

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on July 8, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology
and
YouTube Streaming Video link

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

A94-706 KA'ONO'ULU RANCH (MAUI)

- * Consider Pi'ilani South, LLC and Pi'ilani North, LLC and Honua'ula Partners, LLC's Motion to Dismiss the Order to Show Cause Proceeding
- * Consider Intervenors' Motion to Conduct Phase II of Contested Case Pending Since 2012, and for Final Decision
- * Consider Intervenors' Motion to Strike Portions of the Petitioners' Responses Attempting to Improperly Submit Evidence
- * Consider Petitioners' Motion to Strike Intervenors' Witness List and Exhibit List

V. ACTION

SP97-390 COUNTY OF MAUI (Central Maui Landfill)

Consider Amendment to State Special Permit (SP97-390) for the Proposed Central Maui Landfill Facilities project at TMK (2)3-8-003: (Por) and 020, Pu'unene, Maui, Hawai'i

VI. Recess

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair (Oahu)
NANCY CABRAL, Vice Chair (Big Island)
3 EDMUND ACZON Vice Chair (Oahu)
GARY OKUDA (Oahu)
4 LEE OHIGASHI (Maui)
ARNOLD WONG (Oahu)
5 DAWN CHANG (Oahu)
DAN GIOVANNI (Kauai)

6
7 STAFF:

8 DANIEL A. MORRIS, ESQ.
Deputy Attorney General

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

11 DAWN APUNA, ESQ.
Deputy Attorney General
12 RODNEY FUNAKOSHI, Program Manager
LORENE MAKI, Planner
13 State of Hawaii, Office of Planning

14 MICHAEL HOPPER, ESQ.
Deputy Corporation Counsel
15 MICHELE McLEAN, Director of DPP
ANN CUA, Planner
16 KURT WOLLENHAUPT, Planning Consultant
Department of Planning and Permitting
17 City and County of Honolulu

18 MARJORIE BRONSTER, ESQ.
REX FUJICHAKU, ESQ.
19 RANDALL SAKUMOTO, ESQ.
For Pi'ilani Promenade North and South

20 CURTIS TABATA, ESQ.
21 CHARLES JENKS, Representative for Honua'ula
For Honua'ula Partners

22 TOM PIERCE, ESQ.
23 For Maui Tomorrow Foundation, Inc.
South Maui Citizens for Responsible Growth
24 Daniel Kanahale

25

1 APPEARANCES CONT'D

2 JENNIFER OANA, ESQ.
Department of Environmental Management
3 ERIC NAKAGAWA, Director DEM
ELAINE BAKER, Project Manager DEM
4 MARK ROY, Munekiyo Hiraga Consultant
For County of Maui DEM SP97-390

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.

2 This is the July 8th, 2020 Land Use
3 Commission meeting, and it is being held using
4 interactive conference technology linking
5 videoconference participants and other individuals,
6 including interested members of the public via a ZOOM
7 internet conferencing program. We're doing this in
8 order to comply with State and County official
9 operational directives during the current pandemic.

10 Members of the public are viewing the
11 meeting either via the ZOOM webinar platform and/or a
12 YouTube streaming video.

13 For meeting participants, please be aware
14 that unlike in-person meetings where our court
15 reporter can easily indicate that she cannot hear or
16 ask for a repeat, in these meetings, it is more
17 difficult for her to do this. So I'd like to stress
18 for everyone the importance of speaking slowly,
19 clearly, directly into your microphone, and in
20 addition before speaking, please state your name for
21 the record.

22 Also please be aware for all meeting
23 participants that you are being recorded and the
24 digital record of this ZOOM meeting will be held, and
25 your continued participation is your implied consent

1 to be part of the public record for this event. If
2 you do not wish to be part of the public record, you
3 should exit the meeting.

4 The ZOOM conferencing technology allows the
5 Parties and each participating Commissioner
6 individual remote access to the meeting proceedings
7 via our personal digital devices.

8 So please also note that due to matters
9 entirely outside any of our individual control,
10 occasionally, there will be disruptions to
11 connectivity that may occur for one or more members
12 of the meeting at any given time.

13 If such disruptions occur, please let us
14 know; and please also offer us your patience as we
15 try to restore the audio/visual signals so we can
16 effectively conduct business during this pandemic.

17 My name is Jonathan Likeke Scheuer. I'm
18 the current LUC Chair, along with Commissioners
19 Aczon, Chang, Okuda, and Wong, LUC Executive Officer
20 Dan Orodener, LUC Chief Planner Scott Derrickson,
21 our Administrative Officer Riley Hakoda, our Deputy
22 Attorney General, Linda Chow, and our Court Reporter
23 Jean McManus are all on Oahu.

24 Commissioner Cabral is on Hawaii Island,
25 Commissioner Ohigashi is on Maui, and Commissioner

1 Giovanni is on Kauai.

2 We currently have eight seated
3 Commissioners out of nine possible.

4 Prior to the start of the recorded portion
5 of this meeting, we confirmed that all of our
6 Commissioners can hear and be heard.

7 Our first order of business is adoption of
8 the June 9th and 10th, 2020 minutes.

9 Mr. Derrickson, is there any public
10 testimony that's been received on these minutes?

11 CHIEF PLANNER: No.

12 CHAIRPERSON SCHEUER: Okay. Are there any
13 comments or corrections on the minutes from the
14 Commissioners? If not, may I have a motion to adopt?

15 COMMISSIONER WONG: Chair --

16 VICE CHAIR CABRAL: This is Nancy. I will
17 make a motion to adopt. If somebody just did, then I
18 will second that motion.

19 CHAIRPERSON SCHEUER: I believe Mr. Wong,
20 were you trying to make a motion?

21 COMMISSIONER WONG: I'll second
22 Commissioner Cabral.

23 CHAIRPERSON SCHEUER: Okay. A motion's
24 been made to adopt the minutes from June 9th and 10th
25 by Commissioner Cabral, seconded by Commissioner

1 Wong.

2 Is there any discussion? If not, if you
3 haven't been with us since we've been doing this
4 on-line, I'm asking for roll call votes for all
5 votes.

6 Mr. Orodenker. You're muted, Mr.
7 Orodenker.

8 EXECUTIVE OFFICER: Commissioner Cabral?

9 VICE CHAIR CABRAL: Yes.

10 EXECUTIVE OFFICER: Commissioner Wong?

11 COMMISSIONER WONG: Aye.

12 EXECUTIVE OFFICER: Commissioner Aczon?

13 VICE CHAIR ACZON: Aye.

14 EXECUTIVE OFFICER: Commissioner Ohigashi?

15 COMMISSIONER OHIGASHI: Aye.

16 EXECUTIVE OFFICER: Commissioner Chang?

17 COMMISSIONER CHANG: Yes.

18 EXECUTIVE OFFICER: Commissioner Giovanni?

19 COMMISSIONER GIOVANNI: Abstain.

20 EXECUTIVE OFFICER: Commissioner Okuda?

21 COMMISSIONER OKUDA: Yes.

22 EXECUTIVE OFFICER: Chair Scheuer?

23 CHAIRPERSON SCHEUER: Aye.

24 EXECUTIVE OFFICER: Thank you, Mr. Chair.

25 Motion passes unanimously.

1 CHAIRPERSON SCHEUER: And sorry, just as
2 part of the record, I believe today our deputy --
3 assigned Deputy Attorney General is Mr. Morris. Is
4 that correct?

5 MR. MORRIS: Yes, thank you for making that
6 correction. This is Daniel Morris, Deputy Attorney
7 General.

8 CHAIRPERSON SCHEUER: Okay. Thank you very
9 much.

10 Our next order of business on the agenda
11 was the adoption of the June 24th and 25th minutes.
12 However, the LUC staff has informed me that those
13 minutes are not ready for adoption, which means our
14 next agenda item is the tentative meeting schedule.

15 Mr. Orodener.

16 EXECUTIVE OFFICER: Thank you, Mr. Chair.

17 Tomorrow we will again be meeting via ZOOM
18 for the adoption of the Pulelehua matter.

19 On July 22nd, we once again will be meeting
20 by ZOOM on Oahu for the A17-804 Adoption of the
21 Order.

22 On 23rd of July, we will be again meeting
23 by ZOOM in regard to the University of Nations matter
24 A02-737, Hilo.

25 On August 12th, we will resume the Hawaiian

1 Memorial Park matter, whether that is by ZOOM or not,
2 we're waiting to make that determination. Same with
3 August 13th.

4 On August 26th, we will be on Maui for the
5 Hanohano motion.

6 On August 27th, we will be again on Maui
7 for the Kihei High School.

8 September 9th, we will again be on Maui for
9 the C. Brewer bifurcation; and September 10th,
10 continuation of that matter and the continuation of
11 the Hanohano Motion to Amend.

12 On the 23rd, we will be on Oahu for the
13 Hawaiian Memorial Park matter; and on the 24th for
14 Halekua Development.

15 And October and November, we have set aside
16 a series of meetings to handle HP-2035 which requires
17 a Land Use Commission to make a determination as to
18 whether certain lands held by DLNR are more
19 appropriate in Agricultural use.

20 I would suggest that the Commissioners take
21 a look at that. We're not sure whether it's passed
22 the legislature. We don't have any reason to believe
23 that the government is going to get to it at the
24 time, so we are -- it requires us to make all our
25 determinations by December, the end of December. So

1 we have that set aside for October 7th and 8th and
2 21st, location to be determined.

3 On October 22nd, we will be taking up -- in
4 Hilo, taking up the Hilo Family Trust matter, and
5 Hawaii Island Ranch.

6 On November 4th, we will take up Halekua
7 Development, if necessary; and then November 5th, we
8 have again set aside for our HP-2035 matters.

9 On November 18th, we will take up the
10 Windward Hotel matter on Maui; and on the 19th,
11 again, we will be taking up HP-2035 matters.

12 December 2nd, we will pick up Lanai on
13 Maui, and on the 3rd, we will take up the Barry Trust
14 matter.

15 On December 16th, we have set aside for the
16 Church matter in Hilo.

17 December 17th, the adoption of the Barry
18 Trust order.

19 And that takes us through the end of the
20 year.

21 Once again, I ask the Commissioners to keep
22 their calendars -- it fills up rapidly, and we have
23 many things to percolate.

24 CHAIRPERSON SCHEUER: Thank you very much,
25 Mr. Orodener.

1 Commissioners, are there any questions for
2 Dan? Commissioners, any questions? Seeing none.

3 A94-708 Ka'ono'ulu Ranch

4 Our next agenda item is an action meeting
5 on Docket No. A94-706 Ka'ono'ulu Ranch Maui to
6 consider the following matters; Pi'ilani South LLC,
7 and Pi'ilani North, LLC and Honua'ula Partners, LLC's
8 Motion to Dismiss the Order to Show Cause proceeding.

9 Intervenors' Motion to Conduct Phase II of
10 the Contested Case Pending since 2012, and for Final
11 Decision.

12 Intervenor's Motion to Strike Portions of
13 the Petitioner's Responses Attempting to Improperly
14 Submit Evidence.

15 Petitioners' Motion to Strike Intervenors'
16 Witness List and Exhibit List.

17 Will the parties for Docket No. A94-706
18 please identify themselves for the record, and
19 remember to unmute yourselves.

20 MS. BRONSTER: Good morning, Commissioners.
21 My name is Marjorie Bronster and along with Rex
22 Fujichaku and Randall Sakumoto, I represent Pi'ilani
23 Promenade North and Pi'ilani Promenade South.

24 CHAIRPERSON SCHEUER: Thank you, Ms.
25 Bronster.

1 MR. TABATA: Good morning, Curtis Tabata
2 for Honua'ula Partners. Also present as an attendee
3 is Charles Jenks representative of Honua'ula
4 Partners.

5 CHAIRPERSON SCHEUER: Thank you, Mr.
6 Tabata.

7 MR. HOPPER: For the County of Maui,
8 Michael Hopper, Deputy Corporation Counsel
9 representing the Maui County Department of Planning.
10 I have Michele McLean and Ann Cua with me as well.

11 CHAIRPERSON SCHEUER: Thank you very much,
12 Mr. Hopper.

13 MS. APUNA: Good morning. Deputy Attorney
14 General Dawn Apuna on behalf of the State Office of
15 Planning. I'm with Rodney Funakoshi and Lorene Maki.

16 CHAIRPERSON SCHEUER: Thank you.

17 MR. PIERCE: Aloha, Commissioners, Tom
18 Pierce on behalf of Maui Tomorrow Foundation, Inc.,
19 South Maui Citizens for Responsible Growth, and
20 Daniel Kanahele. And my clients are participating
21 electronically.

22 CHAIRPERSON SCHEUER: Thank you very much,
23 Mr. Pierce.

24 Let me next update the record.

25 At the September 25th and 26th, 2019, LUC

1 meeting in Kahului, Maui, the Commission heard a
2 status report on this docket.

3 On May 13th, 2020, the Commission received
4 notice that the settlement hearings on the docket had
5 been unproductive, and the Petitioner was requesting
6 that the Commission set an evidentiary hearing on
7 Pi'ilani's Motion to Dismiss at the earliest
8 practicable date and time.

9 On May 25th, the Commission received a
10 Notice of Appearance of Co-Counsel Margery S.
11 Bronster and Rex Fujichaku for Pi'ilani Promenade
12 South, LLC and Pi'ilani Promenade North, LLC.

13 From May 18th to June 26th, the Commission
14 received copies of various Motions, Exhibit Lists,
15 Exhibits, responses and memoranda of the Parties,
16 correspondence and other documents associated with
17 this case that have been made part of the record.

18 On June 30th, the Commission mailed the
19 July 8 and 9, 2020 Notice of the Agenda to the
20 Parties as well as to our Statewide and Maui regular
21 and email mailing lists.

22 On July 7th, the Commission received a
23 stipulation by the Parties as to the matters on this
24 docket.

25 For the members of the public, please be

1 reminded that the Commission will be focused today on
2 the matters listed on the agenda and will not be
3 considering the merits of the A94-706 Petition;
4 rather, the Commission is interested in hearing
5 testimony about the motions in front of them today.

6 I will briefly run over our procedures.

7 First, I will recognize written testimony
8 that has been submitted in this matter, identifying
9 the person or organization who has submitted it.

10 Next, I will call for individuals who have
11 preregistered to present public testimony for the
12 docket.

13 I will bring each person into the main part
14 of the ZOOM meeting. I will swear you in. You will
15 be in our virtual witness box. You will have two
16 minutes to testify in this matter, and then you will
17 be available for questioning by the Parties and the
18 Commissioners.

19 After all questions are completed, I will
20 excuse you and bring in the next witness.

21 After all registered testifiers have
22 completed their testimony, I will then call for any
23 individuals in the general audience who wish to
24 testify in this matter. You should all have access
25 to the raise-hands function on your ZOOM meeting

1 software.

2 As you raise your hand, I will bring you in
3 and repeat the same procedure of swearing you in,
4 offering you two minutes of testimony, and you are
5 being available for questions.

6 After completion of all public testimony on
7 this proceeding, I will give an opportunity for the
8 Parties to admit any exhibits into the record. And
9 after the admission of any exhibits, Petitioners will
10 present their case, followed by presentations by the
11 County of Maui, the Office of Planning and the
12 Intervenor.

13 The Chair will also from time to time note
14 that we will take questions -- or excuse me -- we
15 will take short breaks on this matter.

16 Are the parties clear with our proceedings
17 for today? Starting with the Petitioner.

18 MS. BRONSTER: Yes, thank you, Mr. Chair.

19 MR. TABATA: Yes, thank you.

20 MR. HOPPER: Yes.

21 MS. APUNA: Yes.

22 MR. PIERCE: Tom Pierce for Intervenors,
23 yes.

24 CHAIRPERSON SCHEUER: Thank you very much.

25 The list I have from our Chief Clerk,

1 include the following public -- written public
2 testimony that's been received on this matter so far
3 is from Richard Moss, Dr. May Trotto, De Austin,
4 Rebecca DiLiberto and Mele Stokesberry.

5 Next, I will ask, with the assistance of
6 either Mr. Derrickson or Mr. Hakoda, to identify
7 individuals who have preregistered to provide
8 testimony on this matter.

9 Are there any such individuals?

10 MR. HAKODA: This is Riley Hakoda, Chief
11 Clerk. No testifiers.

12 CHAIRPERSON SCHEUER: Okay. Are there any
13 members of the public who are attending the meeting
14 who wish to participate? Okay. I have one raised
15 hand, two raised hands.

16 I'm first going to be admitting Lucienne
17 deNaie into the meeting. If you will enable your
18 audio and video, Ms. de Naie.

19 THE WITNESS: Thank you. I can't use my
20 video, or I'll lose the bandwidth.

21 CHAIRPERSON SCHEUER: No problem. If
22 possible, we ask for video. Understood it's not.

23 I'm going to swear you in.

24 Do you swear or affirm the testimony you're
25 about to give is the truth?

1 THE WITNESS: I do.

2 CHAIRPERSON SCHEUER: Thank you, please
3 proceed. You have two minutes.

4 LUCIENNE deNAIE

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: Thank you. My name is
10 Lucienne deNaie, and I've spent many hours on this
11 land. And it is likely that this will be the last
12 day that this matter will be heard, and I just wanted
13 to read into the record so that it does not
14 disappear, some things that have been shared by
15 cultural users over the land about its nature.

16 That this area of this particular parcel
17 was a small village, one of a string of mauka
18 villages along the coast where fishing families lived
19 in the 1500s on. And it was located between these
20 two gulches, Kalanikakoi and the small gulch.

21 There was a petroglyph found on the land,
22 and others found mauka which indicate a traditional
23 pathway passed through this land.

24 The one interpretation of the symbol on the
25 petroglyph which was removed from the site would be

1 that it marked the location of a small freshwater
2 spring, which could indicate why there was a small
3 village there.

4 The village was only 10 to 12 families, and
5 it was related to the large fishponds constructed
6 along the coastline immediately makai. And the sites
7 that we find remaining on this particular parcel were
8 used by the villagers for observation of the weather
9 and celestial patterns to help the residents
10 effectively manage the food resources of the land and
11 the sea.

12 And the people who built the fishponds, who
13 were the great chiefs of Maui from the Pi'ilani clan,
14 along with the assistance of Umi from the Big Island,
15 likely came to this place for observations because
16 it's the right elevation to see certain things in the
17 ocean and certain weather patterns, and to know when
18 things would be propitious for certain activities to
19 take place. And the Hawaiians were very, very much
20 attuned to that.

21 The coastline of Kihei once had populations
22 all along it, because there were freshwater ponds
23 along --

24 CHAIRPERSON SCHEUER: Two minutes, Ms.
25 deNaie.

1 THE WITNESS: Okay. Anyway, that is just
2 what I would like to have in the record, that this
3 place does have a longer history. Thank you.

4 CHAIRPERSON SCHEUER: Thank you very much,
5 Ms. deNaie.

6 Are there any questions for the witness?

7 Ms. Bronster?

8 MS. BRONSTER: Sorry. There are no
9 questions for this witness. Thank you.

10 CHAIRPERSON SCHEUER: Okay. Mr. Tabata?

11 MR. TABATA: No questions, thank you.

12 CHAIRPERSON SCHEUER: Maui County?

13 MR. HOPPER: No questions.

14 CHAIRPERSON SCHEUER: OP?

15 MS. APUNA: No questions.

16 CHAIRPERSON SCHEUER: Intervenors?

17 MR. PIERCE: No questions.

18 CHAIRPERSON SCHEUER: Okay. Our next
19 public witnesses -- thank you, Ms. De Naie. I will
20 take you out of being a participant to an attendee.

21 I am now going to bring in Brett Gobar,
22 followed by Rob Mr. Weltman, followed by Steven
23 Goldsmith, followed by Char Schulenburg.

24 I will be bringing in Mr. Gobar into the
25 meeting, if you can enable your audio and video,

1 please.

2 THE WITNESS: Can you hear me?

3 CHAIRPERSON SCHEUER: I can hear you. We
4 see a photo.

5 THE WITNESS: Thank you. My name is Brett
6 Gobar, I live in --

7 CHAIRPERSON SCHEUER: Mr. Gobar, I'm going
8 to swear you in.

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

11 THE WITNESS: I do.

12 CHAIRPERSON SCHEUER: Thank you. So state
13 your name and address for the record and then
14 proceed.

15 BRETT GOBAR

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

19 DIRECT EXAMINATION

20 THE WITNESS: Yes, please. Brett Gobar,
21 127 Haleiki Place, Paia.

22 I came to Maui because Dr. Yaconetti
23 (phonetic) is my mom's cousin. He came here in 1955.
24 You'll remember him on the Planning Commission.

25 And I agree with his general attitude,

1 although he's gone now, slowing down the growth in
2 Maui. This Kihei mall idea could be a big mistake.
3 I do not expect -- I'm a real estate broker and
4 investor, by the way, as well as a farmer formerly
5 from Ulupalakua.

6 I do not expect to see demand for more
7 commercial property increase in the next 15 years.
8 The virus will cause a reduction in local incomes and
9 spending and demand for additional commercial
10 facilities for at least the next decade and probably
11 longer.

12 We may see many jobs going back to the
13 mainland and lose some of our population. Building a
14 new commercial structure like the new Lowe's and the
15 new Target, the new Safeway has obviously caused
16 blight in the older commercial shopping areas in
17 Kahului and Wailuku, providing wide open spaces for
18 homeless people and degrading the area. We cannot
19 continue this trend to blight our older areas.

20 Business has left these areas a wasteland.
21 The best planning practices -- and I did study
22 (indecipherable) -- in college -- dictate the County
23 first redevelop existing blighted areas where
24 housing, transportation and infrastructure already
25 exist.

1 I urge you to put this project and others
2 like it on hold. Thank you for your consideration.
3 Brett Gobar, aloha.

4 CHAIRPERSON SCHEUER: Thank you, Mr. Gobar.
5 Are there any questions? Petitioners?

6 MS. BRONSTER: No questions from Pi'ilani.

7 CHAIRPERSON SCHEUER: Mr. Tabata?

8 MR. TABATA: No questions.

9 MR. HOPPER: No questions.

10 MS. APUNA: No questions.

11 MR. PIERCE: Tom Pierce for Intervenors.

12 No questions.

13 CHAIRPERSON SCHEUER: Thank you very much
14 for your testimony, Mr. Gobar.

15 THE WITNESS: Aloha.

16 CHAIRPERSON SCHEUER: I will now be
17 bringing in Mr. Rob Weltman. If you will enable your
18 video, please, if possible. Good.

19 THE WITNESS: Aloha mai kakou.

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

23 THE WITNESS: I do

24 CHAIRPERSON SCHEUER: Okay. Please state
25 your name and address for the record and then

1 proceed. Thank you.

