreational Facilities. The Petition Area is sandwiched in a congested urban area and is designated as Open Space in the West Maui Community Plan of 1996, which is law.

Intervener's Objection #6

B 27.p. 18 The mauka portion of the Project will connect to Lui Street while the makai portion of the Project will connect to an existing cane haul road known as the "Proposed Kahua Street Extension". The Proposed Kahua Street Extension will connect to Keawe Street to the north.

(TR. 7/19/12 atpp124-125; Tanaka WDT at p.4: Niiya WDT atpp. 3-4.)

The existing cane haul road is privately owned and referred to as the "Proposed Kahua Street Extension". The evidence provided by the Petitioner only acknowledges the need for this roadway and their proposed improvements of this roadway for the Kahoma subdivision. An acknowledgement from the owner(s) of this cane haul road and intentions to make it accessible to the Petitioner in form of written verification would be prudent.

Intervener's Objection #7

28. p 18 Traffic calming structures will be constructed on the road within the Petition Area. (Tr. 7/19/12 at pp124-125; Niiya WDT at p 4).

82. p. 26 Connectivity between adjoining residential neighborhoods and commercial/industrial areas will be increased by the roadway within the Project. (TR 7/19/12 at pp. 119-120, 112-123; TR.8/23/12 at p.35)."

238. p 47 From a traffic standpoint, the Project will have no significant impact on the existing highways, streets and roads. (Niiya WDT at p. 6).

"The applicant boasts about increased roadway connectivity in their application but the roadways that they plan to connect to are already substandard and over-stressed by the current residents living there." Elle Cochran Exhibit 15 p. 3. Herman Naeole a long time resident on behalf of his family and the surrounding community, expressed concern for the safety of "all lifes" walking on the streets in the existing neighborhood and received over 200 signatures with a "petition to block approval for proposed Kahoma Project." (TR. Naeole 125:12-25, 126:1-25, 127:1-25, 128:1-25, 129:5-25, 130:1-10 Sept. 7, 2012 Int. Lincoln Ex. 8 DVD #1 Petition).

Intervener's Objection #8

30. p. 18 Petitioner and Owner's consultants have met with interested community groups to discuss the proposed Project. (Tr. 7/19/12 atpp.123-124; TR7/20/12 atpp.19-20; Petitioner's Exs 7 and 23).

The findings of the May 2008 meeting was not fully represented as 100% of those attending that meeting opposed the Proposed Kahoma Subdivision. (Spencer Tr. 102:13-20 July 20, 2012; Bigelow Tr. 66:14-20, 67:1-3.10-25 68:1-22 Sept. 6, 2012).

Intervener's Objection #9

The Findings of Fact of the Petitioner's # 47 pg. 21, # 63 pg. 24, #75 pg. 25, #80 pg. 26, #84 pg. 26, # 95 pg. 28, #100 pg. 29, #101 pg. 29, #130 pg. 33, #140 pg. 34, #150 pg. 35, #154 pg. 36, #176 pg. 39, #226 pg. 45, #232 pg. 46, #241 pg. 48, # 246 pg. 48, #253 pg. 49, #254 pg. 49, #263 pg. 50-51, #266 pg. 51, #267 pg. 51, #268 pg. 51 should be omitted.

These are the Petitioner's conclusions of their Findings of Fact which reflect the Petitioner's opinion and are not substantiated by facts from the Exhibits or Transcripts. The "fact" reference is nothing more than the Petitioner's FOF _-_ of their FOF.

Intervener's Objection #10

The State Office of Planning determined that the Project generally meets the State Functional Plan.

