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LAND USE COMMISSION

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STATE OF HAWAI'I

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ACTION

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HASEKO (Ewa))

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TRANSCRIPT OF PROCEEDINGS

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14 The above-entitled matters came on for a Public

15 Hearing at Conference Room 204, 2nd Floor, Leiopapa A

16 Kamehameha, 235 S. Beretania Street, Honolulu,

17 Hawai'i, commencing at 9:35 a.m. on Thursday, February

18 4, 2010 pursuant to Notice.

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REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
24 Certified Shorthand Reporter

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1 PRESIDING OFFICER WONG: Good morning. This
2 is a meeting of the Land Use Commission here at the
3 State building, Leiopapa. We're in the conference
4 room, second floor. We'd like to welcome all of you
5 here.

6 We've circulated the minutes of the last
7 meetings and asked our fellow Commissioners to take a
8 look at that. And we'd like to adopt those minutes if
9 the Commissioners are ready.

10 COMMISSIONER KANUHA: Move to approve.

11 PRESIDING OFFICER WONG: Adoption of the
12 minutes has been moved. Motion has been made by
13 Commissioner Kanuha. Do I hear a second?

14 COMMISSIONER CONTRADES: Second.

15 PRESIDING OFFICER WONG: Second by
16 Commissioner Contrades. All those in favor say aye.

17 COMMISSIONERS VOTING: Aye.

18 PRESIDING OFFICER WONG: Motion is carried.
19 The minutes are adopted. Executive Director, can you
20 go over the tentative meeting schedule, please.

21 MR. DAVIDSON: Thank you, Chair Wong. All
22 Commissioners have the tentative meeting schedule.
23 Please note that the HHFDC Forest City 201(h) Notice
24 of Intent to File Petition has come in. So if that
25 goes according to plan it will be heard in Kona in

1 April. That's reflected on the meeting schedule. So
2 we've got a busy West Hawai'i schedule starting in
3 March. Any conflicts or concerns please contact Riley
4 or me. Thank you.

5 PRESIDING OFFICER WONG: Thank you,
6 Executive Director.

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1 Docket No. A83-558

2 PRESIDING OFFICER WONG: The first item on
3 our agenda has to do with an action item. This is a
4 hearing and action meeting on Docket No. A83-558 MSM
5 and Associates, Inc. (O'ahu) -Haseko (Ewa) to consider
6 Petitioner's motion to amend Condition No. 9 of the
7 Amendment to the Agricultural Land Use District into
8 the Urban Land Use District for approximately 181
9 acres at Oneula, 'Ewa, O'ahu TMK 9-1-12; 7, 8, 9, 11,
10 12, 13, 16, 17 and portion of 5.

11 On December 29, 2009 the Commission received
12 petitioner's motion to delete Condition No. 9 together
13 with a memorandum in support of the motion.

14 Let me briefly describe our procedure for
15 today on this docket. First, we will have the parties
16 identify themselves for the record. Then I will call
17 for those individuals desiring to provide public
18 testimony for the public hearing portion of the
19 proceedings to identify themselves.

20 All such individuals will be called in turn
21 to our witness box, which is here, where they will be
22 sworn in prior to their testimony. I note for all
23 present that any of the parties or members of the
24 Commission may choose to question in turn any of these
25 public witnesses.

1 After completion of the public testimony
2 portion of the proceedings the petitioner will present
3 its case. Once they have completed with their
4 presentation the order of presentation will be as
5 follows: City and County of Honolulu and the Office of
6 Planning.

7 Are there any questions regarding our
8 procedures for today? Hearing none, will the parties
9 please identify themselves for the record.

10 MS. IZU: Good morning, Commissioners.
11 Yvonne Izu on behalf of Haseko ('Ewa), Inc.

12 MR. YEE: Good morning. Deputy Attorney
13 General Bryan Yee on behalf of the Office of Planning.
14 With me is Abbey Mayer from the Office of Planning.

15 PRESIDING OFFICER WONG: City.

16 MR. KITAOKA: Good morning, Mr. Chair and
17 Commissioners. Don Kitaoka, deputy corporation
18 counsel on behalf of the director of the Department of
19 Planning and Permitting, City and County of Honolulu.