2 MATT WELTMAN

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: Matt Weltman, 188 Wailua
8 Place, Kihei, Maui. I did submit written testimony.
9 I'm not sure why it didn't show up in the register,
10 but I'll just summarize very briefly.

11 I'm speaking for Sierra Club of Maui right
12 now. There are three things I think are worth
13 considering on whether or not to dismiss.

14 This first one is, has -- have the options
15 for what can be done, given the current designation,
16 been defined well enough that we know what the
17 potential outcomes can be and what are the things
18 that could be built there?

19 The second one is, what exactly is the plan
20 being proposed?

21 And the third one is, have things changed
22 since 1995, meaning that we need to look again at
23 what is the best use for this land.

24 Brett mentioned some things, but there's
25 also the issue of floodings in North Kihei, and one

1 of the things that's come up many times there is what
2 can we do in the mauka lands to prevent the flooding
3 below the highway.

4 So I think, given those three things, I
5 would be against dismissing and continue to keep an
6 eye on it and define better what the future outcomes
7 should be for this land. Mahalo.

8 CHAIRPERSON SCHEUER: Thank you, Mr.
9 Weltman.

10 Questions for the witness?

11 MS. BRONSTER: This is Margie Bronster for
12 Pi'ilani. No questions.

13 MR. TABATA: No questions.

14 MR. HOPPER: No questions.

15 MS. APUNA: No questions.

16 MR. PIERCE: Tom Pierce for Intervenors.
17 No questions.

18 CHAIRPERSON SCHEUER: Commissioners?
19 Commissioner Okuda?

20 COMMISSIONER OKUDA: Thank you very much,
21 Mr. Chair, and thank you, Mr. Weltman, for your
22 testimony.

23 Are you speaking on behalf of the Sierra
24 Club?

25 THE WITNESS: Yes, I am.

1 COMMISSIONER OKUDA: Were you aware or are
2 you aware, or is the club aware that Intervenors and
3 the Petitioners have apparently entered into a
4 stipulation to resolve this matter?

5 THE WITNESS: No. The various
6 communication I have read is that the discussions on
7 settlement failed to result in a second agreement.

8 COMMISSIONER OKUDA: Okay. So I just
9 wanted to just see or check whether or not you are
10 aware and had an opportunity to review the
11 stipulation that has been submitted to the Land Use
12 Commission?

13 THE WITNESS: I have not. I read an
14 overview of it, a summary of it.

15 COMMISSIONER OKUDA: Okay. You've read an
16 overview of the stipulation; is that your testimony?

17 THE WITNESS: Overview of the Motion to
18 Dismiss.

19 COMMISSIONER OKUDA: Oh, okay, thank you.
20 I just wanted that clarification.

21 Thank you, Mr. Chair. No further
22 questions.

23 CHAIRPERSON SCHEUER: Okay. Thank you, Mr.
24 Okuda.

25 Are there further questions, Commissioners,

1 for Mr. Weltman? Seeing none, I would just add to
2 Mr. Okuda's comments that because the Intervenors and
3 the Parties have stipulated to this, our ability to
4 continue this proceeding is significantly limited as
5 you request, since the Intervenors have already
6 agreed via stipulation to resolve all the matters in
7 the manner laid out in the stipulation.

8 And I believe that stipulation has been
9 posted to the Land Use Commission's website.

10 Thank you very much, Mr. Weltman, for your
11 testimony.

12 I'm going to move you to be an attendee,
13 and I'm going to bring in Steven Goldsmith.

14 If you can enable your audio and video, Mr.
15 Goldsmith. You are muted. There you go. Now you're
16 unmuted. Are you able to enable your video?

17 THE WITNESS: Here I am, thank you.

18 I'm Steven Goldsmith.

19 CHAIRPERSON SCHEUER: Good morning, aloha.

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

22 THE WITNESS: I so swear.

23 CHAIRPERSON SCHEUER: Thank you.

24 So state your name and address for the
25 record and then proceed. You have two minutes.

1 STEVEN GOLDSMITH

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

5 DIRECT EXAMINATION

6 THE WITNESS: My name is Steven Goldsmith.
7 I live at 44 (inaudible) Kanani Road in Kihei.

8 I'm speaking on behalf of myself today.
9 I'm clearly not as well informed as everyone here,
10 which is very briefly I wasn't aware that the
11 stipulation did happen.

12 So my major concern is just the traffic
13 involved with this. As a resident of Kihei for
14 20 years, I've seen it go from the two lanes to the
15 four lanes to fill up. I see what happens in the
16 afternoon on Lipoa Street just from the Kihei Charter
17 School. So my biggest concern is the impact on the
18 community both on the highway, and if this is truly
19 the highest and best use of this land.

20 I'll leave it at that. Thank you for all
21 your service. That concludes my testimony.

22 CHAIRPERSON SCHEUER: Thank you very much,
23 Mr. Goldsmith.

24 Questions, starting with Ms. Bronster?

25 MS. BRONSTER: No questions.

1 CHAIRPERSON SCHEUER: Mr. Tabata?

2 MR. TABATA: No questions.

3 CHAIRPERSON SCHEUER: Mr. Hopper?

4 MR. HOPPER: No questions, Chair.

5 CHAIRPERSON SCHEUER: Ms. Apuna?

6 MS. APUNA: No questions.

7 CHAIRPERSON SCHEUER: Mr. Pierce?

8 MR. PIERCE: No questions.

9 CHAIRPERSON SCHEUER: Commissioners? I
10 don't see any questions.

11 Mr. Goldsmith, thank you very much for
12 taking the time to participate. We appreciate it.

13 I am putting you to become an attendee
14 again, and I'm going to let in Char Schulenburg.

15 If the witness would enable your audio and
16 video, please.

17 THE WITNESS: Aloha. Can you hear me?

18 CHAIRPERSON SCHEUER: I can hear you. Is
19 it possible to enable your video?

20 THE WITNESS: I'm trying to figure that
21 out. Oh, I see it, sorry about that, guys.

22 CHAIRPERSON SCHEUER: We can see you now,
23 thank you.

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

1 THE WITNESS: Yes.

2 CHAIRPERSON SCHEUER: Okay. Your name and
3 address for the record, and then you have two
4 minutes.

5 CHAR SHULENBURG

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

9 DIRECT EXAMINATION

10 THE WITNESS: Charlene Shulenburg, 1390
11 South Kihei Road.

12 Thank you, everyone. I understand you're
13 all volunteers.

14 I did not know that an agreement had been
15 met, and I have not seen it or have a chance to read
16 it.

17 But whether there is an agreement or not, I
18 am concerned about drainage and flooding regarding
19 this property. The 1995 plan, I don't know what it
20 took into account, and I don't know when the last
21 review of any drainage plan has been conducted.

22 We have learned an awful lot since 1995.
23 Mauka to makai and how people -- makai will be
24 directly affected, and they already are. If the
25 gulch and the redirection of the water is

1 substantial, you know, Kalanikakoi already floods.

2 According to a 2015 water quality study,
3 there was about 111 acres of wetlands left in about
4 1995. There are less than 20 acres left. This is
5 what happens.

6 This is a picture of what happens at a
7 different gulch that is a little bit south of
8 Kalanikakoi, but the brown water events are
9 significant and the flooding and the street flooding
10 is significant every single time.

11 We're concerned because the 100-year storm
12 thing just doesn't make any sense any more. I mean,
13 we've had like eight storms since 2005. And in those
14 times like, you know, people even -- seven people had
15 to be saved in and around Kalanikakoi Bridge area.

16 So there is a lot to consider, and I would
17 say if there's a chance to put a condition on
18 anything, that that would be my recommendation is to
19 at least have the EIS reviewed with regard to
20 flooding and drainage. Thank you so very much.

21 CHAIRPERSON SCHEUER: Thank you, Ms.
22 Schulenburg.

23 Before I offer questions, I'm going to note
24 to Mr. Hakoda or Mr. Derrickson, there's been a
25 request that a link to the stipulation be posted in

1 the Q and A, if possible.

2 So starting with Ms. Bronster, are there
3 questions for the witness?

4 MS. BRONSTER: No questions. Thank you,
5 Mr. Chair.

6 CHAIRPERSON SCHEUER: Thank you.

7 Mr. Tabata?

8 MR. TABATA: No questions.

9 CHAIRPERSON SCHEUER: Mr. Hopper?

10 MR. HOPPER: No questions.

11 CHAIRPERSON SCHEUER: Ms. Apuna?

12 MS. APUNA: No questions.

13 CHAIRPERSON SCHEUER: Mr. Pierce?

14 MR. PIERCE: No questions.

15 CHAIRPERSON SCHEUER: Commissioners?

16 Seeing no questions, thank you very much
17 for taking the time to testify in this matter.

18 THE WITNESS: Thank you.

19 We have one other person who has raised
20 their hand, Ms. Clare Apana. I am going to admit her
21 into the meeting as a panelist.

22 Ms. Apana, if you can enable your audio and
23 video when you come into the meeting. Ms. Apana, can
24 you enable your video, if possible? There we go.

25 I will also note that, and I do not hear

1 it, but apparently some attendees are hearing food
2 chewing. So if you are chewing food, please mute
3 yourself until you need to speak.

4 Are you able to enable your video, Ms.
5 Apana? Can you hear me? Can you at least give
6 audio, please?

7 Ms. Apana, okay, you are muted. Can you
8 hear us and can you say something, please? Okay, we
9 can see you now. Can you say something? Clare, we
10 cannot hear you. We cannot hear you.

11 Are there any other individuals while we're
12 waiting to see whether we can resolve this audio
13 issue, are there any other individuals who wish to
14 provide public testimony on this matter? If so,
15 please use the raise-hands function.

16 Okay. Ms. Apana, I'm going to demote you
17 back to the audience. See whether or not you can get
18 your audio up and running, I'm going to admit Mike
19 Wildberger.

20 Good morning, Mr. Wildberger, if you can
21 enable your audio and video.

22 Scott, we can hear you.

23 THE WITNESS: Mike Wildberger here.

24 CHAIRPERSON SCHEUER: Good morning, are you
25 able to enable your -- there you go, thank you.

1 Mr. Derrickson, we cannot -- we can hear
2 you in the background.

3 Good morning, do you swear or affirm that
4 the testimony you're about to give is the truth? Mr.
5 Wildberger?

6 THE WITNESS: Oh, I thought you said, "Mr.
7 Derrickson." Yes.

8 CHAIRPERSON SCHEUER: Okay. You have two
9 minutes. Please state your name and address for the
10 record and proceed.

11 MIKE WILDBERGER

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: Mike Wildberger. My home
17 address is 2710 Kahale Street. I'm a businessman. I
18 own a 4,000-square-foot factory warehouse adjoining
19 the subject property. Been in business two decades
20 there.

21 In that time, I haven't found a shortage of
22 commercial property or even retail property in the
23 Central Valley or Kihei. Our own units have never
24 been totally rented out. That hasn't driven prices
25 down, so I don't know what the stipulation agreement

1 you guys came to. I wasn't able to find it on the
2 website. But it just seems like from the point of
3 view if someone's out there working -- people looking
4 for space, there's not a demand. And an abundance of
5 empty spaces hasn't resulted in a drop of pricing
6 that would benefit local businesses.

7 So building more at this time, especially
8 considering the current pandemic, just seems like a
9 bad idea. I think everybody else addressed all the
10 other concerns, but I just want to agree with the
11 realtor who spoke earlier, that I just don't think
12 the project is a good use of Kihei space, thank you.

13 CHAIRPERSON SCHEUER: Thank you very much,
14 Mr. Wildberger.

15 Are there questions for Mr. Wildberger, Ms.
16 Bronster?

17 MS. BRONSTER: No questions.

18 CHAIRPERSON SCHEUER: Mr. Tabata?

19 MR. TABATA: No questions.

20 CHAIRPERSON SCHEUER: Mr. Hopper?

21 MR. HOPPER: No questions, Chair.

22 CHAIRPERSON SCHEUER: Ms. Apuna?

23 MS. APUNA: No questions.

24 CHAIRPERSON SCHEUER: Mr. Pierce?

25 MR. PIERCE: No questions.

1 CHAIRPERSON SCHEUER: Okay. And, Mr.
2 Wildberger, I have asked the staff to see if the link
3 can be posted to the Q and A section.

4 I will advise that we only received this
5 late yesterday ourselves.

6 THE WITNESS: Thank you.

7 CHAIRPERSON SCHEUER: So don't feel too far
8 out of the loop.

9 THE WITNESS: I do want to say, too, this
10 is one of the better ZOOM meetings I've attended so
11 far.

12 CHAIRPERSON SCHEUER: We have an excellent
13 staff who have worked very hard to make it possible.

14 THE WITNESS: That's what makes it happen,
15 thank you.

16 CHAIRPERSON SCHEUER: Are there any
17 questions, Commissioners, for Mr. Wildberger? Seeing
18 none.

19 Thank you very much for your testimony.

20 I'm going to admit Patricia Stillwell.

21 Good morning, Ms. Stillwell. Can you
22 enable your audio and video, please?

23 THE WITNESS: That can be done. Yes.
24 There I am.

25 CHAIRPERSON SCHEUER: There you are.

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

3 THE WITNESS: I do.

4 CHAIRPERSON SCHEUER: Thank you. Please
5 state your name and address for the record and then
6 proceed.

7 PATRICIA STILLWELL

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

11 DIRECT EXAMINATION

12 THE WITNESS: Patricia Stillwell, 227
13 Kamakoi Loop in Kihei, Maui. And I also submitted
14 written testimony on Monday that I didn't know
15 whether or not you received, and this was written
16 prior to knowing that there is new information. So
17 bear with me on maybe old information, but anyway.

18 I'm submitting the testimony to request
19 that you do not dismiss the Order to Show Cause
20 brought by Intervenors. Sarofim has yet to describe
21 what their plans are for the subject property.
22 Community needs have certainly changed in the past
23 25 years since the original plans for light
24 industrial development, which then morphed into a big
25 box commercial center.

1 The community summarily rejected this
2 commercial center both as unwanted, outdated and not
3 in compliance with the conditions of the LUC, and
4 that was many years ago. It is not realistic to
5 expect the community needs will be fulfilled with an
6 outdated 25-year-old vision that would not be a
7 benefit for the community.

8 Giving the changing environment of our
9 economy and the life times of 2020 and what we have
10 learned about our environment since, an industrial
11 park would likely be a vacant ghost town located at
12 the entrance to our beach community that we endeavor
13 to make appealing and welcoming.

14 And I want to mahalo you for all of your
15 time, effort and support in honoring the needs of our
16 community and the rule of law. Thank you.

17 CHAIRPERSON SCHEUER: Was that the
18 conclusion of your testimony?

19 THE WITNESS: Yes, I'm done.

20 CHAIRPERSON SCHEUER: Okay. Thank you.

21 Questions for the witness, Ms. Bronster?

22 MS. BRONSTER: No questions.

23 CHAIRPERSON SCHEUER: Mr. Tabata?

24 MR. TABATA: No questions.

25 CHAIRPERSON SCHEUER: Mr. Hopper?

1 MR. HOPPER: No questions.

2 CHAIRPERSON SCHEUER: Ms. Apuna?

3 MS. APUNA: No questions.

4 CHAIRPERSON SCHEUER: Mr. Pierce?

5 MR. PIERCE: No questions.

6 CHAIRPERSON SCHEUER: Commissioners?

7 Seeing none, thank you very much for your testimony.

8 THE WITNESS: You're welcome.

9 CHAIRPERSON SCHEUER: I will now try and
10 bring in Ms. Apana again to see whether or not we can
11 get her testimony. We can see you. You're muted,
12 and your volume might be low.

13 So first you need to unmute. There, you're
14 unmuted now. Can you say something, please?

15 THE WITNESS: Yes, can you hear me?

16 CHAIRPERSON SCHEUER: Yes, we can hear you.
17 This is great. Yes, okay.

18 THE WITNESS: Thank you.

19 CHAIRPERSON SCHEUER: Do you swear or
20 affirm that the testimony you're about to give is the
21 truth?

22 THE WITNESS: Yes.

23 CHAIRPERSON SCHEUER: Thank you, please
24 proceed.

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CLARE APANA

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

DIRECT EXAMINATION

THE WITNESS: Thank you.

My name is Clare Apana. I live at 260 Halenani Drive, Wailuku, Maui, and I have testified before you today -- before today at the last hearing, and I am quite surprised by the events that have happened.

I have attended and spoken with the developer, and I understand that they have said that they hear us, but I don't see any preservations of the sites that -- anyway the site that I am most concerned about.

I'm concerned about all of them, but I don't see the data recovery to identify which are the important sites to be saved, and I don't see preservation of the site that I go to.

I'm very upset about that, and I don't know how this agreement came to be, but I understand from doing a contested case how hard it is and how long it takes and how people with money drag things out, and cause so much money to be spent by the other side,

1 which is the people, that sometimes you just can't do
2 it. And I don't know if that's what happened, but I
3 suspect that there's something like this, like a
4 no -- an impasse that could not be met.

5 And I have gone and I have testified and
6 spoken with the developer several times about my
7 concerns and my cultural practice and the cultural
8 practice of my kumu Michael Lee, and I don't see them
9 being protected. I would like you to be sure that
10 they are protected before you allow this to go
11 forward. I just don't know that this is happened at
12 all, and it is not --

13 CHAIRPERSON SCHEUER: Two minutes.

14 THE WITNESS: Thank you.

15 CHAIRPERSON SCHEUER: Thank you very much,
16 Ms. Apana.

17 Are there questions for the witness, Ms.
18 Bronster?

19 MS. BRONSTER: No questions.

20 CHAIRPERSON SCHEUER: Mr. Tabata?

21 MR. TABATA: No questions.

22 CHAIRPERSON SCHEUER: Mr. Hopper?

23 MR. HOPPER: No questions.

24 CHAIRPERSON SCHEUER: Ms. Apuna?

25 MS. APUNA: No questions.

1 CHAIRPERSON SCHEUER: Mr. Pierce?

2 MR. PIERCE: No questions.

3 CHAIRPERSON SCHEUER: Commissioners?

4 Anything from the Commissioners?

5 Ms. Apana, the nature of the -- as will be
6 explained more in our proceedings that follow -- the
7 nature of the stipulation is that everything is going
8 back to the original approval by the Land Use
9 Commission. So all the parties, including the
10 Intervenors, have agreed to remove all the various
11 motions and other things that they've requested in
12 front of the LUC and we go back to what the
13 originally approved docket was.

14 So I'm not going to say anything more than
15 that at this time, but that should become clearer
16 over the course of our proceedings today.

17 THE WITNESS: Thank you.

18 CHAIRPERSON SCHEUER: Anything else? Okay.

19 Thank you very much, Ms. Apana, and thanks
20 for your persistence in being heard with the
21 technical issues.

22 Mr. Foster Ah Fong has his hand up. I'm
23 going to promote him to panelist.

24 Can you enable your audio and video,
25 please. Aloha, good morning.

1 THE WITNESS: Good morning.

2 CHAIRPERSON SCHEUER: Do you swear or
3 affirm the testimony you're about to give is the
4 truth?

5 THE WITNESS: Yes, I do.

6 CHAIRPERSON SCHEUER: Okay. Please
7 proceed. Name and address for the record.

8 FOSTER AH FONG

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: Commissioners, my name is
14 Foster Ah Fong. I live at 58 Orville Street,
15 Wailuku, Maui. I just wanted to testify.

16 Earlier, Chairman, I heard you read off
17 those that submitted the written testimonies to the
18 LUC on this matter, and I'm now speaking on behalf of
19 Ernie Kalanikau (phonetic) that he did submit a
20 written testimony regarding this agenda item. And
21 because I didn't hear his name mentioned, I just
22 wanted to say that I just spoke with Ernie, and he
23 does want his voice to be put on record regarding
24 this matter, even though I just learned that there
25 was a stipulation submitted.

1 And so with that said, I just want to let
2 the Commissioners know that Ernie Kalanikau lived in
3 Ka'ono'ulu. His family has lived and comes from the
4 ahupua'a of Ka'ono'ulu Kalepolepo. And so not only
5 does his family reside currently, but has ancestral
6 ties to this old ahupua'a on the makai side as well
7 as the mauka area of Ka'ono'ulu.

8 And so if you didn't receive his recent
9 testimony, when he gets out of his doctor's
10 appointment, he will be happy to submit it, but I
11 believe he did submit it prior to 9:00 A.M. yesterday
12 morning. And that's all I wanted to say.

13 CHAIRPERSON SCHEUER: Thank you very much,
14 Mr. Ah Fong.

15 Are there questions?

16 MS. BRONSTER: No questions from Pi'ilani.
17 Thank you.

18 CHAIRPERSON SCHEUER: Mr. Tabata?

19 MR. TABATA: No questions.

20 CHAIRPERSON SCHEUER: Mr. Hopper?

21 MR. HOPPER: No questions.

22 CHAIRPERSON SCHEUER: Ms. Apuna?

23 MS. APUNA: No questions.

24 CHAIRPERSON SCHEUER: Mr. Pierce?

25 MR. PIERCE: No questions.

1 CHAIRPERSON SCHEUER: Commissioners?

2 Does the staff have any clarification about
3 testimony that may have been submitted after the list
4 was given to me?

5 CHIEF CLERK: Chair, this is Riley Hakoda
6 speaking. Mr. Derrickson is checking. I think
7 9:00 A.M. yesterday it might have been a little bit
8 late for with a lot of filing, so it may be buried in
9 paperwork. We'll check for it. We apologize.

10 CHAIRPERSON SCHEUER: Okay. Thank you very
11 much, Mr. Hakoda.

12 It will be part of the record of this
13 proceeding, even if I didn't note that it had been
14 received along with the other items that I listed.

15 Are there any further questions,
16 Commissioners, for Mr. (frozen screen).

17 I'm going to make a last call for any
18 attendees in the public attendee portion of the ZOOM
19 meeting to use the raise-hand function to see if you
20 have to -- wish to deliver public testimony on this
21 matter. If so, I will bring you in. If not, I will
22 close public testimony on this matter.

23 Going once, going twice. Okay. I'm going
24 to close public testimony on this matter.

25 So our next order of proceedings is to call

1 on (frozen frame).

2 COMMISSIONER WONG: Chair, can you repeat
3 that?

4 EXECUTIVE OFFICER: Yeah, Mr. Chair, you're
5 breaking up.

6 CHAIRPERSON SCHEUER: Yeah, I noticed that
7 everybody had frozen, which meant I was the one who
8 was probably frozen. Sorry for that.