#62 Agricultural pg. 23, #74 Housing pg. 25, #79 Housing pg. 26, # 83 Transportation pg. 26, #94 Historic Preservation pg. 28, #99 Sustainability pg. 28

Webster defines "generally" as 1. for the most part 2. As a rule 3. In disregard of particular instances and details. The overall objective of the State is to guarantee for present and future generations decisions made by the LUC which are consistent with the goals of the State. The Petitioner's opinion that they are "generally" meeting the State's goal is "in disregard" to the Constitution of the State of Hawaii Article XI Sections 1 and 9. According to the State's witness,

"the Constitution provides the overall guidance". (Funakoshi Tr. 88:21-25, 89:1-9 Sept. 7, 2012; Int. Lincoln Ex. 13).

Intervener's Objection #11

C 44 pg. 20 The County of Maui adopted a County-wide policy plan in March, 2010 identifying as a land use goal the encouragement of infill of lands intended of urban use. (Tr. 7/19/12 at pp. 135-136; Petitioner's Ex. 23).

45. pg. 21 The Maui Planning Commission and the Maui County Planning Department recommend the Project be included in the draft Maui Island Plan Map as an urban use.

128, pg 32 The petition Area is infill as it is surrounded by existion urban uses.

146. pg.35 Maui County is undergoing a review and update of its land use plans. (TR 7/19/12 at pp. 134-136; Petitioner Ex. 23).

147. Maui County adopted a Country-wide policy plan on March 24, 2010 that identifies goals, objectives, policies and implementing actions. (Petitioner Ex. 23; TR 7/19/12 at pp. 134-135).

148. The Project complies with the policy plan by providing affordable housing, by increasing the affordable housing inventory, by infill in existing communities on lands intended for urban use, and by directing new development in and around communities with existing infrastructure and service capacity. (TR 7/19/12 at pp. 134-138).

149. Inclusion of the Project on the Maui Island Plan Map covering the Lahaina area was recommended by the General Plan Advisory Committee, the Maui Planning Commission and the Maui County Planning Department. (TR 7/19/12 at pp. 135-136; Petitioner Ex. 23).

262. The County of Maui is undergoing a review and update of its land use plans, the current result of which is that the Project is included as an urban use.(FOF146-149).

263. pg 50 Based on the exemptions granted by the Maui County Council to the project and the review and update presently being conducted by the County of Maui, the lack of conformity with the West Maui Community Plan is not a basis to deny the reclassification of the Petition area from agriculture to urban. (FOF 255-262).

The County of Maui adopted a County-wide plan in March, 2010 and the Maui Island Plan is not completed so neither would supersede the West Maui Community Plan of 1996. The West Maui Community Plan has the Petition Area designated as Open Space. The Open Space Community Plan designation **does** meet the objectives and policies for Urban Design by integrating stream channels and gulches into the region's open space system for the purpose of safety, open space greenways for public use, and visual separation. The Petitioner was aware of this zoning when they acquired the land. Urban use of land includes Parks and Open Spaces. The Petition Area would still meet the criteria of urban use if left as Open Space. The Petitioner's conclusion that the Maui Island Plan would only endorse their Project as urban use is inaccurate. The Petitioner's only facts are their own FOF146-149. The Petition Area does not meet the Maui County's Code, Ordinance No. 3818 Bill No. 10, County's description of "infill". The use of the word "infill" is the term used by the Petitioner and the County which is not accurate as it is not substantiated by an ordinance. The lack of conformity with the West Maui Community Plan is a basis to deny the reclassification of the Petition Area from agriculture to urban. It is only the Petitioner's opinion otherwise and the FOF for this opinion is their reference to their own FOF 255-262 and not in Exhibits or Transcripts for verification. (County Ex. 11 Infill; Int. Lincoln Ex. 8 DVD #2; Int. Lincoln Ex 13; County Ex. Urban Design, Goal, Objectives and Policies).

Intervener's Objection #12

65. pg. 24 The average median sales price for the single family homes in Lahaina for the period from 2004 to 2011 was \$800,000. (Dodson WDT at p. 2)

66. The median income for a Maui household (family of four) is \$77,000. (Dodson WDT at p.2)

67. Maui households earning the median income cannot buy a house in Lahaina priced at market rates. (Dodson WDT at pp. 2-3).