20 PRESIDING OFFICER WONG: I'm informed that
21 no one has signed up for public testimony on this
22 issue unless there's anyone else who wants to speak.
23 I see a hand. Please come forward.

24 GLENN OMILDA
25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: I do.

3 PRESIDING OFFICER WONG: Please state your
4 name for the record and your address.

5 THE WITNESS: My name is Glenn Omilda. The
6 address is 91-1179 Puamaiole Street, Apartment 24V in
7 'Ewa Beach 96706. Thank you.

8 PRESIDING OFFICER WONG: Proceed.

9 THE WITNESS: Good morning, Mr. Chair and
10 members of the Commission. I've been involved with
11 the 'Ewa Beach community for nearly 30 years. I've
12 been tracking the impacts and development within the
13 'Ewa Beach area and of course the 'Ewa Plains in
14 general.

15 This morning I ask you that you deny the
16 motion for Haseko on the grounds that Haseko has never
17 been a friendly developer within the community. I've
18 tracked them since the early '90s when on two
19 occasions I supported the Project, the 'Ewa
20 Development Haseko Project, number one, as a job
21 facilitator and the other one as president of the 'Ewa
22 Beach Community Association. But since then Haseko
23 has been not a good player in the community.

24 So this morning I ask you to deny their
25 request simply because they have not come to the

1 community in years. And all these projects that have
2 come about with the housing development and the 'Ewa
3 Marina has been negligent.

4 Even with the projects that is now on the
5 table they said it's not, it's not -- it's not
6 relevant to what the motion is. But I think it hinges
7 largely upon the reconfiguration of the marina.

8 The community had approved the basic plan in
9 the early '90s when Haseko bought the property from
10 MSM, and decided that they would build their marina
11 and housing project.

12 The first phase of the marina was supposed
13 to be, supposedly had been built as a first phase.
14 Now they're into four phases and it hasn't been built
15 yet. But yet they're into their fourth phase of
16 building bedroom communities, four phases of
17 bedroom -- of housing, of housing development. So I
18 take issue with that.

19 I think we should have a balanced growth in
20 'Ewa Beach, a balanced growth. We are impacted with
21 everything: Development, traffic, the ocean. And I
22 think it's appalling that a developer that size really
23 has not come before the community in years.

24 In the early '90s when the community
25 accepted their master plan, their plan was to develop

1 a marina with waterways within the marina up and down
2 the landscape similar to Hawai'i Kai Marinas.

3 Now they have downsized the marina. And we
4 talk about the hundred-year flood that comes from
5 Makakilo and uplands and the mitigation really has
6 been drastically altered so that the water
7 reconfigured the marina so it's downsized. The
8 waterways has minimal existence within the marina. So
9 the waterways is not there.

10 The golf course that would have been a
11 buffer to catch the hundred-year flood water is not
12 there. They have reconfigured the whole golf course.
13 Now, it runs perpendicular to the ocean. Mind you,
14 flood waters going into the ocean, eventually running
15 into the ocean. And it's appalling, where 'Ewa Beach
16 relies on the ocean, relies on ocean recreation.

17 And I think it's not forthright that the
18 community should -- avoid, avoid the community just
19 to, just because they're taking upon themselves:
20 Well, we don't need the public to give input.

21 Two issues that come to mind is: One and
22 everybody's been in the news everything, the wall.
23 Everybody knew that Haseko never came before the
24 community to erect this wall that separates the old
25 community from their Project. And the wall is about

1 20, 25, 30 feet high. And the mitigation was that,
2 you know, Haseko would eventually discuss it with the
3 community --

4 PRESIDING OFFICER WONG: Mr. Omilda, let me
5 interrupt. The item on the agenda has to do with
6 amendment No. 9 of the Decision and Order previously
7 issued by the Commission. We were not revisiting the
8 merits of whether or not Haseko should or should not
9 have been granted the reclassification.

10 So we ask you to restrict your testimony to
11 the issue before this Commission, particularly because
12 we have a big -- lot of people here today. I want to
13 accommodate everybody. And we need your cooperation.