9 Our next order is to enter into the record
10 any exhibits from any of the parties beginning with
11 Pi'ilani Promenade.

12 MS. BRONSTER: We have nothing additional
13 to add today other than what has been previously
14 filed.

15 CHAIRPERSON SCHEUER: Thank you.

16 Mr. Tabata?

17 MR. TABATA: We have five exhibits here
18 previously served on all parties.

19 Exhibit 1 is the Unilateral Agreement.

20 Exhibit 2 is Ordinance No. 3553.

21 Exhibit No. 3 is Ordinance No. 4849.

22 4 is Maui Industrial Partners, job cost
23 statement, detention detail.

24 And No. 5 is Honua'ula Partners, LLC 670
25 cost breakdown.

1 Request they be entered into the record as
2 evidence.

3 MS. BRONSTER: Mr. Chair, if I may clarify.

4 CHAIRPERSON SCHEUER: Yes, please.

5 MS. BRONSTER: I apologize.

6 The Petitioners submitted a Third Amended
7 Exhibit List, and we would like those exhibits to be
8 entered into evidence.

9 CHAIRPERSON SCHEUER: Okay. Is it okay if
10 I go with Mr. Tabata, and then back to yours?

11 MS. BRONSTER: I'm sorry.

12 CHAIRPERSON SCHEUER: No problem.

13 MS. BRONSTER: Of course.

14 CHAIRPERSON SCHEUER: Are there any
15 objections to Mr. Tabata's exhibits being entered
16 into the record?

17 First, Ms. Bronster?

18 MS. BRONSTER: No objection.

19 CHAIRPERSON SCHEUER: Mr. Hopper?

20 MR. HOPPER: No objection.

21 CHAIRPERSON SCHEUER: Ms. Apuna?

22 MS. APUNA: No objection.

23 CHAIRPERSON SCHEUER: Mr. Pierce?

24 MR. PIERCE: No objection.

25 CHAIRPERSON SCHEUER: Commissioners?

1 Seeing no objections, the exhibits are
2 entered into the record and will be numbered
3 appropriately.

4 (Honua'ula Exhibits 1-5 were received into
5 evidence.)

6 CHAIRPERSON SCHEUER: Going back to Ms.
7 Bronster's exhibits, will you describe them, please?

8 MS. BRONSTER: Yes. We would request that
9 the Third Amended Exhibit List that was filed on
10 June 26, 2020, which contained Exhibits numbered 1
11 through 38, all be admitted into evidence.

12 CHAIRPERSON SCHEUER: Any objections to
13 those being entered into the record?

14 Mr. Tabata?

15 MR. TABATA: No objection.

16 MR. HOPPER: No objection.

17 CHAIRPERSON SCHEUER: Ms. Apuna?

18 MS. APUNA: No objection.

19 CHAIRPERSON SCHEUER: Mr. Pierce?

20 MR. PIERCE: No objection.

21 CHAIRPERSON SCHEUER: Commissioners?

22 Those are entered into the record and
23 appropriately numbered. Thank you.

24 (Pi'ilani Exhibits 1-38 were received into
25 evidence.)

1 CHAIRPERSON SCHEUER: County?

2 MR. HOPPER: The County of Maui did submit
3 a witness and exhibit list. We didn't have anything
4 new since we had filed that, but I don't believe the
5 Commission ever accepted the exhibits. There were
6 just Exhibits 1 and 2.

7 1 is the Position Statement, and the other
8 is a resume of Michele McLean, who would have been a
9 witness.

10 We don't have anything in addition to that,
11 so hopefully those have either already been admitted
12 or can be admitted here. Those would be the only
13 exhibits the County would have.

14 CHAIRPERSON SCHEUER: Mr. Hopper (audio
15 difficulty), but I believe we do actually have to
16 admit those into the record prior to the adoption or
17 consideration of the stipulated agreement.

18 Is that correct, Mr. Orodener?

19 EXECUTIVE OFFICER: Mr. Chair, they were
20 submitted prior to the last hearing, and they have
21 already been adopted. But I'm not sure that we need
22 to go through this exercise to move on the
23 stipulation.

24 CHAIRPERSON SCHEUER: Okay. Well, we're
25 almost done. (Frozen screen.)

1 Mr. Pierce?

2 MR. PIERCE: Mr. Chair, you were breaking
3 up. I was not able to understand that.

4 CHAIRPERSON SCHEUER: Okay. First OP. I
5 apologize, there seems to be some unknown cause of
6 instability in my connection.

7 First, beginning with the Office of
8 Planning, are there any records?

9 MS. APUNA: OP has no additional exhibits
10 to enter in the record.

11 CHAIRPERSON SCHEUER: Same question for the
12 Intervenors.

13 MR. PIERCE: If I understand the question,
14 Mr. Chair, the Intervenors have no exhibits or
15 witnesses to enter.

16 CHAIRPERSON SCHEUER: Okay, thank you.

17 So with that said, we are now at 9:57 A.M.
18 I'm going to suggest that before we get on to the
19 consideration of the stipulated agreement we take a
20 ten-minute break.

21 I might be frozen. Can somebody confirm
22 that you've heard that I'm suggesting we take a
23 ten-minute recess?

24 COMMISSIONER WONG: We heard that, Chair.
25 Yes.

1 CHAIRPERSON SCHEUER: Okay. It's 9:57 A.M.
2 We're going to recess till 10:07 A.M. when we'll take
3 up the stipulation.

4 (Recess taken.)

5 CHAIRPERSON SCHEUER: It is 10:11. We're
6 back on the record. I have two brief announcements
7 before we go on the record.

8 I have confirmed with the LUC staff that
9 the stipulated decision is on the website. In
10 addition, if you can locate the question and answer
11 section of this ZOOM webinar, you can find a link to
12 the stipulated decision in the Q and A.

13 In addition, I have an update that late
14 testimony received in the last 24 hours, not yet
15 posted to the website, has been received from Lehua
16 Nani Huddelston Hazuka (phonetic), Jean Schatt
17 (phonetic), Rob Weltman, Rod and Helen
18 (indecipherable), Eric Miller, Vernon Kalanikau, Mike
19 Wildberger, Lea Stoli (phonetic), Terese Masters
20 (phonetic), Carol Lee Kamakona (phonetic), Kelly
21 Ritourous, (phonetic) Patricia Stillwell and Virginia
22 Hertz (phonetic).

23 With that -- Mr. Tabata, I -- the Chair
24 understands the parties have proposed a stipulation
25 (frozen screen) -- the meeting agenda items noted for

1 the docket. And I'm not sure exactly who, but is it
2 Mr. Tabata, are you going to be presenting the
3 stipulation first, or who is?

4 MR. TABATA: I believe Marjorie Bronster
5 was going to do that.

6 CHAIRPERSON SCHEUER: Okay. Thank you.
7 Ms. Bronster.

8 MS. BRONSTER: Thank you, Chair, and thank
9 you, Commissioners. I also want to thank all of the
10 parties and their counsel, because as the
11 Commissioners said, the Chair said earlier at the --
12 in May, the parties had come to an impasse, and we
13 did not believe it -- that it was going to be
14 possible to come to a settlement of the issues and to
15 avoid the hearing that is now before you.

16 We worked very hard and were able to come
17 up with an agreement, actually within the last
18 48 hours, which is why we submitted our stipulation
19 at 12:18 on 7/7, which was yesterday.

20 It has been a very long and hard road to
21 get here, but I think that the parties have come
22 together, and the agreements that we reached that are
23 laid out in the stipulation makes specific request to
24 the Commission that will obviate the need for a
25 hearing on the merits today of any of the currently

1 pending motions.

2 Specifically, the parties ask the Land Use
3 Commission to act at the parties' request consistent
4 with what is set out in paragraph 10 of the
5 stipulation, and specifically we ask that the Land
6 Use Commission adopt the stipulation as an order.

7 That would include determining that there
8 are no violations of the 1995 D&O, and that the site
9 plan for the Petition Area, including what is
10 attached as Exhibit N, satisfies Condition 5 of the
11 1995 D&O, and to dismiss the OSC proceeding in its
12 entirety, including Phase II, based on the
13 stipulations and representations of the parties and
14 to lift the stay imposed by the order granting the
15 stay.

16 That would also obviate the need to take up
17 the other motions which are the motions to strike
18 that the Chair mentioned at the outset.

19 In general, this is based on the parties'
20 commitments that the presentation that was made in
21 2013 has been formally withdrawn and that's
22 reiterated in the stipulation, and the parties have
23 also agreed to pursue the creation of conservation
24 easements as set forth in Exhibit N, which is
25 attached to the stipulation and proposed order.

1 And specifically, if you look at Exhibit N
2 which we have attached, it highlights two particular
3 areas which will be treated as conservation
4 easements, and that the parties will work at getting
5 those formalized. It has necessitated some minor
6 changes to the roadways, and you can see that with
7 little cul-de-sacs at various places to leave these
8 conservation easements out, basically being no build
9 zones.

10 The parties will work together and we
11 believe that this will not violate the 1995 Decision
12 and Order, and accordingly we ask the Commission to
13 accept the parties' representations and the
14 stipulation and enter the orders as requested. Thank
15 you.

16 CHAIRPERSON SCHEUER: Thank you, Ms.
17 Bronster for that overview of the stipulated
18 agreement.

19 Procedurally I was thinking I would first
20 offer to the parties to provide any additional
21 comments regarding what you summarized and then ask
22 the Commissioners whether there are any questions for
23 any of the parties. Is that acceptable procedurally?

24 MS. BRONSTER: We have no problem with
25 that.

1 CHAIRPERSON SCHEUER: Okay. So, Mr.
2 Tabata, do you have anything to add to what's been
3 shared already about the stipulation?

4 MR. TABATA: I have nothing further. Thank
5 you.

6 CHAIRPERSON SCHEUER: Okay. Mr. Hopper?

7 MR. HOPPER: The County of Maui is
8 supportive of the settlement agreement, and we have
9 signed the settlement agreement. It's important to
10 have the site plan before you so that the Commission
11 can see what's proposed and confirm that that's
12 consistent with the 1995 Decision and Order.

13 This may not resolve all of the issues down
14 the line till the end of time. I think at this point
15 this will deal with the Order to Show Cause that has
16 been filed, that's resolved, that did involve an
17 earlier, different (audio difficulty) -- so we think
18 that that's a step, and so the County has approved
19 this agreement (indecipherable). Thank you.

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

22 Ms. Apuna?

23 MS. APUNA: OP has no comments.

24 CHAIRPERSON SCHEUER: Okay. Mr. Pierce?

25 MR. PIERCE: Mr. Chair, I would just ask

1 the Commissioners pay close attention to the language
2 in the stipulation because that's what controls.

3 There are a few things that Ms. Bronster said that
4 aren't -- and I don't think it was intended to be
5 other than what the stipulation is, but a few of
6 those things I think are better said, for example, in
7 section 10A what we're asking the Commission to do
8 is -- and I'm paraphrasing a portion of it -- quote,
9 determine that there are no current violations of the
10 1995 D&O.

11 So I would ask the Commissioners to pay
12 close attention to it, the stipulation and the words,
13 that's what the Intervenors have agreed to.

14 And the other point I would like to make is
15 that Ms. Bronster spent some time talking about
16 conservation easements, and I would just note that
17 that is something that was presented and admitted
18 into evidence this morning by the -- it had been
19 submitted at an earlier date to the Commission, and
20 this is exhibit -- this was proposed exhibit --

21 MS. BRONSTER: N.

22 MR. PIERCE: Actually, they're identified
23 as Petitioner's Exhibits 36 through 38, and it also
24 does have an N on it, but they're identified in a
25 filing that was called Petitioner's Exhibits 36

1 through 38. That was filed with the Commission on
2 June 26, 2020, and those were admitted into evidence
3 this morning.

4 So this is something that the Petitioners,
5 of their own initiative have proposed, apparently
6 were proposing to the Commission.

7 CHAIRPERSON SCHEUER: Okay.

8 MR. PIERCE: And we have nothing further to
9 add at the moment.

10 CHAIRPERSON SCHEUER: Thank you, Mr.
11 Pierce.

12 With that, Commissioners, we have a
13 stipulation before us and some summary comments. I'd
14 like to open it up for questions from the
15 Commissioners towards any of the parties, starting
16 with Mr. (frozen screen). I may have frozen.

17 Mr. Okuda?

18 COMMISSIONER OKUDA: Thank you, Chair.

19 Ms. Bronster, can I ask you a question
20 about what's been identified on the attached plan as
21 Conservation Easement? Ms. Bronster?

22 MS. BRONSTER: Sorry about that, I will --
23 you can certainly ask and hopefully I will be able
24 to, and if not, I've got lots of resources to help
25 out.

1 COMMISSIONER OKUDA: Okay, great.

2 Is that designation of Conservation
3 Easement irrevocable? For example, if for some
4 reason there is a future petition to change, as an
5 example, the layout, or something like that, will the
6 location and the easement as described in the
7 operative documents still be irrevocable?

8 MS. BRONSTER: That is the plan, Mr. Okuda.
9 If you take a look at paragraph 5 of the stipulation,
10 what the Petitioners agreed to do was, they agreed to
11 continue to consult in good faith with the lineal and
12 cultural descendants of the Petition Area and members
13 of the Ahu Moku o Kulakai to discuss the terms of
14 access under the conservation easements to be
15 established by Petitioners within the areas listed on
16 the attached Exhibit N.

17 The plan is that this would run with the
18 land, and it would be irrevocable. This is something
19 that came up at the 11th hour, and so we have not yet
20 established the Conservation Easement, but we wanted
21 the Land Use Commission to approve the plan -- and
22 I'm sorry -- to dismiss the Order to Show Cause, to
23 lift the stay and enable us to work as outlined in
24 paragraph 5 to get these established, and they will
25 run with the land.

1 COMMISSIONER OKUDA: Now, we all hope, and
2 I'm sure everyone working in good faith will have a
3 result which will benefit everyone, might not be the
4 perfect result, but it would benefit everyone in the
5 end.

6 But my question is this: If there is a
7 dispute, do you agree that the plain language of the
8 stipulation, if it were to be adopted by the Land Use
9 Commission, the plain language of the document would
10 control what everyone's duties and obligations and
11 rights are?

12 MS. BRONSTER: Yes, Mr. Okuda, we do. And
13 I believe that if I paraphrased something earlier
14 that differed from what the plain language of the
15 stipulation and proposed order says, certainly the
16 stipulation would control.

17 COMMISSIONER OKUDA: And for the benefit of
18 the community, because I personally know, having sat
19 through these hearings, that community members spent
20 a lot of time, taking time from their jobs or other
21 things that are important to testify, a democracy
22 always works really well when everyone testifies and
23 participates, but can you maybe in plain English
24 explain, even though we understand the plain language
25 of the stipulation controls, what is the effect on

1 having what's been, you know, kind of called
2 popularly in the media, the Maui mega mall.

3 What does this stipulation mean for the
4 Maui mega mall or any other kind of mall or things
5 like that?

6 MS. BRONSTER: Well, I think that the
7 stipulation and order very specifically deals with
8 what has been called the Maui mega mall. Because I
9 think that the Petitioners listened to the, you know,
10 what has happened in the past, has listened to the
11 community, and the mega mall is what has been
12 referred to as what we called the 2013 plan. That
13 plan has been withdrawn, and it is formerly --
14 Pi'ilani formerly reiterated its withdrawal of the
15 2013 plan in the stipulation, and I refer everybody
16 to paragraph 1.

17 So the mega mall as described in the 2013
18 plan has been withdrawn and will not be built as
19 outlined. And that is a commitment that Pi'ilani
20 Promenade has made, and I don't mean to speak for Mr.
21 Tabata, but paragraph 2 refers to the workforce
22 housing plan, which was also formerly withdrawn, and
23 that was outlined in this Petition as well.

24 So the parties have agreed to go back to
25 the 1995 plan, and we believe that Exhibit N as

1 attached substantially complies with that 1995 plan.

2 COMMISSIONER OKUDA: Okay. A final
3 question or group of questions.

4 There's been public testimony, pretty
5 consistent public testimony about concerns about
6 cultural resources or potential cultural resources on
7 the property, also concerns about flooding issues,
8 things like that.

9 Does the stipulation in any way take away
10 any of the community's rights, remedies or future
11 arguments with respect to the issues that have been
12 raised such as flooding, or impacts on cultural
13 activities or cultural resources or archaeological
14 sites?

15 MS. BRONSTER: Mr. Okuda, as this
16 stipulation I think makes clear, what we were
17 attempting to do, and what the parties have agreed to
18 was come to agreement to dismiss the Order to Show
19 Cause and lift the stay and allow this project to go
20 forward.

21 We were listening to the community, and
22 that was why we came up with the concept of doing
23 these two conservation easements, but other than what
24 is specifically outlined in the stipulation and
25 order, there is not an impact on the community's

1 rights as your question suggested.

2 COMMISSIONER OKUDA: Okay. Thank you very
3 much.

4 No further questions, Chair.

5 CHAIRPERSON SCHEUER: Thank you very much,
6 Mr. Okuda. We have questions from Commissioners
7 Ohigashi, followed by Commissioner Chang.

8 COMMISSIONER OHIGASHI: I'm taking a look
9 at page No. 5. I'm not sure who can answer this, but
10 maybe one of you can.

11 Page No. 5, 10A, and I'm just asking
12 because it says at the end that this stipulation
13 satisfies the last sentence of condition five, by
14 condition five you mean paragraph 5 in the
15 stipulation?

16 MS. BRONSTER: No.

17 COMMISSIONER OHIGASHI: No.

18 MS. BRONSTER: No, condition five refers to
19 -- I'm sorry, hold on -- I'm sorry.

20 CHAIRPERSON SCHEUER: Ms. Bronster, (audio
21 difficulty) identify the people who are speaking,
22 please --

23 MS. BRONSTER: Certainly.

24 CHAIRPERSON SCHEUER: -- for the court
25 reporter.

1 MS. BRONSTER: And I apologize, this is
2 Marjorie Bronster on behalf of Pi'ilani, and I
3 apologize for taking a moment. I just wanted to make
4 sure that my colleagues agreed with me when I stated
5 that if the condition five that is referred is
6 condition five of the 1995 D&O.

7 COMMISSIONER OHIGASHI: Okay. And that
8 is -- that's referred to in, I guess, to paragraph F,
9 page No. 2, right?

10 MS. BRONSTER: That is correct.

11 COMMISSIONER OHIGASHI: Okay. Second
12 question that I have is that under -- same page, it
13 says, either this stipulation or any short form
14 memorandum shall be recorded in the Bureau of
15 Conveyances.

16 Is there any other short form memorandum
17 that this stipulation -- effects this stipulation, or
18 does it -- and is the -- are the parties going to
19 submit those short memorandums at this time?

20 MS. BRONSTER: No, there are no other short
21 form memoranda. The purpose of this paragraph was to
22 make it clear that we were not intending that this
23 stipulation or anything that described this
24 stipulation would be recorded with the Bureau.

25 COMMISSIONER OHIGASHI: And so I think the

1 stipulation says -- states that it is clear that the
2 workforce housing plan that is on page three, No. 2,
3 is totally gone; is that right?

4 MS. BRONSTER: I think I would best like to
5 refer this to Mr. Tabata, if I may, Mr. Chair.

6 CHAIRPERSON SCHEUER: Yes, please.

7 MR. TABATA: Commissioner Ohigashi, we
8 are -- we have formerly reiterated our withdrawal of
9 the workforce housing plan four-acre parcel.

10 COMMISSIONER OHIGASHI: Will there be any
11 housing on the parcel?

12 MR. TABATA: On our 13-acre parcel, as of
13 this stipulation, no.

14 COMMISSIONER OHIGASHI: Now, the parties
15 are asking us to make certain statements and one is
16 that there's no current violation of the 1995 D&O.
17 And before we can do that, is it my understanding
18 that you've all stipulated that there is sufficient
19 facts to support that finding?

20 MR. TABATA: I believe so, you know, based
21 on the record that the Commission has assembled. We
22 have agreed to withdraw our workforce housing plan
23 for our 13-acre parcel. This doesn't mean that in
24 the future we may make a request, a future request,
25 but based on this stipulation and the record before

1 us, we have agreed to withdraw our workforce housing
2 plan.

3 COMMISSIONER OHIGASHI: Well, maybe I'm
4 trying to be a little ahead -- I'm a little bit ahead
5 and maybe you're a little bit behind, but I
6 understood that there wouldn't be any workforce
7 housing.

8 I'm moving onto my -- another part, which
9 states that you ask -- you're asking the Commission
10 to make certain findings. So going back to 10A on
11 page No. 5, the first finding you ask -- you're
12 asking is that there are no current violations of the
13 1995 D&O and use site plan from Petition Area.

14 I just wanted to be sure on the record that
15 all parties stipulated sufficient facts to support
16 this finding.

17 CHAIRPERSON SCHEUER: Mr. Ohigashi, is that
18 a question for each of the counsel?

19 COMMISSIONER OHIGASHI: Yes.

20 CHAIRPERSON SCHEUER: Okay. So start
21 with --

22 COMMISSIONER OHIGASHI: Ask everyone.

23 CHAIRPERSON SCHEUER: Yeah.

24 MS. BRONSTER: May I begin, Mr. Chair?

25 CHAIRPERSON SCHEUER: Yes, please.

1 MS. BRONSTER: In response to Member
2 Ohigashi's questions, we believe that there are ample
3 facts to support the findings that there are no
4 current violations of the 1995 D&O as specifically
5 set forth in the stipulation as well as in Pi'ilani's
6 earlier submission.

7 The specifics of the violations that were
8 at issue, I think we have substantially outlined in
9 our papers, but I believe that the stipulation itself
10 points out that the parties do agree that there are
11 no current violations of the 1995 D&O.

12 And if anyone would like me to, I can go
13 into each one of the issues that had been addressed
14 in the underlying papers, but we outlined those in
15 our Motion to Dismiss the Order to Show Cause.

16 COMMISSIONER OHIGASHI: I'm just trying to
17 get on the record, Ms. Bronster, whether or not all
18 the parties agree as stipulated that there is
19 sufficient facts to support this particular finding,
20 and you can say, no, yes.

21 MS. BRONSTER: We believe, yes, and I'll
22 let the others speak for themselves.

23 COMMISSIONER OHIGASHI: Thank you.

24 CHAIRPERSON SCHEUER: Mr. Tabata?

25 MR. TABATA: Thank you.

1 On behalf of Honua'ula Partners, our answer
2 to Commissioner Ohigashi's question is yes.

3 CHAIRPERSON SCHEUER: Maui County?

4 MR. HOPPER: Michael Hopper, Deputy
5 Corporation Counsel for Maui County.

6 The County agrees that there are no current
7 violations that link to the 1995 Decision and Order
8 as it states. I guess the main issue was that the --
9 when the Commission voted to find the violation, it
10 was based on (audio difficulty) -- different plans
11 and this makes clear that's been withdrawn, so I --

12 COURT REPORTER: I'm having trouble hearing
13 you, Mr. Hopper. This is the court reporter. Can
14 you speak closer to your microphone? I'm having
15 difficulty.