If the median sales price for a single family home in Lahaina was \$800,000 that would mean half of the homes were under \$800,000 and in the range of the proposed Project. Intervener Lincoln is at median income and resides in Lahaina at 452 Aki Street near the Project Area. Intervener Lincoln has a house located at 453 Aki Street and was purchased in the period from 2004 to 2011. It is a false statement that Maui households earning the median income cannot buy a house in Lahaina at market rate. (Ridao Tr. 163:10 Sept. 6, 2012; Int. Lincoln Ex. 1 22 Map)

Intervener's Objection #13

68. Lahaina has a lack of inventory of newly constructed homes and vacant lots for families earning between 80% and 160% of the median income. (Bigelow WDT at p.14).

69. On June 27, 2012 there were three active listings for single family homes (3 to 4 bedroom, 1 to 2 bathrooms, living area between 1,000 and 1,500 square feet, on lots up to 11,000 square feet in area) in the West Maui Area. (Bigelow WDT at p. 14 and Petitioner Ex. 28).

The Weinberg Property located below the Project Area is moving ahead with their 203 residential units providing single-family and multi-family affordable housing with a mix of two, three, and four bedroom dwellings. The Weinberg Property was originally part of the West Maui

Community Plan's public park. The Villages of Leiali'i is another Project providing housing units for West Maui and may be underway by 2016. The County's witness Jo-Ann Ridao confirmed that Pulelehua and other pre-approved projects for West Maui would be able to meet the SMS housing projected needs and that the Petition Area proposed subdivision would not be necessary to meet the criteria for affordable housing. Jo-Ann Ridao also confirmed that there are several houses in the adjacent neighborhood that were built in the 1990's and in September were available in the price range under HUD's 80 percent of the median income. (Ridao Tr. 163:1-10, 165:1-16 Sept. 6, 2012; Lincoln Int. Ex. 1 20:10-15; Lincoln Int. Ex. 2 pg 46).

Intervener's Objection #14

77. pg. 25 The Project will provide a 43,000 square foot neighborhood park in the middle of the Project. (TR 7/19/12 at p. 124; Petitioner Ex. 23)

98. pg 28 Providing a neighborhood park within the Project encourages recreation and healthy lifestyles. (TR 7/19/12 at pp. 132 and 124).

The Project will remove 16.7 acres of recreational and naturally beautiful Open Space that is available for the densely populated area of the Lahaina District. The Project Area is in the West Maui Community Plan as Open Space and the Council Committee addressed the issue on May 17, 1995, "our intent was... for it to become a public open space area for either present or future use." The West Maui Community Plan, Ordinance No. 2476 adopted in 1996, which is a law, relating to environmental quality, clearly and unambiguously defines the parcel as Open Space. (Int. Lincoln Ex. 1 pp. 23-37).

Intervener's Objection #15

85, pg 27 The State Historic Preservation Functional Plan places importance on the preservation of historic properties, records, artifacts and rural histories. (TR 7/19/12 at p. 132).

The Rural History of the Petition Area was not given consideration. Rory Frampton confirmed in his testimony that 150 years of plantation days would be considered Rural History. The Petitioner supplied evidence of that fact of the rural history with a photo of old concrete water lines along the south boarder of the Petition Area. (Frampton Tr. 18:1-11 July 20, 2012; Pet. Rebut. Ex. 37 and 38 photos).

Intervener's Objection # 16

91.pg 27 The claimed archaeological feature was examined and determined by expert archaeologists to be a push pile of rock and boulders and not an archaeological feature. (TR 10/5/12 at pp. 91-93; Petitioner Ex. 41).

182. p.40 Only a few archaeological inventory surveys will result in no findings of archaeological features or archaeological deposits. (Dega WDT at p. 7).

183. Based on stratigraphic sequencing and the archaeologist's experience, it is unlikely that land alterations from sugar cane operations wholly obliterated archaeological features on the Petition Area. (Dega WDT at p. 8).

184. It is unlikely that agricultural or habitation pursuits of any significance occurred in the Petition Area before the land was used for sugar cane production. (Dega WDT at p. 8).

186. The claimed archaeological feature was examined and determined by expert archaeologists to be a push pile of rock and boulders and not an archaeological feature. (TR 10/5/12 at pp. 91-93; Petitioner Ex. 41).

187. The locations of the claimed burials were excavated to bedrock. No evidence was found of burials, either presently existing or which may have existed in the past and been removed. (TR 10/5/12 at p. 92; Petitioner Ex. 41).

190. pg. 41 Archival research from 18 separate sources and interviews of five persons knowledgeable of the Kahoma Stream area was conducted. (Kapahulehua WDT at p. 4).

191. In the pre-contact period, the Petition Area probably was not used for traditional practices. (Kapahulehua WDT at p. 4).

Intervener Lincoln asked the question, “How many years did the Hawaiians live in this area?” The Petitioner’s representative Frampton answered, “Hundreds.” “If not longer.” (Frampton TR. 17:18-21 July 20, 2012). The Petitioner’s CIA consultant expressed that this is where the people lived “they are the ones that really helped the King.” (Kukahiko 3:32-36, 4:1-5 Pet. Exhibit). The fact that the inventory surveys resulted in no findings of archaeological features would be not surprising as Hawaiians would have been “green” farmers. The evidence or lack thereof in relationship to farming and burials would be attributed to biodegradable matter. The other features would have been compromised with the Kahoma Flood Control Project and the Pioneer Mill Sugarcane farming practices. The Hawaiian Cultural Practitioner, Michael Lee, claims that the push-pile also includes a heiau. The debate is moot as they would both be considered Historical Artifacts. The heiau, in relationship to the Hawaiian History and the push-pile, is evidence of Rural History. (LUC Docket No. A12-795 Lee vs. Dega).

Intervener's Objection #17

97. pg. 28 The Project's location adjacent to existing urban areas shortens necessary trips to commercial areas, minimizing petroleum fueled car and truck use. (TR 7/19/12 at pp. 132-133).

The fact that the Petition Area is adjacent to existing urban areas does not support the idea that it will minimize petroleum fuel use. The Petitioner did not supply a list of actual potential occupants and establish where they work or where they shop or if they would walk or bike if they lived in the Petition Area.

Intervener's Objection #18

114. pg 30 The West Maui region is served by four public schools operated by the State of Hawaii Department of Education. (Petitioner Exs. 7 and 23).

The Petitioner provided evidence that the schools are over capacity. The approved housing that is in the process of development in the Lahaina District, Kaanapali 2020 and Weinberg's Property, Kahoma Village will add more to an already overburdened school system. The school impact fees would be inadequate. (Pet. Ex. 7 41 Table 5; Funakoshi Tr. 80:4-25,81:1-25,82:1-6 Sept. 7, 2012; Lincoln Tr. 167:11-13 Sept. 7, 2012; Lincoln Int. Ex. 5 59:9-16, Lincoln Tr. 167:11-13 Sept. 7, 2012; Lincoln Tr. 31:9-12 Oct. 4, 2012).

Intervener's Objection #19

117. pg 31 The Lahaina Aquatic Center; the Lahaina Civic Center and the Wainee Park are also located in the vicinity of the Petition area. (Petitioner Ex. 7).

They are one mile or more away from the Petition Area.

Intervener's Objection #20

159. p. 37 The Petition area is located mauka of Honoapiilani Highway with West Maui mountains visible to the east and the island of Lanai visible to the west. (TR 7/19/12 at pp. 117-118).