16 CHAIRPERSON SCHEUER: Speak slightly more
17 slowly, Mr. Hopper.

18 MR. HOPPER: Okay. Is this a little
19 better?

20 COURT REPORTER: Much better, thank you.

21 MR. HOPPER: Thank you.

22 The County's position, I'll try to
23 reiterate is that there are no current violations of
24 the 1995 Decision and Order.

25 I think the main issue previously with the

1 Commission was that it had found the violation based
2 on different plans that this agreement makes clear
3 have been withdrawn. What the current filings have
4 said is that the landowners would proceed with a
5 project that will be consistent with the 1995
6 Decision and Order, and they have put before us
7 attached exhibit a site plan that is essentially the
8 same as the conceptual plan that was provided to the
9 Commission in 1995.

10 Now, there will need to be continued
11 development of this parcel, including, we believe,
12 subdivision and other applications, and the County is
13 going to have to review that as it would come forward
14 as it would with any other project.

15 But the County is satisfied at this time
16 that based on the filing in this docket, as well as
17 the terms of the agreement, that there are no current
18 violations of the 1995 Decision and Order.

19 CHAIRPERSON SCHEUER: Mr. Ohigashi?

20 COMMISSIONER OHIGASHI: Oh, I was just
21 wondering, Mr. Pierce, do you have anything?

22 MR. PIERCE: Commissioners, I would refer
23 you to the sections of the stipulation that
24 Intervenor have signed, and I will refer you to a
25 couple that are specific to your question,

1 Commissioner Ohigashi.

2 Paragraph 3, the Petitioners are stating
3 that in accordance with Condition 15 of the 1995 D&O,
4 the Petition Area will be developed and substantial
5 compliance with the representations made by
6 Ka'ono'ula Ranch to the Commission back in 1995 in
7 support of the project that was identified as
8 Ka'ono'ula Industrial Park.

9 And then, of course, they've attached with
10 respect to paragraph 4 what is relevant there is
11 they've attached a site plan that has similarities to
12 the 1995 site plan that was proposed by the
13 Petitioners at that point in time.

14 And we also would point out the language,
15 and I'm just looking for it here, if you'll give me
16 one moment.

17 I'm just looking for the section that was
18 in here that is just our request which is 10A that I
19 mentioned before that we are just asking the
20 Commission to determine that there are no current
21 violations, and we understand that that's a
22 Commission decision on that respect.

23 No further response at this time.

24 CHAIRPERSON SCHEUER: Okay. Mr. Ohigashi,
25 did you have further questions?

1 COMMISSIONER OHIGASHI: I just have one
2 more.

3 The last set of questions deal with what is
4 the parties' understanding if the Motion to Amend the
5 D&O is withdrawn, Motion to Conduct Phase II is
6 withdrawn, Motion to Strike -- Motion to Strike,
7 these motions are all withdrawn?

8 Is it my understanding that the stipulation
9 would control any future matters concerning the
10 parties in this case?

11 In other words, let's say there's a
12 violation of one of these agreements for some reason.
13 Does that leave it to the Commission to determine
14 whether or not there's a violation, whether or not
15 motions can be, I guess, renewed; or is it left up to
16 the parties to -- and report, or what is the next --
17 I just want to try to get an idea what is the
18 enforcement, and what is -- is it -- what would the
19 Land Use Commission's role be enforcing this
20 agreement?

21 CHAIRPERSON SCHEUER: Mr. Ohigashi, is that
22 directed to a particular party or all parties?

23 COMMISSIONER OHIGASHI: Anyone who wishes
24 to want to answer it, and I'm sure there will be
25 persons who disagree with it or may disagree with

1 each other, but I just like to -- I just like to know
2 what are we going to do after this is done? I mean,
3 to enforce this agreement.

4 Maybe Ms. Bronster could start.

5 MS. BRONSTER: I'd be happy to, Mr. Chair.

6 CHAIRPERSON SCHEUER: Please.

7 MS. BRONSTER: Thank you.

8 We view this stipulation as being a
9 stipulation upon which the Commission -- and we are
10 asking the Commission to dismiss the Order to Show
11 Cause and lift the stay, and so that this would be
12 treated as any other ruling by the Land Use
13 Commission.

14 So that it's based on the representations
15 and commitments contained in the stipulation, and it
16 would be treated as if it were any other order of the
17 Land Use Commission.

18 So if there were a violation, I suppose the
19 parties would have the rights that they would have if
20 there was any other order that gave rise to, you
21 know, the commitments made to the Commission were
22 wrong.

23 COMMISSIONER OHIGASHI: Just to follow up,
24 Mr. Chair.

25 So part of it is to lift the -- one of this

1 stipulation is to lift the stay, that is preventing
2 substantial compliance-type of activity to take place
3 upon the property.

4 Assuming that starting there is a violation
5 of this agreement, the Land Use Commission is without
6 any jurisdiction, assuming that there's a finding
7 that there is substantial commencement, I mean --
8 sorry -- substantial commencement from enforcing any
9 of the terms of this agreement with the ultimate
10 sanction that the OSC had been requesting.

11 Is that the parties' understanding? Mr.
12 Pierce, is that your understanding?

13 MR. PIERCE: Commissioner Ohigashi, I
14 understood your first question. I do want to respond
15 to that, but this last question I'm not fully
16 understanding. Can you explain it again?

17 COMMISSIONER OHIGASHI: Maybe it's a
18 rambling question, and that's why I'm not as precise
19 as I should be.

20 What I'm getting at is this: We have the
21 stipulation and order. Ms. Bronster says that's the
22 order of the Commission. One of the terms of the
23 order says that substantial -- the stay on the
24 property, to lift the stay on the property.

25 So Petitioners go about and start their

1 work on the property, substantial commencement. Then
2 we find out that there is a violation of this
3 agreement. Technically the Land Use Commission, if
4 there is substantial commencement, you cannot
5 withdraw the -- or do the things that the OSC wants
6 us to do, that is to revert the property.

7 Is that the position of Intervenors, Mr.
8 Pierce?

9 MR. PIERCE: Commissioner Ohigashi, let me
10 answer this way.

11 We understand that this stipulation as
12 we've entered it, with the terms that are associated
13 with it, ends the contested case. And if the
14 Commissioners recall, this all was initiated by the
15 Intervenors back in 2012, and there's two issues
16 here.

17 One is obviously that the County of Maui
18 has an enforcement mechanism under Chapter 205 Hawaii
19 Revised Statutes, and then there's the Land Use
20 Commission has a separate enforcement action.

21 So we chose, after our initial discussions
22 with the County, to file a motion for an Order to
23 Show Cause, so I just want to bring this full circle.

24 We understand that the stipulation is
25 ending the contested case that was initiated by us

1 through the Motion for Order to Show Cause and which
2 was -- and, of course, the Commission after that
3 granted the Order to Show Cause, and this has been a
4 continuing proceeding.

5 So we understand that's ending. So with
6 respect to contested case, there will be -- we
7 understand that there's no longer any enforcement
8 rights under that, including requesting, for example,
9 that the stay be entered again, or that there be
10 reverter. All those are ended as a result of our
11 agreement pursuant to the stipulation to end the
12 contested case. We're giving up that right.

13 Then with respect to what the stipulation
14 standard for, it certainly has -- it certainly is an
15 agreement, and it's going to have a Commission
16 decision associated with it that the parties are
17 requesting, which we think is necessary.

18 And then, of course, we think that the Land
19 Use Commission has ongoing jurisdiction, which I
20 believe the Petitioners' attorney also commented on,
21 to continue to oversee this, of course, because it's
22 an on-going project that has not been completed.

23 Does that assist, Commissioner Ohigashi?

24 COMMISSIONER OHIGASHI: Well, I guess so
25 long as you understand that under present rules that

1 we have limited enforcement opportunities to do
2 substantial commencement starts on the property.

3 MR. PIERCE: Understood.

4 CHAIRPERSON SCHEUER: Okay. Anything
5 further, Commissioner Ohigashi?

6 COMMISSIONER OHIGASHI: No.

7 CHAIRPERSON SCHEUER: Thank you very much.
8 Commissioner Chang?

9 COMMISSIONER CHANG: Thank you, Mr. Chair.
10 Mr. Pierce, can I just follow up on
11 Commissioner Ohigashi's question, because looking at
12 the proposed Decision and Order, it says, determine
13 that there are no current violations as of 1995
14 Decision and Order.

15 So is it my understanding that the
16 Intervenors that come next year, the Intervenors are
17 waiving any rights to challenge, that any of the
18 specific conditions in the original D&O, that there
19 will be no challenges by the Intervenors that there's
20 been noncompliance? That you have agreed that
21 they -- there is no violation of any of the
22 conditions in the 1995 D&O?

23 MR. PIERCE: Commissioner Chang, thank you
24 for the question, and I appreciate the opportunity to
25 clarify.

1 And, again, I think the words of the
2 stipulation are very important, and what we're
3 requesting is that the commission has -- we're
4 requesting that the order included that the
5 Commission has determined that there are no current
6 violations of the 1995 D&O, and we mean that
7 literally, what it means right now as of today.
8 We're not aware of any.

9 COMMISSIONER CHANG: Okay.

10 MR. PIERCE: To the extent -- and, of
11 course, the way that we found out about this before
12 was that there was activities that started to happen
13 on the land. We became aware of what the -- what --
14 I apologize, let me just turn this off.

15 We, you know, certainly reserve the right
16 to at some future date evaluate what is going on on
17 the property, and that would, of course, be a future
18 type of situation.

19 COMMISSIONER CHANG: Okay. That helps me
20 to understand.

21 So it's sort of the world for this project
22 as of July -- what is it -- July 8th, 2020, there's
23 no violation, so we won't get coming before LUC an
24 issue raised by the Intervenors, and I'm assuming
25 this stipulation is -- only binds the Intervenors.

1 If another party that's not been subject to this
2 stipulation raises a question about the compliance of
3 the 1995 D&O, is it the understanding of -- I'm going
4 to -- actually, these are two separate questions --
5 let me first finish my first line of thinking.

6 So that in my mind as of July 8th, 2020,
7 there are no violations of the 1995 D&O. Would you
8 agree with that? Is that what this stipulation says,
9 and the Intervenors are comfortable with that?

10 MR. PIERCE: The Intervenors are
11 comfortable with that, Commissioner.

12 COMMISSIONER CHANG: I guess this is my
13 second question for -- I guess it's for all
14 parties -- that the stipulation only binds the
15 parties that have signed the stipulation. If there
16 is someone outside, any parties that the Intervenor
17 may represent, a separate action may be filed and a
18 separate Order to Show Cause could be filed?

19 MR. PIERCE: That is correct, Commissioner.
20 We certainly have no ability to bind anyone other
21 than the Intervenors who are identified here.

22 COMMISSIONER CHANG: Okay. I would ask
23 for --

24 MR. PIERCE: Which would be --

25 COMMISSIONER CHANG: I'm sorry, go ahead.

1 MR. PIERCE: Yeah, just to be clear for the
2 record, you know, I represent Daniel Kanahale, who's
3 here in his individual capacity. And then, of
4 course, South Maui Citizens For Responsible Growth
5 and Maui Tomorrow Foundation.

6 COMMISSIONER CHANG: Thank you, Mr. Pierce.
7 I'm going to ask the same questions of all the other
8 counsel, if I may, Mr. Chair, to make sure that for
9 the record in my mind it's clear --

10 CHAIRPERSON SCHEUER: Yes.

11 COMMISSIONER CHANG: -- that all parties
12 understand this stipulation only binds the parties to
13 this stipulation.

14 Maybe, Ms. Bronster, you can follow.

15 MS. BRONSTER: Certainly. Mr. Chair, may
16 I?

17 CHAIRPERSON SCHEUER: Please.

18 MS. BRONSTER: Yes, we believe that this
19 stipulation binds the parties to this proceeding, and
20 we are requesting an order from the Commission to
21 follow. And anyone else's rights are as laid out in
22 law, we're not attempting to affect other people's
23 rights. Nobody else is stipulating to this.

24 COMMISSIONER CHANG: Okay.

25 MS. BRONSTER: There are implications, of

1 course, if the Commission does enter the order, which
2 is what we're requesting.

3 CHAIRPERSON SCHEUER: County?

4 MR. HOPPER: I think you correctly stated
5 that the document only binds the signers.

6 I think it's important to note for the
7 County it does have ongoing enforcement ability in
8 addition to the fact the County will have to be
9 reviewing future land use approvals, and if there are
10 issues with them or disagreements, it is, you know,
11 possible to seek the Commission's advice on
12 further -- on issues down the line, if there arises a
13 need for declaratory ruling or something like that as
14 it develops.

15 We are agreeing as of today there are no
16 violations, and, however, I think the County has an
17 ongoing enforcement responsibility under HRS, and,
18 therefore, would have to continue to review the
19 project as the plans are submitted for approvals and
20 continue to go through that responsibility.

21 So we do believe, again, there are no
22 violations today on the property.

23 COMMISSIONER CHANG: Thank you.

24 CHAIRPERSON SCHEUER: Thank you.

25 OP?

1 MS. APUNA: Yes, it's OP's understanding
2 that only the parties who are signatories to the
3 stipulation are bound by it.

4 CHAIRPERSON SCHEUER: Okay. And, sorry, I
5 believe you've answered it already but just last
6 chance, Mr. Pierce.

7 MR. PIERCE: Yes, I think that the County
8 identified the issue quite well.

9 So there are two enforcement mechanisms as
10 we go forward, both the County and the Land Use
11 Commission, depending on what happens on the --
12 within the Petition Area.

13 And, Mr. Chair, if I may, if there's an
14 opportunity, I do want to go back. There was a
15 request of the other parties, but I do want to go
16 back, if I may, at some point, and respond to
17 something that Commissioner Okuda asked of only the
18 Petitioners with respect to one issue.

19 CHAIRPERSON SCHEUER: Briefly, please do
20 that. Well, hold on.

21 Commissioner Chang, did you have anything
22 further?

23 COMMISSIONER CHANG: Yes, Mr. Chair, just
24 have one more question that I want to ask.

25 CHAIRPERSON SCHEUER: Okay. We'll go for

1 Commissioner Chang (frozen screen) Mr. Pierce. I'll
2 see if there's any further questions from
3 Commissioners.

4 Ms. Chang?

5 COMMISSIONER CHANG: My final question is
6 prior to the Petitioners. This is in paragraph 5,
7 Petitioner agree to continue to consult in good faith
8 with lineal cultural descendants.

9 That paragraph I feel very uncomfortable
10 with, so what I'd like to propose is: Petitioner
11 shall consult with lineal cultural decendents, Ahu
12 Moko, as well as the larger community. I mean, I
13 think what we've been hearing from the different
14 parties throughout this process is that they've not
15 been fully engaged in this process.

16 So good faith is a very subjective term, so
17 I'd like to say "shall", and that they shall provide
18 the results of the consultation in their annual
19 reports.

20 I'm not too sure procedurally whether --
21 how -- whether we put that in our decision or whether
22 that's an amendment to the stipulation.

23 CHAIRPERSON SCHEUER: Commissioner Chang, I
24 think procedurally where we would address that is
25 that when we take up the request to adopt this as a

1 motion, you would speak towards not adopting it as a
2 motion, but rather adopting our own separate D&O on
3 this matter referencing.

4 COMMISSIONER CHANG: Well, let me just
5 ask --

6 CHAIRPERSON SCHEUER: That's where I think
7 you would bring that up.

8 COMMISSIONER CHANG: Thank you for that
9 clarification, Mr. Chair.

10 Based upon my statement, does the
11 Petitioners, Ms. Bronster or Mr. Tabata, do you have
12 any objections to the changes to that paragraph that
13 they "shall" consult?

14 MS. BRONSTER: May I, Mr. Chair?

15 I think that the question that we are
16 asking is for -- and we've jointly asked -- is for
17 the Commission to dismiss the Order to Show Cause and
18 lift the stay. And the reason that we included these
19 easements is because we have been listening to the
20 community and a lot of the concerns.

21 So it is certainly our anticipation that we
22 will continue to consult, because there is, you know,
23 much to do between now and the time that we actually
24 get the easements created.

25 But I think that the wording, as Mr. Pierce

1 and others have mentioned, has been very carefully
2 selected, and we're comfortable that we will continue
3 to work with the parties as outlined in paragraph 5.
4 I'm not comfortable with making changes to that
5 language right now.

6 COMMISSIONER CHANG: Okay.

7 CHAIRPERSON SCHEUER: Pardon me. Actually,
8 I don't think that this is the -- I think our ability
9 to try and wordsmith a stipulated agreement live via
10 ZOOM is possibly beyond our capabilities as a body,
11 especially with the number of parties involved here.

12 So I'm willing to have the parties (frozen
13 screen) -- on discussion of any motion that's --

14 COMMISSIONER CHANG: Mr. Chair, you are --
15 I had a hard time hearing you. I'm not asking to
16 wordsmith. I really want to know -- understand the
17 parties' intention on that paragraph.

18 So for me it's very important that I
19 understand how far they're willing to go with respect
20 to the consultation. Thank you.

21 CHAIRPERSON SCHEUER: Okay. Mr. Tabata?

22 MR. TABATA: Thank you. I agree with Ms.
23 Bronster's statements regarding paragraph 5. When I
24 read it, paragraph 5, I do not read the terms "good
25 faith" as a limiting -- a limitation. I believe we

1 are stating affirmatively that we agree to continue
2 to consult and that good faith simply expresses the
3 need to have sincere discussions.

4 So I don't see it as a limiting term. And
5 that the existing wording, I believe, is sufficient
6 to address Commissioner Chang's concern.

7 CHAIRPERSON SCHEUER: County?

8 MR. HOPPER: We don't necessarily have
9 objections, but we'd want to make sure that -- I
10 mean, it's a stipulation that the parties had agreed
11 to, so in making changes and wordsmithing, I think
12 that the Chair had raised, I think, relevant issues
13 might, you know -- I think, the key thing is there an
14 agreement between the Intervenors -- between the
15 Intervenors and the landowners on this issue, so the
16 County will sort of support whatever makes that
17 happen.

18 But at this stage, we leave it up to the
19 Commission and the -- those two parties.

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

22 Ms. Apuna?

23 MS. APUNA: OP will defer to however
24 Commission -- the Commission believes the wording
25 should be made and what effect that will take.

1 CHAIRPERSON SCHEUER: Mr. Pierce?

2 MR. PIERCE: I would agree with OP on that,
3 if the Commission would like, we certainly are --
4 have absolutely no objection to the word "shall" to
5 replace "may".

6 CHAIRPERSON SCHEUER: Okay. Thank you.

7 Commissioner Chang, did you have further
8 questions?

9 COMMISSIONER CHANG: No, I have no further
10 questions.

11 CHAIRPERSON SCHEUER: Thank you very much,
12 Commissioner Chang.

13 Mr. Pierce, you asked for the opportunity
14 to raise one issue related to a response from
15 Pi'ilani Promenade North and South. I'm giving you
16 that opportunity now.

17 MR. PIERCE: Thank you, Mr. Chair.

18 And this does relate to -- a bit to the
19 cultural issues that were just identified.

20 Commissioner Okuda asked, he was referring
21 to Exhibit N of the stipulation attached to the
22 stipulation and asked will the conservation easements
23 be irrevocable. I think were -- was along the lines
24 of the question.

25 And in the Petitioner's response, Ms.

1 Bronster said that this came at the 11th hour, and I
2 just want to repeat the actual facts of this, because
3 the 11th hour is ambiguous from my perspective.

4 But just to clarify once again, the
5 Petitioners, before there was ever a stipulation
6 submitted on June 26, 2020, a supplemental
7 declaration of Robert Poynor, and Mr. Poynor is the
8 principal of Sarofim Realty Advisors, which is the
9 developer of this project, and attached to that --
10 there is a string of representations by the way that
11 are made by the developer there that are now admitted
12 into evidence that relate to the original 1995 D&O.

13 And also attached to it, it simply says,
14 attached hereto is Exhibit N is a copy of the site
15 plan for the Petition Area prepared by Pi'ilani and
16 HPL.

17 So I just want to mention that to clarify
18 the record on that. That's it. Mr. Chair, thank you
19 very much for that chance.

20 CHAIRPERSON SCHEUER: Thank you, Mr.
21 Pierce, for those comments.

22 Commissioner Okuda?

23 COMMISSIONER OKUDA: Thank you, very much,
24 Mr. Chair.

25 This is a followup to a line of questions

1 that Commissioner Chang was raising dealing with
2 binding effect. Let me ask this question, Mr. Chair,
3 and ask if -- with your permission, of course, if any
4 of the parties disagree with the statement I'm going
5 to make.

6 Even though only parties to a stipulation
7 are bound by the stipulation, if the Land Use
8 Commission adopts the stipulation as an order, the
9 order becomes, for lack of a better technical term,
10 law of the case, meaning in future proceedings, if --
11 even if somebody else shows up who didn't sign the
12 stipulation, the Land Use Commission will still be
13 bound to follow and enforce the plain language of the
14 stipulation.

15 Mr. Chair, if I can ask if any of the
16 parties disagree with that statement?

17 CHAIRPERSON SCHEUER: That's fine. I will
18 ask the parties to be as brief as possible beginning
19 with Ms. Bronster.

20 MS. BRONSTER: No disagreement. We are
21 asking that this be an order.

22 CHAIRPERSON SCHEUER: Mr. Tabata?

23 MR. TABATA: No disagreement. I believe
24 Commissioner Okuda is correct that the law of the
25 case law actually will apply as well as other

1 doctrines like res judicata or collateral estoppel.

2 CHAIRPERSON SCHEUER: Mr. Hopper?

3 MR. HOPPER: I would agree, again though,
4 subject to the ongoing obligation to continue to
5 enforce the 1995 Decision and Order, meaning that
6 there can be future violations after this agreement.
7 I think this (indecipherable) has the site plan and
8 with (indecipherable) and those issues dealt with,
9 but we do understand that there are other potential
10 issues that would be subject to enforcement.

11 CHAIRPERSON SCHEUER: Ms. Apuna?

12 MS. APUNA: We don't disagree with
13 Commissioner Okuda's statement.

14 CHAIRPERSON SCHEUER: Mr. Pierce?

15 MR. PIERCE: I just want to clarify again
16 here. I would support what Mr. Hopper just said on
17 behalf of the County, and I would just add that res
18 judicata and collateral estoppel mentioned by
19 Honua'ula Partners would not apply to other parties
20 at all. It certainly wouldn't, and I actually would
21 question whether the law of the case applies.

22 It certainly is something that is going to
23 have to be dealt with by Land Use Commission with
24 respect to its decision-making in the future.

25 Whether or not -- I would actually reserve based on

1 my litigating some of those issues before whether or
2 not and how that would affect other parties.

3 Now, with respect to the parties that are
4 here, certainly the stipulation speaks in terms of
5 exactly what we're doing. Thank you.

6 COMMISSIONER OKUDA: Thank you very much,
7 Mr. Chair.

8 CHAIRPERSON SCHEUER: I have (frozen
9 screen) --

10 COMMISSIONER WONG: Mr. Chair, are you
11 there?

12 CHAIRPERSON SCHEUER: -- Commissioner
13 Okuda.

14 I am here. I might be frozen.

15 COMMISSIONER OKUDA: Yes, Mr. Chair, I said
16 thank you very much, and thank you to all parties for
17 answering that question.

18 CHAIRPERSON SCHEUER: Okay, so nothing
19 further. Great. Thank you.

20 Commissioners, are there questions for any
21 of the parties?

22 COMMISSIONER WONG: Mr. Chair, if there's
23 no other questions, I would like to make a motion.

24 CHAIRPERSON SCHEUER: If there's no other
25 questions, I'm willing to entertain a motion at this

1 time.

2 COMMISSIONER WONG: Mr. Chair, this is
3 Commissioner Wong. I would like to make a motion.

4 CHAIRPERSON SCHEUER: Please.

5 COMMISSIONER WONG: My motion is to adopt
6 the stipulation as agreed to by the parties as a
7 Decision and Order of the Commission and authorize
8 the Chair to sign the stipulation on behalf of the
9 Commission.

10 CHAIRPERSON SCHEUER: A motion has been
11 made by Commissioner Wong. Is there a second?

12 Commissioner Cabral, you're muted, just for
13 audio record. You're seconding the motion?

14 VICE CHAIR CABRAL: Yes, I am seconding the
15 motion.

16 CHAIRPERSON SCHEUER: Okay. Commissioners,
17 we have a motion before us. We are now in discussion
18 on the motion.

19 COMMISSIONER WONG: Chair, this is
20 Commissioner Wong.

21 CHAIRPERSON SCHEUER: I will recognize
22 any (audio difficulty) -- Commissioner Wong.

23 COMMISSIONER WONG: Thank you, Chair.

24 I just want to say on behalf of my motion,
25 I believe that all the parties worked hard and

1 diligently on this motion and that everyone that is
2 agreeing on this stipulation are attorneys and know
3 what they're talking about. And to me if we're
4 trying to change any part of the language, as a
5 layman, it will be hard at this point in time, as you
6 stated. So I just want to leave it as-is, so that's
7 why I'm just saying it -- agreeing to the stipulation
8 as-is, Chair. Thank you.

9 CHAIRPERSON SCHEUER: Thank you,
10 Commissioner Wong.

11 Commissioners, we're in discussion.

12 Commissioner Ohigashi?

13 COMMISSIONER OHIGASHI: Do we have to
14 include specific findings that there are no current
15 violations of the 1995 Decision and Order and that
16 the new site plan for Petition Area attached as
17 Exhibit N to this stipulation satisfied the last
18 sentence of Condition 5 of the original D&O, Decision
19 and Order?

20 So that's my question, and maybe my
21 question should -- is to Mr. Morris, our attorney to
22 regroup.

23 CHAIRPERSON SCHEUER: I was going to ask
24 you if you were asking a question to Mr. Morris in
25 terms of drafting.

1 And, Mr. Morris, if you're able to put
2 yourself on video, that would be helpful.

3 MR. MORRIS: This is Dan Morris. My
4 initial take is that the adoption of the stipulation
5 as a Decision and Order would consist of the findings
6 of no current violations under the facts known to the
7 parties.

8 So my assessment is, no; but, again, that's
9 sort of just off the top of my head at this point.
10 It's my first meeting that I'm staffing, but I'm
11 going to say that the language of the stipulation
12 would consist of those findings.

13 COMMISSIONER OHIGASHI: And so would that
14 apply also to the other request that they had
15 specifically made, for example, that they're -- that
16 we're dismissing the Order to Show Cause proceedings
17 in its entirety, including Phase II proceedings, and
18 we are stating that we lifting the stay imposed by
19 order granting stay of Phase II?

20 MR. MORRIS: Yes.

21 COMMISSIONER OHIGASHI: That's all my
22 questions.

23 CHAIRPERSON SCHEUER: Thank you, Mr.
24 Ohigashi.

25 Mr. Okuda? Commissioner Okuda?

1 COMMISSIONER OKUDA: Thank you, Mr. Chair.

2 I would like to speak in favor of
3 Commissioner Wong's motion, seconded by Commissioner
4 Cabral, and that we simply adopt the stipulation
5 as-is with no additional changes, no additional
6 findings, just adopt it as a Decision and Order, and
7 this is the reason why.

8 First of all, I do agree that this is the
9 result of extensive community participation, hard
10 work by all the attorneys who I know are very, very
11 capable attorneys.

12 Some people might believe that this is not
13 a perfect solution. I dare say that whether it's in
14 front of the Land Use Commission or even in a court
15 of law, there really have been almost never a case
16 where it's a perfect solution.

17 Why I'm speaking in favor of this motion,
18 however, is I believe it meets the needs and the
19 concerns of the community. And when I say
20 "community", it's not only the residents of the
21 County of Maui who testified at the hearing against
22 the, for lack of a better term, the mega mall
23 project, but also the Petitioners and the landowners
24 who I also consider with their attorneys members of
25 the communities here. And so it reflects, I believe,

1 a democratic, thought out, compromise or work out, a
2 way of moving forward.

3 As far as making specific findings, I would
4 urge everyone just to vote in favor of adopting the
5 stipulation as-is, whether there's going to be impact
6 in the future about having findings or no findings,
7 it is what it is.

8 And if there's a lack of findings that
9 might hurt someone, it might help someone, but that's
10 for a future situation.

11 I do share the community's concern about
12 protection of cultural resources and items which we
13 are charged, under the Hawaii State Constitution, to
14 exercise a trust and public trust over.

15 I do agree that the County of Maui, and
16 frankly the Office of Planning and other on
17 government agencies are capable of enforcement.

18 I'm also convinced by the fact that there
19 has been active public participation by citizens in
20 the community, that the citizens of Maui will keep a
21 careful watch not only on this project but other
22 things that deal with our precious natural resources.

23 So for those reasons, and other good
24 reasons in the record, I ask that the motion be
25 supported.

1 Thank you, Mr. Chair.

2 CHAIRPERSON SCHEUER: Thank you, very much,
3 Commissioner Okuda.

4 Commissioner Chang, followed by
5 Commissioner Ohigashi.

6 COMMISSIONER CHANG: Thank you, Mr. Chair.

7 I will -- I take seriously Commissioner
8 Okuda's -- his recommendation. I mean, I will vote
9 in favor of the motion; however, I have some real
10 concerns about paragraph 5, the good faith, because I
11 think there is a higher standard than just good
12 faith. Good faith can mean many different things. I
13 think they have an obligation, as do we as Land Use
14 Commissioners, to ensure that there's an affirmative
15 obligation to preserve and protect.

16 Clearly, they know who the cultural and
17 lineal decedents are. They have come before this
18 Commission. There have been people who've even
19 testified today that they have a connection to these
20 lands.

21 So I will -- it is my expectation that
22 their representations of the counsel today that they
23 will consult with lineal cultural descendants, and
24 these groups will materialize and that we won't hear
25 the same kinds of testimony in the future.

1 But I am inclined to vote in favor of the
2 motion. Thank you.

3 CHAIRPERSON SCHEUER: Thank you very much,
4 Commissioner Chang.

5 Commissioner Ohigashi?

6 COMMISSIONER OHIGASHI: Yes, I'm also
7 inclined to vote in favor of the motion. However, I
8 noticed that in the stipulation on page No. 9, they
9 provided to us a Decision and Order, and my
10 understanding is that if we are to adopt the
11 stipulation, we -- is it correct to say that if we
12 are adopting this stipulation, we are adopting the
13 Decision and Order form that has been attached on
14 page No. 9?

15 I just want that for the record, because I
16 think that if we adopt it and it's been submitted to
17 us, that is how the Decision and Order would read.

18 CHAIRPERSON SCHEUER: Mr. Morris?

19 MR. MORRIS: I don't understand the
20 question. If it's adopted at the Decision as Order
21 of the Commission, then that's it. I don't quite
22 understand the question.

23 COMMISSIONER OHIGASHI: Mr. Morris, if you
24 have a copy of the stipulation, if you look on page
25 No. 9. The parties have provided us a Decision and

1 Order form as part of the stipulation.

2 So my question is: By adopting the
3 stipulation, we are adopting this form of the
4 Decision and Order?

5 MR. MORRIS: That's correct.

6 COMMISSIONER OHIGASHI: Okay. That's all.
7 I'm in support of the motion, Mr. Chair.

8 CHAIRPERSON SCHEUER: (Frozen screen).

9 Thank you very much, Commissioner Ohigashi.

10 Are there further comments, Commissioners?

11 I'm getting warning my internet connection is
12 unstable. I apologize for that.

13 Commissioner Okuda?

14 COMMISSIONER OKUDA: Thank you, Mr. Chair.

15 If I can just respond to Commissioner
16 Chang's concern which I also share, but if I can say
17 this. I believe the real power in the Decision and
18 Order, if it is adopted, is the fact that lineal
19 descendants, people who have a real concern in the
20 community will continue their participation in this
21 matter.

22 And so even though, yes, if we were
23 drafting the document from scratch I would probably
24 agree with the suggestions that Commissioner Chang
25 has proposed. But I feel confident that given the

1 history that -- of community participation here, the
2 real strength in protecting the resources that we are
3 charged to protect is the fact that we will not only
4 have this written stipulation as part of the record
5 and this docket runs with the land, but it's also
6 going to be the fact that there's going to be real
7 community participation.

8 So, thank you, Mr. Chair. That's all the
9 comments I have.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Okuda. (Frozen screen.) -- is there --
12 speaking to the motion or other gestures?

13 Commissioner Cabral?

14 VICE CHAIR CABRAL: Yes, I wanted to speak
15 to the motion, and thank my fellow Commissioner Wong
16 and Commissioner Okuda also for his legal support of
17 the -- what I think Commissioner Wong and I are
18 probably very much more, since we are not lawyers,
19 we're somewhat in the common sense field, and I'd
20 like -- I'm very supportive of the fact that the --
21 all the parties came to this agreement.

22 And I can appreciate concerns that
23 Commissioner Chang has that, yes, there's things that
24 will go wrong. My whole life, I get paid to take
25 care of things that go wrong all the time. So

1 hopefully all the different parties are so much more
2 aware through working through the years and years and
3 through the efforts with the community and with the
4 Intervenors and with the -- all the different parties
5 involved have tried to work through some of these
6 things, and they're hopefully so much more aware of
7 the concerns of the other members of the community
8 that I'm hopeful that they'll be able to proceed to
9 take care of this, and we won't have to hear this
10 again.

11 Thank you very much. I'm in favor of
12 having this hopefully get settled. Thank you.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Cabral.

15 Commissioner Aczon, did you have anything
16 to share?

17 VICE CHAIR ACZON: No, I don't have
18 anything further. I believe everybody mentioned that
19 the community -- well, that the -- all the parties
20 worked hard on this one, and I believe because of
21 their legal background they considered every word
22 that the people said in this agreement and
23 stipulation, and for us to change it at the last
24 minute might change the whole agreement. So I'm in
25 favor of the motion.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioner Giovanni?

3 COMMISSIONER GIOVANNI: I'm also in favor
4 of the motion. I commend the parties for their 11th
5 hour coming together and the stipulation, and I think
6 it's a workable solution, so thank you.

7 CHAIRPERSON SCHEUER: Okay. If there is no
8 further comments (frozen screen).

9 COMMISSIONER WONG: We lost him. Chair
10 Scheuer, you're frozen.

11 CHAIRPERSON SCHEUER: Am I still frozen?
12 Am I still frozen?

13 COMMISSIONER WONG: No.

14 CHAIRPERSON SCHEUER: Okay.

15 COMMISSIONER WONG: You're back.

16 CHAIRPERSON SCHEUER: Perhaps it was the
17 universe saying to make my remarks brief.

18 I had the opportunity to try and mediate
19 some of this dispute earlier. While those initial
20 discussions did not result in a stipulation, I had
21 the chance to observe all the parties. The
22 incredible -- incredibly capable counsel each of the
23 parties have, as well as the commitment of all of the
24 parties including all of the Intervenors who are
25 there indeed as volunteers. So I'm very comfortable

1 with the language, and I'm very gratified that this
2 step has been taken.

3 This is not the end of the issue, but it is
4 where we need to go to be able to move forward
5 collectively.

6 With that, Mr. Orodener, (frozen screen).

7 EXECUTIVE OFFICER: Thank you, Mr. Chair.

8 The motion is to adopt the stipulation as
9 ordered to authorize the Chair to sign it on behalf
10 of the Commission.

11 Commissioner Wong?

12 COMMISSIONER WONG: Aye.

13 EXECUTIVE OFFICER: Commissioner Cabral?

14 VICE CHAIR CABRAL: Yes.

15 EXECUTIVE OFFICER: Commissioner Aczon?

16 Commissioner Aczon?

17 VICE CHAIR ACZON: Yes.

18 EXECUTIVE OFFICER: Commissioner Giovanni?

19 COMMISSIONER GIOVANNI: Aye.

20 EXECUTIVE OFFICER: Commissioner Chang?

21 COMMISSIONER CHANG: Yes.

22 EXECUTIVE OFFICER: Commissioner Okuda?

23 COMMISSIONER OKUDA: Yes.

24 EXECUTIVE OFFICER: Commissioner Ohigashi?

25 COMMISSIONER OHIGASHI: Yes.

1 EXECUTIVE OFFICER: Chair Scheuer?

2 CHAIRPERSON SCHEUER: Aye.

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

5 CHAIRPERSON SCHEUER: Thank you very much
6 and congratulations to the parties.

7 Our next agenda item, there was a request
8 from Maui County for an hour's recess to prepare.

9 Is that still the case, Mr. Hopper?

10 MR. HOPPER: I believe we have a different
11 counsel representing the Department of Environmental
12 Management in this case, if they were the party, so I
13 would want to -- if they're on the line, I'd want to
14 check to see where they are at before lunch.

15 MS. OANO: Hi, this is Jennifer Oana. I'm
16 a Deputy Corporation Counsel for DEM. I don't
17 believe we made that request, so we're -- the only
18 thing I need to do is request maybe a ten-minute
19 recess. I need to get the director here. He's been
20 watching from his office, and I just texted him.

21 CHAIRPERSON SCHEUER: With the Commission's
22 permission, I'm going to request a 15-minute recess
23 to 11:40 where we'll take up the next agenda item.

24 Is that okay, Commissioners? If not -- so
25 thank you very much to the parties on the previous

1 docket. We will reconvene this hearing for the next
2 agenda item SP97-390 at 11:40 A.M.

3 (Recess taken.)

4 CHAIRPERSON SCHEUER: Okay. We have
5 Commissioners Cabral, Wong, Okuda, Ohigashi, Chang,
6 Aczon, Giovanni and myself. It is 11:42 A.M., we're
7 going to reconvene the meeting.

8 SP97-390 County of Maui (Central Maui
9 Landfill)

10 Our next agenda item is a meeting on Docket
11 No. SP97-390 to consider a Fourth Amendment to the
12 State Land Use Commission Special Permit for the
13 proposed Central Maui Landfill facilities project at
14 Tax Map Key (2)3-8-003 Portion of Lots 19 and 20,
15 Pu'unene, Maui, Hawaii.

16 Will the Parties on this docket please
17 identify themselves for the record?

18 MS. OANA: Good morning, Mr. Chair,
19 Commissioners. My name is Jennifer Oana, Deputy
20 Corporation Counsel for the County of Maui on behalf
21 of and with the Department of Environmental
22 Management. You may hear me refer to them as DEM.

23 Represented today by the Director Eric
24 Nakagawa, sitting over there. Also in the room with
25 me is the Present Manager Elaine Baker, and our

1 Consultant Mark Roy from Munekiyo Hiraga.

2 CHAIRPERSON SCHEUER: Going next -- oh, go
3 ahead.

4 MS OANA: As you just stated on the fourth
5 amendment to our Special Permit for the Central Maui
6 Landfill facility, the fourth amendment has three
7 components.

8 CHAIRPERSON SCHEUER: We're just doing
9 appearances right now.

10 MS. OANA: Okay. Thank you.

11 CHAIRPERSON SCHEUER: Hold your fire; we'll
12 get to you.

13 MS. OANA: I'm ready to go.

14 CHAIRPERSON SCHEUER: Ms. Apuna?

15 MS. APUNA: Good morning, Chair, Deputy
16 Attorney General Dawn Apuna on behalf of the State
17 Office of Planning. Here with me today is Rodney
18 Funakoshi and Lorene Maki.

19 CHAIRPERSON SCHEUER: Okay. Mr. Hopper, I
20 notice you're still here as well.

21 MR. HOPPER: Yeah, the County of Maui
22 Department of Planning is here if you have questions.
23 Michael Hopper, Deputy Corporation Counsel. With me
24 are Deputy Director Jordan Hart and Kurt Wollenhaupt
25 as well from our office. Thank you.

1 CHAIRPERSON SCHEUER: Thank you very much.
2 Okay. No other appearances. Let me update the
3 record.

4 On March 23rd of 2009, the Commission
5 mailed the order approving the third amendment to the
6 LUC Special Permit.

7 From October 8, 2009 through August 7th of
8 2018, the Commission received correspondence and a
9 photographic map in accordance with Condition 16 of
10 the approval and various comments from the Office of
11 Planning on the County's Draft Environmental
12 Assessment and proposed amendments to the State
13 Special Permit. The Commission also received and
14 acknowledged the County's correction to the third
15 amendment.

16 On August 5th of 2019, the County responded
17 to the LUC comments on its proposed amendment.

18 From February 18th of this year until
19 June 25th the Commission received a copy of the Maui
20 Planning Department's letter to Maui Environmental
21 Services and advance materials for the proposed
22 fourth amendment to this Special Permit all of which
23 are part of the record.

24 On June 25th, 2020, the Commission received
25 from County of Maui its letter of transmittal

1 summarizing the documents provided to the LUC for the
2 special permit application.

3 On June 30, the Commission mailed the July
4 8th and 9th, 2020, Notice of Agenda to the Parties
5 and to our Statewide and Maui regular and email
6 mailing lists.

7 On July 1st, a few days ago, the Commission
8 received the Office of Planning's comment letter on
9 this docket.

10 The procedures for this docket will be the
11 same as the procedures for the first docket. I will
12 acknowledge any written testimony received and the
13 organization affiliated with the testifier, if noted.

14 I will then call for any preregistered
15 testifiers. I will then call for any members of the
16 audience who are not preregistered to testify.

17 Each witness will be brought into the
18 meeting as a panelist, sworn in and given two minutes
19 to testify, which may be followed by questions from
20 any of the parties.

21 Following all of the testifying -- public
22 testimony on this matter, I will give an opportunity
23 for the parties to admit any exhibits if there are
24 any further exhibits on to the record, and then the
25 opportunity for the Petitioner to present their case.

1 From time to time, if necessary, we will
2 take breaks as noted previously.

3 Are there any questions on our procedures
4 today from the parties? If you would orally respond,
5 please.

6 MS. OANA: No questions.

7 MR. HOPPER: No questions, Chair.

8 CHAIRPERSON SCHEUER: Thank you, Mr.
9 Hopper.

10 MS. APUNA: No questions.

11 CHAIRPERSON SCHEUER: Okay. Great.

12 Mr. Chief Clerk, has there been any written
13 testimony received on this docket?

14 CHIEF CLERK: Mr. Chair, Riley Hakoda,
15 Chief Clerk. No testimony received that I'm aware
16 of.

17 CHAIRPERSON SCHEUER: Okay. Has anybody
18 registered to speak as a testifier on this docket?

19 CHIEF CLERK: No, Mr. Chair, no registered
20 witnesses.

21 CHAIRPERSON SCHEUER: Okay. For the
22 attendees in the attendee function of this ZOOM
23 meeting, if you wish to testify in this matter,
24 please, use your raise-hand function, and I will
25 allow you to testify on this matter.

1 Going once, going twice, I do not see
2 anybody who is wishing to testify on this matter, so
3 there is no public testimony on this matter.

4 With that, now you can proceed, DEM and
5 counsel, with your presentation.

6 MS. OANA: Thank you, Mr. Chair. We are
7 here for our fourth amendment request -- request for
8 a fourth amendment to our special permit for our
9 Central Maui Landfill system. There are several
10 components to this request for fourth amendment.

11 The first component is to add approximately
12 40 acres of land to the special permit area. This
13 land would be for our Central Maui Landfill
14 facilities expansion project. We have an Integrated
15 Solid Waste Management Plan, and one of the goals of
16 that plan is to reduce the County's waste treatment
17 of the landfill by at least 60 percent.

18 This expansion project would allow the
19 County to improve the landfill facilities and
20 establish programs for recycling and diversion to
21 reduce the waste into the landfill.

22 The second component to this fourth
23 amendment request is to remove approximately 16 acres
24 of what is in your materials referred to as Parcel
25 20. This piece of land is not owned by the County.

1 At one time years ago, it was contemplated that the
2 County would purchase it and use it for the landfill,
3 but that did not happen. So this fourth amendment is
4 requesting to remove that area of land from the
5 Special Permit Area.

6 And the last, the third prong of this
7 special permit is to, as far as time extension, to
8 October 31st, 2028.

9 Over the years, the County has come before
10 this Commission to request amendments for land
11 expansion as well as time extension. This time
12 extension would coincide with the County Special Use
13 Permit that was approved by the Maui Planning
14 Commission for the same uses.

15 At this time, I'd like to introduce Mark
16 Roy from Munekiyo and Hiraga who will give you a
17 presentation on the project.