160. The Petition area is not located within an identified or protected scenic view corridor.
(Petitioner Ex. 7).

The views from the Petition Area are beautiful from mauka to makai as you can see from the Intervener Lincoln's Exhibits of photos and DVD. The Hawaii State Constitution says nothing about conserving view plains. Rather it refers to conserving the natural beauty and a clean and healthful environment. This is the only Open Space corridor in the Lahaina District of significance and approving this Project is a destruction of the natural beauty and a healthful environment. (Int. Lincoln Ex. 8 DVD #1; Int. Lincoln Ex. 13).

Intervener's Objection #21

161. The project will be developed as an architecturally integrated area with low-rise residential structures. (Petitioner Ex. 7).

The Project will obstruct the views of the existing neighborhood. (Int. Lincoln Ex. pp.73-74 photos).

Intervener's Objection #22

167. pg 37 From a botanical standpoint, nothing in the Petition Area warranted protection either as a plant species or as plant habitat. (Hobdy WDT at p. 6; TR 8/23/12 at p. 127).

The Petitioner's flora expert is not aware that many of the plant that he referred to as "weeds" are used as medicine by Hawaiian Cultural Practitioners. Robert Hodby states " That's not my field".(Hodby Tr. 139:9-12 Aug.23, 2012). When Hodby listed the plants as abundant, uncommon, or rare it was in relationship to the site. "It doesn't translate to island-wide or, you know, anything broader than just on the property." (Hodby Tr. 138:4-12 Aug. 23, 2012).

Intervener's Objection #23

169. p. 38 Nine species of non-native birds were observed. (Hobdy WDT at p. 6).

171. While Hawaiian owls may have been seen in the Petition Area in the past, it would be difficult to establish habitat for the Hawaiian owl in the Petition area. (TR 8/23/12 at pp. 132-133).

172. From a fauna standpoint, nothing in the Petition Area warranted protection, either as a mammal or bird, or as a habitat for birds. (Hobdy WDT at p. 8; TR 8/23/12 at p. 127).

The Petitioner's fauna expert did not observe the Newell's shearwater and the Hawaiian petrel and yet the U.S. Fish and Wildlife Service acknowledge the fact they are in the area and recommend minimizing the lighting to reduce the sea-birds mortality. Robert Hodby did not witness the Giant Frigate birds or the Hawaiian Owl. The fauna expert is not a Hawaiian Cultural expert so would not know the importance of the Pueo which is the aumakua to the Naeole Family that resides by the Petition Area. (OP Pos. Stat. 6:4-8; Pet. Ex. 7 24:18-23; Naeole Tr. 132:24-25, 133:1-25, 134:1-6 Sept. 7, 2012; Int. Lincoln Ex. Pg. 13 bottom right photo).

Intervener's Objection #24

178. pg. 38 Storm water runoff from the Petition Area will be detained in a detention basin to allow pollutants to settle out, keeping the pollutants from entering ocean waters. (TR 10/5/12 at p. 112).

207. p. 43-44 In compliance with the County of Maui drainage standards, the Project will incorporate drainage features to retain a 50-year, one-hour storm run-off volume increase anticipated to be generated by the Project. (Tanaka WDT at pp. 4-8).

208. A retention basin (drainage basin) will be located on-site near the west end of the Project with an overflow outlet connecting to the Kahoma Stream flood control structure. (Tanaka WDT at p. 6).

210. The proposed drainage system will not increase off site runoff nor cause an adverse impact to adjacent or down stream properties. (Tanaka WDT at p. 6).

211. The County of Maui will be adopting rules governing the water quality of storm water runoff. (TR 9/5/12 at p. 53).

212. The drainage system of the Project was reviewed to determine whether the capacity was adequate to meet the rules for storm water quality proposed by the County of Maui. (TR 9/5/12 at p. 53).

213. The project drainage system is adequate to meet the requirements under the proposed rules. (TR 9/5/12 at p.53).

214. The Project drainage system will be reviewed for compliance with storm water runoff and water quality rules when construction permits are sought. (TR 8/23/12 at pp. 197-198).