18 CHAIRPERSON SCHEUER: Okay. I will need to
19 swear you in. Do you have a PowerPoint that you're
20 planning to share via share screen or --

21 MR. ROY: Let me just share the screen.

22 CHAIRPERSON SCHEUER: Okay. Hold on, hold
23 on. Let me swear you in first.

24 Do you swear or affirm the testimony your
25 about to give is the truth?

1 THE WITNESS: I do.

2 CHAIRPERSON SCHEUER: Okay, so go ahead

3 MARK ROY

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

8 DIRECT EXAMINATION

9 MR. ROY: Okay. Can everyone see the
10 shared PowerPoint?

11 CHAIRPERSON SCHEUER: No. Currently, we
12 see, I believe, the share screen options. We're not
13 viewing your PowerPoint yet.

14 COMMISSIONER GIOVANNI: I see the
15 PowerPoint.

16 COURT REPORTER: Also, Roy, this is Jean
17 McManus -- excuse me, Mark. This is Jean McManus the
18 court reporter. You need to speak up.

19 CHAIRPERSON SCHEUER: Okay, go ahead.

20 MR. ROY: Good morning, Chair, members of
21 the Commission. My name is Mark Roy with the firm
22 Munekiyo Hiraga. We're acting as the planning and
23 permitting consultants with this project.

24 Again, today on behalf of the County of
25 Maui --

1 COURT REPORTER: Excuse me. Can you please
2 speak louder? This is the court reporter.

3 MR. ROY: Sure.

4 COURT REPORTER: Thank you.

5 MR. ROY: Sure, sorry about that.

6 Thank you for the opportunity to present
7 this important project to you all today. Along with
8 noted representatives of the County of Maui, we also
9 have members of the project team in attendance with
10 us. They would be happy to answer any questions the
11 Commission may have following the presentation today.

12 So we have the engineer company called
13 Amar, we have a surveyor with us, R.T. Tanaka
14 Engineers. Our traffic consultant Fehr & Peers,
15 Archeologist Scientific Consultant Services, and our
16 cultural consultant, Cultural Surveys Hawaii, and as
17 mentioned, I'm representing Munekiyo Hiraga. We're
18 acting as the planning consultants for this project.

19 The requested amendment to the state permit
20 that's before the Commission today -- it's also being
21 referred to as the fourth amendment -- relates to the
22 addition of about 40 acres of land through the
23 Central Maui Landfill property in Pu'unene, Maui to
24 allow the development of what's being referred to as
25 the Central Maui Landfill facilities project, CML

1 facilities project in short.

2 This project is very hot, as Jennifer
3 mentioned, is intended to implement the
4 recommendations from the County's Integrated Solid
5 Waste Management Plan and further extend the life of
6 the adjacent Central Maui Landfill facility by
7 increasing the amount of waste that is diverted away
8 from landfill disposal.

9 The proposed facilities project will
10 feature an office building, an abandoned vehicle
11 area, a metals processing area, an open construction
12 and demolition material recovery area, a household
13 hazardous waste area, an electronic waste collection
14 area and storage area, as well as a warehouse and
15 accompanying storage area.

16 There will also be a refuse collection
17 office, truck parking, a maintenance area as well as
18 related infrastructure improvements.

19 The development of this project will
20 essentially allow the DEM to consolidate its solid
21 waste operations at the Central Maui Landfill. Due
22 to the sustainability processes involved with this
23 facility, it's estimated that the project will allow
24 the capacity of the existing landfill to be extended
25 to about 2042.

1 So this is a busy slide, but it's intended
2 to provide a history of the permitting at the Central
3 Maui Landfill. Due to its location on ag land and
4 its changing boundary configurations over time which
5 is due to the use of various cavities in the ground
6 that are created by neighboring HC&D quarrying
7 operations over the years.

8 The Central Maui Landfill has historically
9 been permitted by special permits. Two State special
10 permits and one County special permit govern the
11 existing landfill property.

12 The first special permit refers to SP86-359
13 was approved by the State Land Use Commission in
14 1986, which allowed for the opening of the landfill
15 in 1987 on 55 acres of land. There was one
16 subsequent amendment to this special permit. It was
17 approved in 2006. This allowed for the handling of
18 special waste at the landfill.

19 The other special permit, the second
20 special permit referred to as SP97-390, which is the
21 permit that's focused for today's meeting was
22 approved in 1997 by the Land Use Commission and
23 allowed the expansion of the landfill onto about
24 30 acres of land.

25 There have been three amendments to this

1 permit approved since the early 2000's. These
2 various amendments allowed for a new entrance
3 facility, a minor expansion for an access road, an
4 additional 41-acre expansion at the landfill and
5 various housekeeping actions, as well such as an
6 inter-agency department permit transfer to the DEM,
7 and a time extension of the permit to October 31st,
8 2018.

9 The special permit for these lands was
10 approved in 2008 by the County and remains valid
11 until October 31st, 2028, as Jennifer mentioned.

12 So one of the requests today is to have the
13 expiration date for both the State and County permits
14 essentially mirror one another.

15 As Jennifer mentioned, the request before
16 the Commission today is a three-pronged request.

17 The first is to include about 40 acres.
18 It's just under 40 acres for development of the
19 Central Maui Landfill facilities project on the TMK
20 that was specified earlier.

21 The second is a time extension of the State
22 permit, the State special permit to October 31st,
23 2028, and then the third, as Jennifer had mentioned,
24 the removal of a portion of TMK 3-8-003, Parcel 20
25 which is not owned by the County.

1 For orientation purposes, I think most
2 people know where the Central Maui Landfill is. This
3 is a map showing its location along Pulehu Road, and
4 it's just located to the southeast of Kahului on
5 Maui.

6 The shaded area on this slide depicts the
7 40 acres that we're talking about today for the CML
8 facilities project, and I'll just point to the
9 cross-hatched parcel. This is Parcel 20, and a
10 portion of this parcel is being requested for removal
11 from the permit.

12 So the entirety of the site that's
13 delineated by the dashed line on this graphic
14 approximates the limits of the Central Maui Landfill
15 facility.

16 This is a copy of the aerial photo that's
17 on file with the Land Use Commission. This depicts
18 the existing condition of the area, obviously
19 changing year by year, but it shows the area that's
20 covered by the special permits for the Central Maui
21 Landfill.

22 As you can see, there is a buffer along
23 Pulehu Road, as well as you can see some of the
24 neighboring quarrying operations to the north as
25 well.

1 The yellow line importantly for further
2 discussion today delineates the area of the landfill
3 that's permitted by the special permit that is being
4 discussed today.

5 This next slide is a survey, an accurate
6 survey of the Central Maui Landfill that was
7 completed during project planning for this particular
8 project. As you can see, there are two colored areas
9 on this slide. The pink area is the 40-acres CML
10 facility project site that the County would like to
11 have added to this particular permit.

12 And then the yellow area identifies, it's
13 about just over 16 acres of land that's within the
14 permit that the County would like to be removed as it
15 no longer owns the land. It's worth noting at this
16 point that during the process of preparing this
17 survey and accompanying metes and bounds description,
18 the existing permitted area was determined to be
19 72.927 acres, which actually brings me to the next
20 slide.

21 This slide is intended to summarize the
22 area covered by this particular special permit. I'm
23 showing how it will increase with the actions that
24 are proposed today. So the first line item here, the
25 existing permitted area based on the survey, it's

1 just under 73 acres, 72.927.

2 The area to be removed from Parcel 20 is
3 16.841 acres. And then the CML facilities project
4 area, which is an addition, is 39.573 acres, based on
5 the survey, and that would bring the total permitted
6 area for this permit up to 95.659 acres, and we note
7 that that's an expansion of about 23 acres, or more
8 precise 22.732 acres.

9 In terms of process, just a bit of
10 background for the Commission. The planning process
11 for this project actually started about five years
12 ago with the initiation of the State Environmental
13 Review process.

14 There was a Chapter 343 Environmental
15 Assessment that was prepared by the County, and the
16 intent of that document is to evaluate the potential
17 impacts of the proposed project. There was a finding
18 of no significant impact determination granted at the
19 conclusion of that process and was actually published
20 in August of last year. That determination was
21 unchallenged.

22 Following completion of the EA process, a
23 public hearing was then held on December 10th, last
24 year, before the Maui Planning Commission, and the
25 amendments to both the State and County Special

1 Permits were taken up at that meeting.

2 The Planning Commission at that meeting
3 took action and approved both amendments which is why
4 we're here before the Commission today.

5 Very briefly, this is a conceptual site
6 plan for the facilities project. It shows the
7 proposed configuration of the new facilities that I
8 mentioned earlier on the 40-acre site. As you can
9 see, it's an interesting L-shaped site, and you can
10 see the existing Central Maui Landfill facility is
11 adjacent on the southern boundary of this site.

12 And, again, for orientation purposes,
13 Pulehu Road runs along the western boundary of the
14 site. Kahului is situated nearby the northwest. And
15 as I mentioned at the beginning of the presentation,
16 this project really seeks to implement the
17 recommendations of the County's solid waste
18 management plan, the Integrated Solid Waste
19 Management Plan, to consolidate the existing solid
20 waste management operations and to achieve a
21 diversion of substantial waste streams away from the
22 existing landfill.

23 There are a couple of important land use
24 designations that come into play for this particular
25 request today. The 40-acre facilities property was

1 purchased from A&B actually by the County in 2012.
2 And as you can see here on this graphic, the majority
3 of the site is actually designated by the Maui Island
4 Plan, the County's Maui Island Plan, which is part of
5 the General Plan framework for the County. It's
6 designated in pink here as an Urban growth area but
7 designated for future growth within the County.

8 Important Agricultural Lands is the second
9 important designation that we wanted to spend a bit
10 of time on during the presentation today. The County
11 does also recognize that about 22 acres, which is
12 still half of the facility site, was designated as
13 Important Agricultural Lands as a result of the 2009
14 declaratory petition that was filed by the previous
15 landowner A&B prior to it being purchased by the
16 County.

17 Those special permits are allowed on IAL
18 lands, to our understanding, pre-consultation with
19 the Office of Planning and also the Department of
20 Agriculture is a requirement that is set forth in the
21 Land Use Commission's rules. As such, early
22 notification of the County's request to amend this
23 special permit was provided to these two agencies
24 early during the initial phases of the EA preparation
25 process.

1 All comments received from Office of
2 Planning and Department of Agriculture were
3 thoroughly reviewed and responded to and actually
4 incorporated as part of the Final EA for the project.

5 The 22-acre IAL portion of the project site
6 amounts to about .08 percent of the approximately
7 27,000 acres of IAL lands that were designated on
8 Maui.

9 This next slide shows those lands, the
10 27,000 acres, and spreading across the Central Valley
11 on Maui quite extensively. These are currently
12 designated as IAL lands, and noteworthy here is the
13 red outline in the center of the slide. This is the
14 40-acre project site that we're discussing as part of
15 the review today. 22 acres of which are designated
16 IAL.

17 The County feels that the public benefit to
18 the community that will result from use of this small
19 amount of IAL land outweighs the value of preserving
20 this land for future agriculture.

21 And, you know, we mentioned that
22 particularly given the substantial increase in vacant
23 agricultural lands that has resulted in recent years
24 with the closure of sugarcane activities on Maui, I
25 believe those were seized back to 2016.

1 However, we do want to note that the County
2 is agreeable to Office of Planning's proposed
3 condition that the Petition to remove the 22 acres
4 from the 2009 declaratory order be filed within a
5 year of approval of this permit amendment.

6 This final map really kind of zooms in back
7 down to the site. Again, you've got L-shaped
8 facility site depicted on this slide in black. You
9 can see the portion that is designated IAL, which is
10 about 22 acres.

11 And as you can see, most of the site,
12 again, is within the Urban growth boundary of Maui
13 County's General Plan. I believe it's just about
14 38 acres is covered by the Urban growth boundary
15 designation, but we wanted to show this just with
16 both important designations layered onto a single
17 slide.

18 In closing, the County has evaluated the
19 proposed fourth amendment in relation to all
20 applicable criteria that is set forth in both Hawaii
21 Revised Statutes Chapter 205 and 205A, as well as the
22 Land Use Commission's own administrative rules that
23 relate to special permit.

24 A comprehensive consistency discussion was
25 provided in terms of these decision-making criteria

1 in the Final EA such is contained in Chapter 3 of the
2 Final EA document.

3 And before wrapping up just to revisit the
4 three-pronged request before the Commission today as
5 for a fourth amendment, Special Permit No. SP97-390,
6 to include approximately 40 acres for the development
7 of the Central Maui Landfill facilities project.

8 The second is for a time extension of this
9 permit to October 31st, 2028, again, to mirror the
10 same expiration date of the County special permit.

11 And the third is the removal of a portion
12 of Parcel 20 that is no longer owned by the -- was
13 not owned by the County. They seek to remove that
14 portion of land permit.

15 And in summary, the total permitted area,
16 should these amendments be approved, would be
17 95.659 acres, and that's documented on a recent
18 survey that was actually requested by LUC staff as
19 part of this process.

20 So with that, on behalf of the County and
21 rest of the team that's on the line, we thank you for
22 the opportunity to present this project before you
23 today and the permit amendment, and we'd be happy to
24 respond to any questions that the Commission may have
25 during its review and deliberations today.

1 Thank you very much.

2 CHAIRPERSON SCHEUER: Thank you very much.

3 Commissioners -- and if you'll stop sharing
4 the screen.

5 Commissioners, are there questions for the
6 County?

7 Commissioner Aczon?

8 Oh, Commissioner Cabral.

9 VICE CHAIR CABRAL: Yes. I have a question
10 for the County. In all of this, and I'm not sure if
11 I catch -- caught all of it -- but public hearings, I
12 know that no one is -- came today to testify for or
13 against this project, but I wanted to just review in
14 your County what kind of public knowledge
15 information -- what kind of public notice were -- are
16 you requiring to put out there?

17 And so in other words, is the public aware
18 of this expansion request? Are they, you know -- I
19 mean, so often there's going to be some neighbor
20 who's unhappy about it and would normally be here
21 telling us so.

22 So is the public aware what was your
23 requirements and what have you done? Public
24 meetings? Public notices? I just want to know how
25 well the rest of the world in Maui know what's going

1 on. Thank you.

2 CHAIRPERSON SCHEUER: Thank you,
3 Commissioner Cabral.

4 Go ahead.

5 MR. ROY: Thank you for the question.

6 I can certainly take a shot at responding,
7 and if the Planning Department wishes to add, they
8 can do so.

9 As I mentioned, this has been quite a
10 process. We've been going for about five years now
11 with the Environmental Assessment and also the permit
12 amendment applications.

13 To Commissioner's question, there were
14 notification requirements as part of the application
15 to amend the County's special permit. So there was
16 certainly notification of the general public of this
17 project as it worked its way through the process.

18 There were also, you know, a couple of key
19 steps during the Environmental Assessment process
20 where we published a draft EA through the State
21 Office of Environmental Quality Control's website and
22 also the Final EA, the Draft EA of which allowed for
23 opportunity for public review and comments.

24 So there have certainly been several
25 opportunities for public review along the way, and

1 the Planning Commission's public hearing that we had
2 provided opportunity to the public testimony as well.

3 COMMISSIONER CABRAL: Okay. My second part
4 of that question would be: Then did the public --
5 did any members of the public show up at these
6 hearings or send you testimony or present an opinion?
7 I mean, have you gotten any feedback from the public?

8 MS. OANA: I'm going to have to check my
9 records.

10 Planning Department, I don't know if you
11 have that available.

12 I don't see them online anymore.

13 CHAIRPERSON SCHEUER: No, Mr. Hopper is
14 there.

15 I think it was a question for Planning, Mr.
16 Hopper?

17 MR. HOPPER: Sorry, I didn't quite catch
18 that. What was the question about? Regarding
19 public --

20 CHAIRPERSON SCHEUER: The question was what
21 did -- basically was there opposition to this, and
22 the DEM deferred to Planning.

23 MR. HOPPER: Now, I'm being told by our
24 planning, Staff Planner here, Kurt Wollenhaupt, and
25 Deputy Director Jordan Hart that there was no

1 negative testimony they received.

2 You also have as part of your record the
3 minutes of the Planning Commission meetings, the
4 department staff report that would have included any
5 written testimony.

6 That's correct, Kurt, right?

7 MR. WOLLENHAUPT: Yes.

8 MR. HOPPER: All the written testimony, and
9 so that's what I'm being told. Again, the record is
10 there, and I think if you've got questions, we can
11 respond, but that's what I'm being told.

12 VICE CHAIR CABRAL: Okay. Thank you very
13 much. Very impressive, thank you.

14 MR. HOPPER: I'm sorry. There's also
15 comments in the EA that is --

16 VICE CHAIR CABRAL: Okay.

17 MR. HOPPER: -- to refer to.

18 CHAIRPERSON SCHEUER: Is that it,
19 Commissioner Cabral?

20 VICE CHAIR CABRAL: Yes, I'm satisfied that
21 there's not a big movement, I mean Mr. Pierce isn't
22 here, I mean. Yes, thank you.

23 CHAIRPERSON SCHEUER: Okay. Commissioners
24 Chang, then Okuda, then Ohigashi.

25 COMMISSIONER CHANG: Thank you, Mr. Chair.

1 I appreciate the thorough presentation. I
2 just have a few questions.

3 One is a follow-up to Commissioner Cabral's
4 questions. In addition to the public testimonies,
5 have there been any complaints filed by members of
6 the public on the operations, for example, dust or
7 debris, that you are aware of?

8 MS. OANA: I'm not sure. I'm going to have
9 to refer to our Director Eric Nakagawa.

10 MR. NAKAGAWA: Eric Nakagawa.

11 As far as dust nuisances and all that kind
12 of stuff, basically we're --

13 COURT REPORTER: I'm sorry, you need to
14 speak up. Excuse me, Eric, you need to speak up. I
15 can't hear you well.

16 MR. NAKAGAWA: Can you hear me now?

17 COURT REPORTER: Yes.

18 MR. NAKAGAWA: Good, okay.

19 So as far as dust nuisances and that kind
20 of stuff, that's all pretty much covered underneath
21 our Department of Health operating permit and that
22 kind of stuff, so those kind of stuff is mitigated
23 through on-site water troughs and dust control and
24 that kind of means.

25 It's in the middle -- I don't know if all

1 of you are aware -- in the middle of basically
2 plantation, I guess, area, or used to be sugarcane.
3 So there's real no residential, any type of
4 commercial development anywhere around us, so maybe
5 that's why we've never had any complaints about that
6 kind of stuff in the past.

7 As far as the air control and that kind of
8 stuff, there's standard protocols of -- by DOH of --
9 they're -- what are they called? Fence -- they're
10 called litter fences. And so that traps any type of
11 things that might blow, that kind of stuff.

12 So hopefully that answers your question.

13 COMMISSIONER CHANG: Actually, that does.
14 That's very helpful. So you said there's -- how far
15 is the nearest residence?

16 CHAIRPERSON SCHEUER: If I may, I neglected
17 to swear in the director. Sorry. He jumped in.

18 Just to confirm the testimony you just gave
19 and anything subsequently is the truth?

20 MR. NAKAGAWA: Yes.

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

25 DIRECT EXAMINATION

1 CHAIRPERSON SCHEUER: Go ahead,
2 Commissioner Chang.

3 COMMISSIONER CHANG: So how far is the
4 nearest residence from the landfill?

5 MS. OANA: Just to guess, maybe about five
6 miles, but the Director is checking on his laptop.

7 COMMISSIONER CHANG: Okay. A good guess is
8 okay.

9 MR. NAKAGAWA: It's over a couple miles.
10 I'm just trying to use Google map right here.

11 CHAIRPERSON SCHEUER: If I may,
12 Commissioner, since this is a special permit
13 proceeding, it'd be good if your questions are
14 phrased in terms of what is on the record before us,
15 because we're not conducting additional evidentiary
16 proceedings here.

17 MR. NAKAGAWA: Oh, sorry about that.

18 COMMISSIONER CHANG: Okay, no. Thank you
19 for the reminder, Mr. Chair.

20 All right. So let me just ask you this
21 question: What is the duration of the landfill? I
22 know you're on your fourth amendment.

23 The original order says ten years, so
24 what's the duration of the landfill?

25 MS. OANA: In terms of how long they expect

1 the landfill to have capacity?

2 COMMISSIONER CHANG: Yes, yes.

3 MS. OANA: Right now, with no expansion or
4 diversion of waste, it is expected that we will fill
5 up that capacity by 2026. It would increase it to
6 about 2042.

7 CHAIRPERSON SCHEUER: And, again, sorry for
8 DEM, given that this is a review of a special permit,
9 if you could refer to the record. We're not trying
10 to expand the record here.

11 MS. OANA: Okay, no. The things that I
12 just said, that is in the record already. It's in
13 the Final EA as well as a department
14 (indecipherable).

15 CHAIRPERSON SCHEUER: Thank you.

16 COMMISSIONER CHANG: And the final question
17 is: Where in the record does -- does it state in the
18 record anywhere where the County has a responsibility
19 to restore the site after the life of the landfill?

20 MS. OANA: In terms of closing the landfill
21 and making sure everything is --

22 COMMISSIONER CHANG: Yes, any kind of --
23 site restoration, is there anything in the record
24 that requires the County to restore the landfill, you
25 know, so that -- at least my -- in Honolulu, you

1 cover it, but is there anything in the record what
2 your responsibility is on restoring the site where
3 you --

4 MS. OANA: I don't believe in the current
5 record it states that.

6 COMMISSIONER CHANG: I'm sorry. I didn't
7 hear you.

8 COURT REPORTER: I didn't hear you. I'm
9 sorry, I didn't hear.

10 MR. NAKAGAWA: Ms. Jen Oana, all she's
11 referring to is that she doesn't know if it's stated
12 in the record, because we keep referring back to the
13 record, but in general I can answer the question if
14 you, Chair, if you so please?

15 CHAIRPERSON SCHEUER: So just to be clear,
16 I'm not trying to be difficult or stymie the
17 discussion. But on special permit matters, the
18 action is taken by the County Planning Commission, in
19 this case the Maui County Planning Commission, and we
20 are then have the opportunity, unless I'm corrected,
21 to either approve, approve with modifications, deny
22 or remand the proceeding.

23 So the question from the Commission is in
24 the record, the combined record in front of us which
25 includes the EA, is there a discussion of what

1 happens as part of the closure process of the
2 landfill? And those might not be in the record,
3 those might be under the conditions of the federal
4 permits that apply rather than this record, but just
5 specify where that is. I appreciate it.