The Project does not have a storm-water quality mitigation plan. The county has no requirements for storm-water quality at this time. Mr. Yee question to Mr. Tanaka “And so you can—and you, the LUC may safely approve this Project without knowing whether or not the county rules are going to be passed?” Mr. Tanaka answered “No, I don’t think I’m in a position to answer that question. I don’t know.” There is no guarantee that the rules for storm-water quality will be enacted before the Project is initiated. There is no guarantee that it will not have negative impacts even with the new standards. “This development would have significant irrevocable effects to the environment as there is not adequate wastewater or drainage to protect water quality. This is not consistent with state Coastal Zone Management policy to control point and nonpoint source pollution and attain state water quality standards. Compliance with County of Maui drainage standards does not ensure that drainage is adequate to prevent flooding or that water quality is protected” according to Robin Knox. (Robin Knox WDT; Tanaka Tr. 201:6-25, 202:1-25, 203:1-25, 204:1-25, 205:1-25 Aug. 23, 2012)

Intervener's Objection # 25

222. pg. 45 The County of Maui Department of Water Supply is prepared to supply water for the Project. (TR 9/6/12 at p. 113)

223. The County of Maui Department of Water Supply has excess capacity of potable water available for additional projects. (TR 9/6/12 at p. 115).

224. The County of Maui Department of Water Supply will be able to add capacity to stay ahead of demand for the foreseeable future in the West Maui area. (TR 9/6/12 at p. 117).

The position of the Department of Water Supply, County of Maui “does not grant or imply any guarantee of water until an application for water meters has been received and reviewed”. It was

established that it was “first come, first serve” to whoever applies for their water meter first. West Maui has water, as sugar cane production would have used it but the water availability in potable capacity is not determined as the Water Departments study is incomplete. The Water Department has rejected water meter applications in the past and cannot guarantee that the Project will receive water meters. (County WDT Taylor Ex. 13 1:18-22; Taylor Tr. 115:15-22.116:4-9, 117:6-14, 118:20-24, 126:4-25,127:1-17 Sept. 6, 2012; Lincoln Tr. 167:1-10 Sept. 7, 2012).

Intervener's Objection #26

225 pg.45 The Lahaina Wastewater Reclamation Facility has sufficient capacity for the Project.
(TR 7/20/12 at p. 97; TR 8/23/12 at pp. 198-199).

The Lahaina Wastewater Reclamation Facility does not have adequate existing wastewater treatment capacity. The Project will burden an already inadequate wastewater collection and treatment system. “The County of Maui is currently operating under several consent decrees from EPA related to the Lahaina area sewage collection systems and wastewater reclamation facility” and “According to County of Maui engineering reports by CH2MHill, the existing plant capacity is not adequate to comply with current Clean Water treatment redundancy capacity requirements” according to Robin Knox. The “design capacity” of the Lahaina Wastewater Reclamation Facility is not the same as the actual capacity. The County Council Resolution No. 11-126, includes the provision that the Petitioner pay a fair-share contribution to expand the Lahaina WWRF if needed. If there was ample capacity in the Lahaina WWRF this would be a non-issue. The Lahaina Wastewater Reclamation Facility average wastewater flow is 5.0 million gallons per day (MGD), while the reliable average dry weather capacity is 4.5 MGD, therefore

the current flows exceed the capacity by 0.5 MGD hence, there is not capacity to accept the Projects wastewater and waste-loads. While adding 68 more homes might sound minimal, when added cumulatively with all the other preapproved projects like the Weinberg Kahoma Village's 203 residential units in Lahaina and Kaanapali 2020, will merely add to an already problematic scenario. The Department of Water Supply Exhibit 13 states "Empirical usage information for Lahaina suggests that actual demand would likely be higher." Basic wastewater services cannot be provided as proposed in the Petition, therefore, the Petition does not meet the standards for determining the boundaries of the State Land Use Urban District in accordance with HRS 205-2(b) and HAR 15-15-18(2)(B). (Robin Knox WDT; Knox TR. 96 Oct. 4, 2012; OP WDT 10:3-12; Tanaka WDT 8:1-2).