6 MS. OANA: I don't believe that is in the
7 record in front of me.

8 COMMISSIONER CHANG: I'm sorry, I'm having
9 a hard time hearing. Did you say you don't believe
10 it's in the record?

11 MS. OANA: Yes.

12 CHAIRPERSON SCHEUER: You do need to
13 project, County.

14 COMMISSIONER CHANG: All right. Thank you,
15 Mr. Chair, I have no further questions.

16 CHAIRPERSON SCHEUER: Thank you
17 Commissioner Chang.

18 Commissioner Okuda followed by
19 Commissioners Ohigashi and Giovanni.

20 COMMISSIONER OKUDA: Thank you very much,
21 Mr. Chair.

22 To follow up on Commissioner Chang's
23 question. Can you please point to where in the
24 record is there evidence that after the term,
25 whenever that is, of the use of the property as a

1 landfill including whatever additional uses are being
2 proposed in the special permit that agriculture would
3 be possible on that parcel of property? Where in the
4 record does it show that?

5 MR. NAKAGAWA: So basically, you know --

6 CHAIRPERSON SCHEUER: Please identify
7 yourself before speaking.

8 MR. NAKAGAWA: Eric Nakagawa, Director DEM.

9 So in a round-about way, in the record, it
10 states that we will comply with all of the state and
11 federal permit -- I guess --

12 COMMISSIONER OKUDA: Mr. Nakagawa, I'm
13 sorry, but you have to project, because I couldn't
14 hear the last part, and if I'm yelling, I apologize
15 for that, but I'm trying to make sure that the court
16 reporter hears me because we need to have a complete
17 record here.

18 So if you can please repeat your answer,
19 please.

20 MR. NAKAGAWA: So I believe in the actual
21 application and the permit process, it does say that
22 the County of Maui DEM will comply with all of that
23 federal and state regulations as far as the operating
24 permits and that kind of stuff.

25 So all of that is covered already under DOH

1 guidelines and (indecipherable) guidelines.

2 COMMISSIONER OKUDA: Where in the record is
3 there evidence showing the specific type of
4 agriculture that can be conducted on the site after
5 the term of the special permit ends?

6 MS. OANA: I don't believe that is in the
7 record before you.

8 COMMISSIONER OKUDA: Would it be fair to
9 say then that the record that has been presented to
10 us at this point in time indicates that property will
11 be used for nonagricultural purposes, and the record
12 just does not show any evidence that the property
13 will thereafter be able to be used for agricultural
14 purposes?

15 CHAIRPERSON SCHEUER: Commissioner, at the
16 risk of stepping out of my role as Chair, is the
17 requirement that the property be used for
18 agricultural or that the property be able to be used
19 for uses appropriate to the Agricultural District?

20 COMMISSIONER OKUDA: Actually, I wanted
21 both, if they want to answer it either way, that's
22 fine. I just want to know what their view of the
23 record shows.

24 CHAIRPERSON SCHEUER: Sorry for the
25 interruption. Please proceed.

1 COMMISSIONER OKUDA: DEM, do we have an
2 answer, please?

3 MS. OANA: If I can have just a moment with
4 DEM.

5 CHAIRPERSON SCHEUER: Go ahead.

6 MS. OANA: I'm trying to find an answer for
7 you.

8 COMMISSIONER WONG: Chair, this is
9 Commissioner Wong.

10 CHAIRPERSON SCHEUER: Yes.

11 COMMISSIONER WONG: You know, DEM is
12 consulting with each other.

13 CHAIRPERSON SCHEUER: Yes.

14 COMMISSIONER WONG: Do you think it would
15 be a good time to have a lunch break?

16 CHAIRPERSON SCHEUER: Okay, I was not sure
17 how long this might take. I was perhaps overly
18 optimistic that we might complete prior to needing to
19 take a lunch break.

20 So it is 12:29. I'm going to suggest that
21 we take a 45-minute break for lunch. That would give
22 DEM the chance to make sure they have full access to
23 their record before them, and we can take up the
24 remainder of this item at that time.

25 A 45-minute break is proposed.

1 Commissioners, is that acceptable? Okay. We will
2 reconvene at 1:15 P.M.

3 (Noon recess taken.)

4 CHAIRPERSON SCHEUER: We're back on the
5 record, and Commissioner Okuda had posed a question
6 to DEM.

7 COMMISSIONER OKUDA: DEM, this is Gary
8 Okuda, shall I try to repeat or maybe rephrase my
9 question, would that be helpful?

10 MS. OANA: Sure, thank you.

11 COMMISSIONER OKUDA: Okay. Can you please
12 tell me where in the record does it show what
13 agricultural use of the property will be possible
14 after the end of the term of the special permit?

15 MS. OANA: I don't believe that is in the
16 record. However, if you look at the record,
17 Exhibit 2 in the material, this is Appendix A of the
18 Draft EA, which contains all of the State's special
19 permits. If you look at the first special permit we
20 received SP86-359 Findings of Fact, Conclusions of
21 Law, Decision and Order on page 5, it says:

22 Under conformance to special permit
23 guidelines No. 22, the use of an existing quarry site
24 provides a logical and economic location for a
25 sanitary landfill. Upon the closing of the landfill,

1 the land could be utilized for agricultural
2 production. As such, establishment of a sanitary
3 landfill at the property is not contrary to the
4 objectives sought to be accomplished by the Land Use
5 law and regulation.

6 I do want to point that out. It is the
7 first State special permit and not the one we're
8 actually talking about, but that is in the record.

9 Furthermore, with regard to the condition
10 that the Maui Planning Commission put on this
11 project, Condition No. 4 says:

12 Full compliance with all applicable
13 governmental requirements shall be required.

14 It also says, Condition No. 14, that full
15 compliance with requirements of the State Department
16 of Health for sanitary landfill operation shall be
17 rendered.

18 I also do want to point out in the record,
19 this is Exhibit 6, the Department of Planning's
20 report and recommendation on page 20, the first full
21 paragraph, it does say:

22 Facilities proposed are therefore
23 considered to be long term, and the DEM does not
24 anticipate the land returning to agricultural
25 cultivation that would necessitate a remediation

1 plan.

2 COMMISSIONER OKUDA: Okay, so the record
3 indicates that -- I'm sorry, can you read that last
4 sentence that you read?

5 MS. OANA: The facilities proposed are
6 considered to be long term, and the DEM does not
7 anticipate the plans -- the land returning to
8 agricultural cultivation that would necessitate a
9 remediation plan.

10 COMMISSIONER OKUDA: Okay. And that
11 statement is in the record as you identified,
12 correct?

13 MS. OANA: (Nods head up and down.)

14 COMMISSIONER OKUDA: Okay. Now, the record
15 indicates that the land which is subject to this
16 proposed additional special permit is considered or
17 categorized as prime agricultural land, correct?

18 MS. OANA: Yes.

19 COMMISSIONER OKUDA: And the record also
20 indicates an ALISH, that is an acronym, A-L-I-S-H,
21 rating, correct?

22 MS. OANA: Yes.

23 COMMISSIONER OKUDA: What does the record
24 indicate the ALISH rating is?

25 MS. OANA: If I can have one moment,

1 please.

2 COMMISSIONER OKUDA: I'm sorry, I didn't
3 mean to cause a delay here. Let me just ask you
4 whether -- was it your recollection that the record
5 indicates it's basically a higher prime type of
6 rating?

7 In other words, the ALISH rating is
8 consistent with the categorization of the land as
9 being prime agricultural?

10 MS. OANA: Correct, yes.

11 COMMISSIONER OKUDA: So would it be fair --
12 and if it's not fair to say this, tell me it's not
13 fair, okay -- that the County of Maui essentially
14 intends to make permanent nonagricultural use of the
15 property which is proposed to be in this expanded
16 special permit area?

17 MS. OANA: Yes.

18 COMMISSIONER OKUDA: And on the lands that
19 are already designated IAL, Important Agricultural
20 Lands, I'm looking at page 15 of -- which is a PDF
21 page 15 of Volume 1 of the Environmental Assessment,
22 which is a map or site plan showing various uses and
23 structures to be or proposed for the parcel.

24 Would it be fair to say that these uses or
25 parcels are intended to also be placed on parts of

1 the parcel which are designated IAL?

2 MS. OANA: Correct.

3 COMMISSIONER OKUDA: May I ask you this
4 then.

5 Where in the record was there a discussion
6 of the Hawaii Supreme Court's admonition or warning
7 about the use of a special permit instead of a
8 boundary amendment?

9 And just so that I make my question clear,
10 let me read two separate sentences from the Hawaii
11 Supreme Court case called Neighborhood Board No. 24
12 versus State Land Use Commission. That's found at 64
13 Hawaii 265, a 1982 case.

14 And if I can first read the first sentence,
15 then I'll read the second sentence, then I'll ask you
16 can you point to the -- where in the record there's a
17 discussion or consideration of this admonition or
18 warning from the Hawaii Supreme Court?

19 Okay. The first sentence is found at 54
20 Hawaii at page 272, the Pacific 2d location is 639
21 Pacific 2d at 1102 to 1103. And I quote:

22 As courts have repeatedly recognized,
23 unlimited use of the special permit to effectuate
24 essentially what amounts to a boundary change would
25 undermine the protection from piecemeal changes to

1 the zoning scheme guaranteed landowners by the more
2 extensive procedural protections of boundary
3 amendment statutes.

4 And let me read you the second sentence
5 from that case which is found at Hawaii Reports at
6 page 272, Pacific 3d at page 1103 and I quote:

7 We do not believe that the legislature
8 envisioned the special use technique to be used as a
9 method of circumventing district boundary amendment
10 procedures to allow the ad hoc infusion of major
11 urban uses into Agricultural District.

12 Can you please tell me where in the record
13 there's a discussion that these two admonitions or
14 warnings by the Hawaii Supreme Court about using the
15 special permit instead of a boundary amendment, where
16 that was considered or discussed in the record,
17 because I kind of read through the minutes which is
18 really complete and, you know, it's essentially a
19 verbatim transcript of what was considered at the
20 Planning Commission.

21 So can you point to where in the record
22 these admonitions or warnings by the Hawaii Supreme
23 Court were considered?

24 MS. OANA: I don't believe that that was in
25 the record.

1 COMMISSIONER OKUDA: Can you please point
2 to any explanation in the record why the County did
3 not proceed by way of a boundary amendment instead of
4 using the special permit or in place of using a
5 special permit procedure?

6 MS. OANA: I have to find it, and maybe my
7 people can help me find that. But with regard to the
8 Central Maui Landfill, we are pretty much following
9 the adjacent property owner and lessee's action.
10 They are doing quarry operations, so where they go
11 and where they're done, we follow them.

12 So it does make sense at some point in time
13 that we go in for a boundary amendment, but at this
14 time that land is not owned by the County and we have
15 no control over where they are going to continue with
16 their quarry operation.

17 So at this time, it does, in one sense,
18 make sense for us to continue with the special permit
19 amendment, but it does make sense in the long term to
20 discuss going in for a boundary amendment, which the
21 department has. I have to find where that is in the
22 record, but, you know, that's basically where we are.
23 We have discussed it.

24 It is, you know, on our minds, but at this
25 point, you know, we're following where the quarry

1 goes.

2 COMMISSIONER OKUDA: Is there anything in
3 the record which indicates an emergency or exigent
4 circumstances which required the County of Maui to
5 proceed by special permit and not by a boundary
6 amendment?

7 Let me give you an example. The Commission
8 approved a request for a special permit brought by
9 the City and County of Honolulu instead of a boundary
10 amendment in a situation where there was an argument
11 made that because certain deadlines couldn't be met
12 under a federal consent decree, it may place the City
13 and County at risk.

14 So I'm not saying that's the only example,
15 but is there anything in the record which indicates a
16 reason or exigent or emergency circumstances why the
17 County of Maui could not have proceeded by a boundary
18 amendment instead of a special permit proceeding?

19 MS. OANA: I don't believe there's exigent
20 circumstances with that. It's just, you know, where
21 the quarry is going, and we follow. We wouldn't
22 really be able to -- I mean, we could, but to get a
23 boundary amendment, we would have to think about what
24 will happen in the future that we really don't have
25 control over if we get a boundary amendment for a

1 certain, you know, parcel or parcels of land that may
2 never become part of the Central Maui Landfill.

3 COMMISSIONER OKUDA: But you already
4 anticipate that this parcel that you're seeking a
5 special permit for, that you are really going to
6 impose on the parcel urban uses, correct?

7 MS. OANA: Right.

8 COMMISSIONER OKUDA: And those urban uses
9 are probably going to be permanent, correct?

10 MS. OANA: Correct.

11 COMMISSIONER OKUDA: And I'm not saying
12 that your plan is not a good plan, I think it's
13 really forward looking as far as disposal of waste.
14 It seems to be well thought out. I just want to be
15 sure that we don't get overturned and a good plan
16 falls by the wayside because procedures like that
17 have been followed.

18 Do you agree -- no. Let me withdraw that
19 question.

20 Is there anything in the record which
21 indicates that there was a discussion or
22 consideration of the requirements of Hawaii Revised
23 Statute Section 205-50? That's the section that
24 deals with the procedures which are mandatory to be
25 followed if IAL land is being withdrawn from an IAL

1 designation.

2 Is there anything in the record which
3 indicates there was a discussion or consideration of
4 whether or not the requirements of HRS Section 205-50
5 were considered? And if they were considered, why
6 that section was deemed not to be applicable?

7 MS. OANA: So right now I can point you to
8 the Department of Planning staff report and
9 recommendation, and that I believe starts at page 16.
10 I'm just making sure.

11 It's also in the filed EA. I don't have
12 that page number -- 78 in the Final EA.

13 COMMISSIONER OKUDA: Excuse me for a
14 second. I think I found it here.

15 And so your contention is that part of the
16 record discusses adequately the requirements or
17 possible application or non-application of HRS
18 Section 205-50?

19 MS. OANA: Yes, and their discussion was
20 more towards analyzing it in terms of granting a
21 special permit as opposed to getting the
22 reclassification or the boundary amendment.

23 COMMISSIONER OKUDA: Thank you very much
24 for your testimony.

25 Thank you, Mr. Chair. I have no further

1 questions.

2 CHAIRPERSON SCHEUER: Thank you very much,
3 Commissioner Okuda.

4 Commissioner Ohigashi followed by
5 Commissioner Giovanni.

6 COMMISSIONER OHIGASHI: I've been looking
7 at -- this is Lee Ohigashi.

8 I'm looking at this conceptual site plan on
9 Exhibit 7, page 10, and I notice that there's a key
10 over there. And it says: One office 8000 square
11 foot. And that relates to what is 1 on the
12 conceptual map, right? Is that right?

13 MS. OANA: Yes.

14 COMMISSIONER OHIGASHI: And I notice No. 2
15 is an abandoned vehicles area 2 acres, and that would
16 be No. 2?

17 MS. OANA: Correct.

18 COMMISSIONER OHIGASHI: And then I look
19 down on page 15, and I notice that 1 and Parcel 2 is
20 in the Important Agricultural Lands designated area;
21 is that right?

22 MS. OANA: Correct.

23 COMMISSIONER OHIGASHI: How much -- what
24 other items are in the areas that are designated
25 Important Agricultural Lands?

1 MS. OANA: One moment, please.

2 MR. ROY: Commissioner Ohigashi, this is
3 Mark Roy with Munekiyo Hiraga. I'll do my best to
4 try answer your question. (Audio difficulty) showing
5 the site plan and the IAL boundary, but looking at
6 the two site plan against the boundary is the IAL.
7 If you're looking at the conceptual site plan, it's
8 that L shape, right?

9 Most of the facilities to the northwest on
10 the access of the L shape, it goes along Pulehu Road.
11 Most of that is in the IAL. The bottom of the L
12 that's adjacent to the landfill, a portion of that is
13 outside of IAL.

14 COMMISSIONER OHIGASHI: Okay. Okay. So I
15 just want to be clear. One, we know 1 and 2.

16 What about No. 3, metal processing area?

17 MR. ROY: I believe it's in.

18 COMMISSIONER OHIGASHI: No. 4, open
19 construction and demolition material recovery?

20 MR. ROY: I believe that a portion -- it's
21 in a portion that's maybe out.

22 COMMISSIONER OHIGASHI: Okay. So we know
23 that 1, 2, 3 and 4. Final 4 is in the IAL?

24 MR. ROY: Right.

25 COMMISSIONER OHIGASHI: And is it in the

1 record or do you under -- does DEM understand that
2 when you designate an Important Agricultural Land
3 that that designation prevents, except by I believe
4 at super majority or under other circumstances to
5 initiate a boundary amendment, to change it to Urban?

6 MS. OANA: So, Commissioner Ohigashi, you
7 know, we fully respect Important Agricultural Land,
8 but for a special permit, special permits are allowed
9 on Important Agricultural Land. And when there is a
10 request to do so, there are requirements contained in
11 the HRS to consult with Office of Planning and
12 Department of Agriculture and then incorporate their
13 comments into our Final Environmental Assessment and
14 report.

15 And so in this case, we did early on
16 consult with them as well as throughout this process,
17 and on July 1st, 2020, they did send the Land Use
18 Commission a letter that said that they do support
19 this fourth amendment.

20 They also discussed the IAL lands in this
21 project, and suggested its avenue for mitigation. So
22 what they suggested is that, if so approved, within
23 one year after approval of this fourth amendment that
24 DEM comes back to the Land Use Commission to request
25 that the Declaratory Order to remove the 22 acres

1 from IAL designation.

2 COMMISSIONER OHIGASHI: I thought it was a
3 two-part mitigation, either do it that, or come with
4 some kind of mitigation plan; is that right? A
5 remediation plan, I think that was your
6 recommendation.

7 But besides that that wasn't my question.
8 My question was really this. It's really this.

9 My understanding of IAL is that for the
10 agricultural land is that the Petitioner in that
11 case, when you want for the agricultural land, you
12 are allowed to designate, with Commission approval,
13 certain amount of agricultural land. And if you
14 designate a certain amount, 50 percent or more, your
15 other lands cannot be redesignated.

16 Does any part of the record focus in on the
17 original petition to designate this Important
18 Agricultural Land to determine that it is reverted
19 back would have an affect on the ability -- or the
20 ability of the County or whoever or Land Use
21 Commission to designate more of that original
22 Petitioner's agricultural land as Important
23 Agricultural Lands?

24 MS. OANA: No, that is not in the record.

25 COMMISSIONER OHIGASHI: Has it been done to

1 make that determination whether or not the -- a
2 Declaratory Order taking this out of Important
3 Agricultural Lands would have any effect on the
4 original landowner's rights and abilities?

5 Because essentially you get at the other
6 50 percent saying that you -- we're not -- we cannot
7 do it any more on the other 50 percent but we can do
8 it like this because you've already designated a
9 certain amount of Important Agricultural Lands. So
10 if you take out some, it may affect the original
11 designation, and we can designate some of his -- that
12 original petitioner's other Important Agricultural
13 Lands.

14 MS. OANA: So I believe -- this is HRS
15 205-50(g) does have an avenue for doing that, and it
16 is basically going to the legislature to provide
17 prior authorization by adoption of a contract
18 resolution.

19 COMMISSIONER OHIGASHI: Have you gotten a
20 prior contract resolution to resolve this matter?

21 MS. OANA: No, we have not.

22 COMMISSIONER OHIGASHI: Now, the other
23 question that I have is that given that there are
24 Important Agricultural Lands, why would you place
25 what is called "permanent structures" as well as

1 metal processing plants and places where you place
2 your abandoned vehicles where it -- when it's known
3 to have oil leakage and affecting these lands, why
4 would you put those activities on those lands if they
5 are designated Important Agricultural Lands?

6 MS. OANA: So it has always been the plan
7 that once this special permit is approved, is
8 approved, that the DEM would take steps to remove the
9 IAL designation from these 22 acres so.

10 COMMISSIONER OHIGASHI: But you're assuming
11 that we would grant it, shouldn't we be -- shouldn't
12 the request come first to remove it to support the
13 Special Use Permit rather than after the fact?

14 MS. OANA: That would be a good idea, but
15 it cut out, you know, what comes first, the chicken
16 or the egg kind of thing.

17 COMMISSIONER OHIGASHI: Well, I don't think
18 it's what comes first, the chicken or the egg.

19 Just the question is that you were -- if
20 we're saying Important Agricultural Lands are so
21 important that we have to designate it that and gave
22 the landowner a benefit of that designation,
23 shouldn't that designation be removed first before a
24 special use permit is granted?

25 CHAIRPERSON SCHEUER: Mr. Ohigashi, I'd

1 like to recognize Mr. Hopper.

2 MR. HOPPER: I didn't intend to interrupt.
3 I just had a clarification on an earlier question. I
4 don't want to interrupt you if you're --

5 CHAIRPERSON SCHEUER: Oh, okay. I thought
6 you were trying to interrupt --

7 MR. HOPPER: Sorry. Again, I was just
8 trying to address a question if you have.

9 CHAIRPERSON SCHEUER: Okay.
10 Sorry to interrupt. Go ahead, Mr.
11 Ohigashi.

12 COMMISSIONER OHIGASHI: I just -- I don't
13 look at it as a chicken and egg argument. That's my
14 statement. I look at it as a process that if there's
15 Important Agricultural Lands, shouldn't that be
16 removed or shouldn't that be determined whether or
17 not that designation will continue before a special
18 use permit is granted?

19 MS. OANA: Commissioner, I'll ask Mark Roy
20 to answer your question regarding the process.

21 MR. ROY: I'm Mark Roy with Munekiyo
22 Hiraga, so I'll speak loudly so you can hopefully
23 hear us okay.

24 I just wanted to kind of speak to the
25 process a bit. As I kind of mentioned in the

1 presentation, you know, this has been quite a long,
2 lengthy process for the County up until today. It's
3 been about five years in the sense that the EA
4 process and the processing of the special permit
5 application.

6 But what I did want to just point to is at
7 the beginning of the process, there was, you know,
8 early consultation with the respective agencies, and
9 there was a decision to issue an amendment to the
10 existing special permit for the landfill. And so the
11 County then proceeded to prepare an Environmental
12 Assessment analyzing the potential impacts of the
13 project and the special permit amendment request.

14 The EA process took several years to go
15 through for various reasons. You know, there were a
16 lot of technical studies that were done, and we took
17 it to the public review process.

18 When the EA was completed, then, you know,
19 we went through the public hearing with the Planning
20 Commission to review the proposed amendments. One
21 thing I did want to just note for the record, which I
22 think is important when you do look back over the
23 five years, is that there is a provision within the
24 State Land Use Commission's rules where if an
25 applicant is requesting a special permit on IAL

1 lands, that they have to specifically write to the
2 Office of Planning and the Department of Agriculture,
3 and notify those two agencies of the proposed action.

4 That was most certainly done by the County
5 at the very beginning of the EA process, you know,
6 probably three, four years ago now. And, you know,
7 we certainly looked into those comments and responded
8 as we felt was appropriate to do so.

9 So, you know, fast forward to the end of
10 the process, and, you know, we're very happy to be
11 able to present this project before the Commission
12 today.

13 There is a letter that was issued by the
14 Office of Planning very recently on July 1st, and I
15 think the Commission will probably hear the Office of
16 Planning's position statement sometime during the
17 review of this item today.

18 But there is a proposed condition that is
19 being set forth by the Office of Planning. This kind
20 of goes back to the question of why didn't you do the
21 removal first. But we did consult with the agencies,
22 and we went through the appropriate process that was
23 dictated by the agencies to request the amendment to
24 the special permit.

25 And so now we have a proposed condition

1 that I think Office of Planning is offering in terms
2 of support for the recommended amendment, and I
3 believe that the County is in support of that
4 condition to file the Petition with the Land Use
5 Commission to request removal of that 22 acres.

6 CHAIRPERSON SCHEUER: Sorry, can you not --
7 one moment.

8 We can hear you speaking in the background,
9 your colleagues in the same room. It's coming up on
10 the mic, so it's hard to hear you. Thanks.

11 MR. ROY: Okay. I was just finished --
12 I'll remove my face mask as well, sorry.

13 I was just finishing with just pointing to
14 the Office of Planning's July 1st, 2020, letter that
15 has been reviewed by the County, and I believe the
16 County's position statement supports the proposed
17 condition to within a year of -- if the Commission
18 does choose to approve this amendment, and then the
19 County would proceed to file a petition to request
20 removal of those 22 acres.

21 The County does agree that it's not
22 appropriate for that designation to be in place given
23 the uses that are proposed in the site plan for the
24 facilities project.

25 I just wanted to (indecipherable) -- the

1 process, kind of summary of the process. It has been
2 quite a long road to get here, and we certainly
3 consulted, you know, at every step of the way in
4 accordance with the regulation.

5 CHAIRPERSON SCHEUER: Commissioner
6 Ohigashi?

7 COMMISSIONER OHIGASHI: So I'm just trying
8 to followup.

9 The State or the Office of Planning has two
10 recommendations. One is either to have it removed or
11 have a remediation plan for the IAL designated lands.

12 From what I understand it's one of
13 the (indecipherable) for IAL is going to be returned
14 to agriculture after the life of the landfill.

15 It seems to me that those -- that you're
16 permanently going to use this as landfill that this
17 is going to be a permanent facility. It's going to
18 be forever. So once -- if we give you this special
19 use permit, we're locked into the position to say
20 that the IAL designation should be taken off. It
21 should be removed without having it to be reviewed
22 under the proper criteria, or that what removal of
23 this designation.

24 Now, if you're telling me that you're
25 willing to risk coming before us and saying that,

1 hey, we cannot consider if we grant the special use
2 permit, if we do grant the special use permit, it
3 will be subject to you removing it from the IAL.

4 Then is the County going take the risk that
5 we may say, we don't think you meet the criteria of
6 removing it from the IAL designation?

7 That's my question to you guys. Is that if
8 we -- if you lose that IAL, then the special use
9 permit is essentially gone. Isn't that right?

10 MS. OANA: So first of all, Commissioner
11 Ohigashi, you know, you mentioned the ruling the IAL
12 and the permanent use of the landfill. So with
13 regard to the IAL lands, that is not going to be used
14 for landfilling. The IAL lands will have those, you
15 know, structures on it. They are not, you know --

16 COMMISSIONER OHIGASHI: They're not
17 permanent?

18 MS. OANA: Well, they're permanent, but
19 they're not I guess, you know, buildings in terms of
20 they can never be removed. So I wouldn't say that
21 we've locked the Land Use Commission into a certain
22 course of action. The lands that are IAL lands are
23 not the actual landfill part. It's the facilities
24 and structures that are ancillary to the landfill.

25 COMMISSIONER OHIGASHI: So the landfill

1 part will -- can be used and returned and used by
2 agricultural purposes. However, the IAL part cannot
3 because they'll be used for permanent Urban use. Is
4 that right?

5 MS. OANA: I'm sorry, can you repeat the
6 question?

7 COMMISSIONER OHIGASHI: From what I
8 understand, what your answer was that the landfill
9 portion can be returned to agricultural use and
10 remediated. But the uses on the IAL lands are going
11 to be permanent, so it could never be remediated for
12 use for agricultural purposes. Is that right?

13 MS. OANA: No, that's not what I'm saying,
14 at all.

15 COMMISSIONER OHIGASHI: Okay. So what are
16 you saying?

17 MS. OANA: I think the lands could be
18 remediated even better I would argue, because surface
19 development not subsurface development.

20 COMMISSIONER OHIGASHI: Okay. So is it
21 your plan then to remediate the IAL designated lands
22 to agricultural use?

23 MS. OANA: No, that wouldn't be the plan.
24 The plan would be to go back in front of the Land Use
25 Commission to request removal of the designations for

1 those (indecipherable).

2 COMMISSIONER OHIGASHI: And to permanently
3 take them -- take it out of agricultural use?

4 MS. OANA: (Nods head up and down) and,
5 Commissioner, I mean --

6 CHAIRPERSON SCHEUER: You nodded your head
7 for the record. That was a yes?

8 MS. OANA: Yes, yes.

9 COMMISSIONER OHIGASHI: Okay. I just
10 wanted to be sure, because if you're doing that, I,
11 like Commissioner Okuda, questioned whether or not a
12 boundary amendment should be proper here.

13 I don't have any more questions.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Ohigashi.

16 Commissioner Giovanni. I will also note
17 that I have some questions that have arisen in the
18 course of this hearing.

19 Commissioner Giovanni.

20 COMMISSIONER GIOVANNI: Thank you, Chair.

21 First of all, let me just generally say
22 that, you know, landfill operations and waste
23 management operations are very difficult on islands,
24 especially populated islands, so finding the site,
25 we -- I appreciate is very difficult, especially one

1 that has these features and also doesn't have
2 currently any residential neighbors, but I do have
3 some questions.

4 So I'm perplexed why you're only asking for
5 an extension to 2028 even though I appreciate that
6 would be to be consistent with another permit that
7 you have that expires in 2028, and yet your estimate
8 of the landfill capacity is to 2042, and you seem to
9 be willing to make investments and permanent
10 structures on a piece of land that you don't have a
11 permit for or not even asking for one for more than
12 eight years.

13 Why are you only asking for an extension to
14 2028? It doesn't make sense to me.

15 MR. ROY: Thank you for the comment,
16 Commissioner. Mark Roy with Munekiyo Hiraga. I'll
17 just respond to the, I guess, the facts behind the
18 request as to why 2028.

19 The reason for that was to really sync the
20 State permit with the County special permit, which as
21 you noted, the current expiration deadline is 2028, I
22 think there is certainly a recognition if this
23 project is successful. I mean, the intent is to have
24 waste diverted away from landfill which is obviously
25 a good sustainability measure, which will further

1 extend the life of the landfill. And so the County
2 further acknowledges, I think, that there will need
3 to be a subsequent time extension request process
4 further down the road to extend the life of the
5 special permit to better mirror the extended life of
6 the landfill, if that makes sense.

7 COMMISSIONER GIOVANNI: That is what you're
8 saying, but you're inviting a couple of risks. One
9 is that you're risking the sizeable investment for
10 permanent structures on a land that's only permitted
11 to be to 2028 by your own request.

12 And secondly, you're taking a risk that you
13 might come back before ourselves and other State and
14 County agencies, and you might find you got neighbors
15 in those days and a lot more opposition.

16 So I just question whether it's
17 strategically a good move to only ask for eight more
18 years when you know that you're not -- if you build
19 out the diversion, technologies on the new 40 acres,
20 you're going to get at least to 2042. So I'll just
21 make that point.

22 So in terms of the plans for the 40 acres,
23 and I appreciate to some level of detail what type of
24 sorting and diversion you'll be doing, but I believe
25 the record is eerily silent on the question of

1 plastics. Is that correct?

2 MS. OANA: That's correct.

3 COMMISSIONER GIOVANNI: So even though it's
4 not part of the record, can you clarify what the
5 County's best practices are or current practices or
6 plan practices for the plastics that are waste?

7 CHAIRPERSON SCHEUER: Commissioner
8 Giovanni.

9 COMMISSIONER GIOVANNI: Am I going off the
10 record here? Okay.

11 CHAIRPERSON SCHEUER: So the options
12 available to colleagues -- the options available to
13 us if we believe there is insufficient information on
14 the record, the request would be for remand for --
15 possibly for a remand for further proceedings to make
16 a full record which would enable us to make a
17 decision.

18 COMMISSIONER GIOVANNI: Got it.

19 CHAIRPERSON SCHEUER: Sorry.

20 COMMISSIONER GIOVANNI: So if there's
21 nothing on the record for plastics, then I will take
22 that as the answer. Is that the answer?

23 Okay. Is there anything on the record or
24 any -- that there might be any plans in this 40 acres
25 for any type of waste to energy-type technology?

1 MS. OANA: There was some mention of waste
2 energy, but not for these 40 acres. That would be
3 for something else. It was just commentary results
4 in the record that is just not for the 40 acre (audio
5 difficulty) --

6 CHAIRPERSON SCHEUER: I'm sorry.

7 COURT REPORTER: Jennifer --

8 CHAIRPERSON SCHEUER: We can hear you when
9 you're talking in the background, so it makes the
10 record hard to --

11 COURT REPORTER: Jennifer, also -- this is
12 the court reporter. Please, keep your voice up, very
13 difficult to hear you.

14 COMMISSIONER GIOVANNI: Yeah, maybe start
15 over.

16 MS. OANO: So there was commentary in the
17 record about the waste energy of projects and plans,
18 but that is not part of the 40-acres batch of land.

19 COMMISSIONER GIOVANNI: So what you're
20 saying is if it's in the record that if the County
21 goes forward with any waste to energy, it would not
22 occur on the 40 acres?

23 MS. OANA: Correct.

24 COMMISSIONER GIOVANNI: Okay. I'll accept
25 that.

1 Is there any intention on those 40 acres to
2 do any processes involving combustion of waste?

3 MS. OANA: No.

4 COMMISSIONER GIOVANNI: For any waste that
5 would be diverted as part of the -- from the sorting
6 operation to off property, was there any
7 consideration in the record what that impact might be
8 in terms of greenhouse gas emissions, if those
9 materials eventually were combusted or converted to
10 waste to energy?

11 MS. OANA: No, not in the record.

12 COMMISSIONER GIOVANNI: Was there any
13 consideration of greenhouse gas at all in the record,
14 effects of the plans to develop the 40 acres?

15 MS. OANA: If I can have just a moment,
16 please.

17 COMMISSIONER GIOVANNI: Sure.

18 MR. ROY: Commissioner Giovanni, thank you
19 for the question on greenhouse gasses. The answer is
20 there was not a specific assessment provided in the
21 record in the Environmental Assessment for this
22 project. We would, however, note, as you recall, I
23 mentioned that this project has been going for about
24 five years, the EA and the applications process.

25 We've gone through a number of milestones

1 to date, but the Commission may recall that the State
2 Office of Environmental Quality Control very recently
3 updated their own rules for the preparation of
4 environmental assessment documents, and this document
5 actually predates those rules.

6 So it's just a note in terms of the world
7 does change, I guess, you know, through a period of
8 five years, but this document was certainly put
9 together, you know, in accordance with the rules that
10 guided the preparation of the EA documents at that
11 time.

12 COMMISSIONER GIOVANNI: Thank you for that.
13 That's well-noted, and I might just clarify that the
14 State of Hawaii seems to even change faster and more
15 dramatically in this topic than the world. So we
16 have to be concerned about that.

17 That's all the questions I have, Chair,
18 thank you.

19 CHAIRPERSON SCHEUER: Thank you very much,
20 Commission Giovanni.

21 Commissioner Cabral, you've already asked
22 some questions. Chang, Ohigashi, Okuda.

23 Commissioner Aczon, do you have anything?

24 VICE CHAIR ACZON: No.

25 CHAIRPERSON SCHEUER: Is it okay,

1 Commissioners, if I ask a couple of questions?

2 So I think I heard the testimony just now
3 state that the EA was prepared in accordance with the
4 applicable rules; is that correct? Was that your
5 testimony just now?

6 MR. ROY: That's correct, yeah.

7 CHAIRPERSON SCHEUER: Okay. I'd like to
8 refer to page 139 of the Final Environmental
9 Assessment which is Section 6, Significant Criteria
10 Assessment.

11 Do you have that in front of you, by any
12 chance?

13 MR. ROY: Yes, Chair.

14 CHAIRPERSON SCHEUER: So the first
15 criterion, what's the first criterion listed?

16 MR. ROY: Involves an irrevocable
17 commitment to lawful destruction of any natural or
18 cultural resources.

19 CHAIRPERSON SCHEUER: Okay. So for
20 agricultural lands, do they fall within the
21 definition of a natural resource that could be
22 irrevocably committed under the applicable rules
23 governing Environmental Assessments?

24 MR. ROY: And I don't know the definition
25 of a natural resource as land, Mr. Chair, but it

1 seems like a reasonable suggestion that agricultural
2 land could be considered a resource. I think this
3 provision of the rules I think is -- and, again, I
4 don't have the definition in front of me, but it's
5 more intended to look toward impacts on environmental
6 resources for the use of lands specifically.

7 CHAIRPERSON SCHEUER: So I'm trying to
8 understand whether or not this document, which the
9 County Planning Commission was the accepting entity
10 for this; is that correct? Or DEM?

11 MR. ROY: Chair, it would be DEM that's the
12 approving agency.

13 CHAIRPERSON SCHEUER: So DEM accepted this
14 as complete, this section does not say that these
15 agricultural lands will be irrevocably committed to
16 another use, but yet we actually have now on the
17 record from your counsel that there's no intent to
18 restore them to agricultural use, and, in fact, the
19 intent oddly worded as "mitigation" is to remove the
20 protection as IAL.

21 Have I understood those matters correctly?

22 MS. OANA: Yes.

23 CHAIRPERSON SCHEUER: That was a yes?

24 MR. ROY: The Environmental Assessment,
25 Chair, the County, I think, takes the position that

1 there is an acknowledgment that there is some degree
2 of impact on the availability of agricultural lands.
3 But given the use of a very small acreage compared to
4 the existing acreage of agricultural lands
5 County-wide, that it was not deemed to be a
6 significant impact and therefore require --

7 CHAIRPERSON SCHEUER: That's not what the
8 first criterion is, correct? The first criterion
9 doesn't say it's an acceptable percentage.

10 The first criterion is: Is there an
11 irrevocable commitment.

12 MR. ROY: Irrevocable commitment to the
13 loss or destruction of a natural or cultural
14 resource.

15 CHAIRPERSON SCHEUER: Yeah. Which I think
16 it's, to me, at least, fairly obvious agricultural
17 lands are a natural resource which the State has
18 prioritized.

19 I just want to be really clear I'm
20 understanding that the position of DEM, while seeking
21 a special permit, is to irrevocably change these
22 lands, remove them from IAL and irrevocably change
23 them so that they will no longer be used for
24 agricultural use, and that is really part and parcel
25 of this request, even though the EA does not actually

1 address that; is that correct?

2 I didn't hear the response.

3 MS. OANA: Yes.

4 CHAIRPERSON SCHEUER: I had another
5 question which is, are -- you're familiar with the
6 constitutional and statutory provisions that
7 establish the Important Agricultural Lands programs.
8 There is a criteria that says that if you're going to
9 remove lands from designation as Important
10 Agricultural Lands, or you're going to urbanize them,
11 it requires a two-thirds vote of the approving body.
12 Is that correct? Do I understand that correctly?

13 All right. If you are saying something, I
14 don't hear you. I see your head nodding.

15 MS. OANA: Yes, that would be so.

16 CHAIRPERSON SCHEUER: Okay. But a special
17 permit for approval nominally requires simply a
18 majority vote of a -- of our board, correct?

19 MS. OANA: Correct.

20 CHAIRPERSON SCHEUER: So I'm trying to
21 reconcile procedurally in my mind, let's say you got
22 a majority vote here, but clearly what we're doing is
23 causing this land to no longer be available as IAL,
24 wouldn't it, to follow at least the spirit of the
25 constitution, require a two-thirds vote?

1 MS. OANA: So, Mr. Chair, you know, you
2 bring home an interesting point. However, I would
3 not agree that a special permit vote has to be a
4 simple majority vote. I do want to point you -- the
5 Commission back to OP's letter of July 1st, 2020,
6 which they do suggest an alternative method to remove
7 the IAL designation which is requesting the Land Use
8 Commission to -- requesting for a declaratory order
9 that this land is no longer IAL because of the
10 current use.

11 CHAIRPERSON SCHEUER: Thank you. I have
12 reviewed and am familiar with OP's remarks.

13 I didn't have anything further at this
14 time, Commissioners.

15 Commissioner Wong?

16 COMMISSIONER WONG: Chair, you know, I need
17 a -- if I may, can we have a recess at this time, and
18 let the County of Maui think about some issues that
19 they just requested for the special permit? Maybe
20 they want to look into continuing down this path, or
21 maybe withdraw it.

22 So can we take a ten-minute break while
23 they think about this stuff?

24 CHAIRPERSON SCHEUER: It's 2:13. We've
25 been going an hour. I'm willing to agree to a

1 ten-minute recess, reconvening at 2:23.

2 (Recess taken.)

3 CHAIRPERSON SCHEUER: Folks, we're back on
4 the record. It is 2:24.

5 We are in the portion of having questions
6 for the Department of Environmental Management. I
7 will note that we have yet to hear from the Office of
8 Planning as a public witness to hear on their
9 position statement.

10 I certainly underestimated the amount of
11 time that was going to be necessary for this matter
12 today.

13 One of the options -- excuse me -- we have
14 before us is that this is agendized for tomorrow in
15 addition to the adoption of the changes to the
16 Pulelehua matter, and we could simply recess for the
17 day and reconvene tomorrow morning to take this up,
18 or we could spend a little more time on it.

19 Commissioners, what's your pleasure?

20 COMMISSIONER WONG: Chair.

21 CHAIRPERSON SCHEUER: Commissioner Wong.

22 COMMISSIONER WONG: Yeah, Chair, if you
23 don't mind, I just got a family -- I have to take
24 care of some family business. So if you don't mind,
25 can we take it up tomorrow?

1 CHAIRPERSON SCHEUER: Commissioners?

2 COMMISSIONER OHIGASHI: Mr. Chair.

3 CHAIRPERSON SCHEUER: Commissioner
4 Ohigashi.

5 COMMISSIONER OHIGASHI: I have a court
6 hearing tomorrow morning at 8:30, so I will not be
7 back until about 9:30, I think. I will be available
8 from 9:30 on. That's my only problem.

9 CHAIRPERSON SCHEUER: Okay. Well, since
10 Commissioner Wong wants us to leave early, perhaps he
11 can entertain us with (indecipherable) for the first
12 half hour. We can push back the start time till 9:30
13 if necessary.

14 Commissioners?

15 COMMISSIONER WONG: Chair.

16 CHAIRPERSON SCHEUER: Commissioner Wong.

17 COMMISSIONER WONG: Don't we have another
18 agenda item for tomorrow?

19 CHAIRPERSON SCHEUER: Yes.

20 COMMISSIONER WONG: Is that just an
21 adoption?

22 CHAIRPERSON SCHEUER: Yes.

23 COMMISSIONER WONG: We could move for that
24 one in the beginning, and then push this portion
25 after that, correct?

1 CHAIRPERSON SCHEUER: I believe that is not
2 a problem, yes. That's a good idea.

3 OP, are you okay to go tomorrow when we
4 reconvene on this matter?

5 MS. APUNA: Yeah, that's fine.

6 CHAIRPERSON SCHEUER: Okay. DEM --

7 MR. MORRIS: This is Dan Morris.

8 I'm a little concerned that if we have
9 something agendized for tomorrow, that someone who
10 wanted to weigh in on that may not be prepared or
11 given notice that today that matter would be coming
12 up.

13 Is that a type of matter that there might
14 be someone who looks at the agenda and says I want to
15 weigh in?

16 CHAIRPERSON SCHEUER: I'm sorry, Mr.
17 Morris. I'm not sure I understand you. But just to
18 be really clear, this matter that we are discussing
19 was agendized for today and for tomorrow, and there's
20 a separate matter agendized for tomorrow, which we
21 will not take up till tomorrow.

22 MR. MORRIS: Oh, good. Okay, I thought we
23 were considering taking up a matter on tomorrow's
24 agenda that that might --

25 CHAIRPERSON SCHEUER: No, sir. What was

1 being suggested by Commissioner Wong was that at the
2 start of tomorrow's meeting, we would move to take up
3 Agenda item IX prior to the resumption of the Agenda
4 item VIII to accommodate Commissioner Ohigashi's
5 schedule.

6 MR. MORRIS: Thank you.

7 CHAIRPERSON SCHEUER: Thank you.

8 Commissioners, is there anything further?

9 DEM, does this work?

10 MS. OANA: Yes, that works for us. Thank
11 you.

12 CHAIRPERSON SCHEUER: Okay. So it's 2:27
13 P.M., I'm going to suggest that we go to recess till
14 9:00 A.M. tomorrow morning on this -- as they used to
15 say, same bat time, same bat channel back in our ZOOM
16 meeting, and we will take up first the matter of
17 Docket No. A04-751 Maui Land & Pineapple Company
18 Pulelehua to be followed with the resumption of the
19 discussions on this matter SP97-390.

20 If there is nothing further, I will declare
21 us in recess. Is there anything further?

22 Commissioner Giovanni. No?

23 COMMISSIONER GIOVANNI: Is the ZOOM meeting
24 call-in the same tomorrow?

25 CHAIRPERSON SCHEUER: No, it's a different

1 one. You received two invitations from Mr. Hakoda.
2 Use the one dated for tomorrow.

3 COMMISSIONER GIOVANNI: So I had difficulty
4 today, they had us -- they had to send me a -- the
5 actual numbers rather than just the join button, so
6 can I request that staff send me the appropriate
7 meeting ID and passwords privately so I can --

8 CHIEF CLERK: Yes. This is Riley Hakoda.
9 We will honor that request.

10 COMMISSIONER GIOVANNI: Thank you. That's
11 all.

12 CHAIRPERSON SCHEUER: Thank you very much,
13 Commissioner Giovanni.

14 Is there anything further, Commissioners?

15 If not, thank you very much to everyone,
16 and we are in recess until 9:00 A.M. tomorrow.

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CERTIFICATE

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

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on July 8, 2020, at 9:00 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

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

15 Dated this 8th day of July, 2020, in Honolulu,
16 Hawaii.

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