Intervener's Objection#27

243. pg. 48 The Project will provide construction and construction related employment during the build out of the project. (Riecke-Gonzales WDT at p. 3).

244. The construction of single-family residences and ohana units in the Project will result in construction worker labor revenues of \$8,400,000. (Riecke-Gonzales WDT at p. 3).

246. Reclassification of the Petition Area will provide employment opportunities and economic development. (FOF 243-245).

The impact of reclassification on providing employment and economic development only provides short-term jobs. There is no industry or sustainability.

Intervener's Objection #28

264. pg. 51 Petitioner provided financial statements pursuant to HAR S-15-15-50 (e) (8).
(Bigelow WDT at p. 12; Petitioner Ex. 10).

265. Petitioner will obtain funding for improvements by bank or private financing. (Bigelow WDT at p. 13).

266. Petitioner has the financial capability to undertake the Project. (FOF 264-265).

The Petitioner has not shown the necessary financial ability to carry out the representations and commitments relating to the Project. The “unaudited” financial balance sheet was not checked for accuracy or verified. The Petitioner needs to secure financing and meet requirements imposed by lenders for this Project. The Petitioner did not produce any evidence to verify that they will be able to secure a loan. The partner developer, Habitat for Humanity, did not provide documentation for their economic ability to carry out their commitments relating to the Project. The Petitioner did not provide any data on the overall Project cost. The hard-core engineer plans were not included so the cost analysis for the infrastructure is incomplete as well. The Petitioner’s exhibit 41 page 10 and 11, Figure 6 and 7 shows the bedrock at approximately 5.74 feet to 6.88 feet. The testimony states “This layer was extremely hard; the weathered bedrock encountered was barely penetrable by machine.” (Pet. Ex. 41 p 3) The cost to put in the necessary infrastructure is not addressed and as there is evidence of bedrock, so could prove to be quite costly to put in the necessary infrastructure. (Pet. Ex. 10; Bigelow WDT 13:1-10; Bigelow WDT 13:1-10; Gerry TR. 66:7-16, 69:8-24 July 19, 2012; Geiger 106:23-25 July 19, 2012; Bigelow Tr. 77:20-25, 78:1-10 Sept. 6, 2012).

In light of these facts, the Intervener is very concerned about the Petition for Land Use District Boundary Amendment of certain land situated at Lahaina, Maui, Hawaii TMK (2) 4-5-010:005 from the agriculture district to urban district. The removal of the West Maui Community Plan's Open Space is a violation, as it is a law. There are ample Projects that are underway for development and negate the need for this Project. The Project will jeopardize the present and future generations of a clean and healthful environment as provided by the Constitution of the State of Hawaii. It is recommended that the Petition for reclassification is DENIED and that the property shall remain within the State Land Use Agriculture District.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document(s) was duly served upon upon the following by U.S. Postal Service:

James W. Geiger
Mancini Welch & Geiger
33 Lono Ave. Suite 470
Kahului HI 96732

Jesse Souki, Director Office of Planning
235 South Beretania, Rm 600
Honolulu HI 96813

Bryan C. Yee Esq. Deputy Attorney General
425 Queen Street
Honolulu, HI 96813

William Spence, Director Department of Planning
County of Maui
250 South High Street
Wailuku, HI 96793

James Giroux, Esq. Dept. of Corporation Council
County of Maui
200 South High Street
Wailuku, HI 96793

State Land Use Commission
P.O. Box 2359
Honolulu, HI 96804-2359

Routh Bolomet
PO Box 37371
Honolulu, HI 96837

Dated: 11-11-12 Michele Lincoln Michele Lincoln