14 THE WITNESS: I understand that,
15 Mr. Chairman. But I also gotta speak from the
16 community standpoint.

17 PRESIDING OFFICER WONG: Speak on item No.
18 9.

19 THE WITNESS: Well, item No. 9 I think it
20 basically is the -- and if they say it's gone through
21 the public for comments and for review I think it
22 hasn't. The downsizing and the reclassification of
23 agricultural lands and urban lands has not been
24 dialogued within the community. So -- and again it's
25 a community matter that's vital to this issue.

1 Haseko's done a lot of things in the past that is not
2 favorable or look as community friendly. So I must --
3 and it's a combination --

4 PRESIDING OFFICER WONG: Mr. Omilda, what
5 you're saying is you're opposed to what Haseko is
6 doing?

7 THE WITNESS: Absolutely. Absolutely.

8 PRESIDING OFFICER WONG: I understand. Can
9 you go forward so that we can accommodate the many
10 people here today.

11 THE WITNESS: Okay. Sorry. So, again, I
12 ask you to deny this motion and have Haseko take it
13 back to the community so we can expound on it and
14 discuss it and dialogue.

15 I mean it's only fairly, fairly evident that
16 doing things in the proper way, especially when it
17 comes down to community matters, a project within the
18 community as big as Haseko is that affects lotta
19 things within the community. The impacts as fraud has
20 gone into 'Ewa region with development and building
21 bedroom communities. Thank you.

22 PRESIDING OFFICER WONG: Thank you very
23 much. Any questions, Ms. Izu?

24 THE WITNESS: Mr. Chair, I have public
25 written testimony.

1 PRESIDING OFFICER WONG: Please. Be happy.
2 While you're giving it to our staff do you have any
3 questions?

4 MS. IZU: I have no questions.

5 MR. YEE: No questions.

6 MR. KITAOKA: No questions.

7 PRESIDING OFFICER WONG: Commissioners, any
8 questions of the witness? No questions. Thank you
9 very much. Is there anyone else here to give public
10 testimony on item one of the agenda? If not, Ms. Izu,
11 please present your case.

12 MS. IZU: Thank you very much. Condition 9
13 of the Decision and Order from 1984 -- and this was
14 done by MSM which was the predecessor in interest to
15 Haseko for a portion of this property -- required that
16 after the marina is completed that Haseko is supposed
17 to come back to the Land Use Commission and have it
18 reclassified from urban to conservation.

19 In our discussions with the Department of
20 Land and Natural Resources, which has jurisdiction
21 over conservation lands, the Department didn't see any
22 reason why it should be reclassified back to
23 conservation.

24 The marina is going to be -- is being
25 excavated out of fast lands. It's not seaward of the

1 shoreline. It's mauka of the shoreline. So the
2 Department of Land and Natural Resources felt there
3 were no natural resources that the Department needed
4 to protect through the conservation district
5 regulations.

6 In various entitlement proceedings at both
7 the city and the state there were a number of
8 requirements for Haseko to make the marina accessible
9 to the public, to make the marina area really an urban
10 type facility.

11 There's a commercial area right next to the
12 marina. There's industrial area, marine industrial.
13 They wanted the marina to be kind of a gathering place
14 for the community.

15 So it really is an urban type development
16 completely surrounding the marina. And the marina
17 itself is really a parking lot for the boats. Again,
18 it's not a natural environment.

19 In light of the Department of Land and
20 Natural Resources' statements that they didn't see
21 that there were natural resources to protect, and they
22 didn't feel that the marina itself fit within the
23 purposes of the conservation district. We're asking
24 that Condition 9 be deleted so that when the marina is
25 completed we, Haseko, is not required to come back and

1 have it reclassified to conservation. Thank you.

2 PRESIDING OFFICER WONG: Thank you.

3 Mr. Yee.

4 MR. YEE: The Office of Planning has no
5 opposition to the motion. I want to be clear that our
6 lack of opposition really has nothing to do with the
7 character of the development or the development. It's
8 really primarily because the DLNR has no objection to
9 having the waters remain in urban.

10 And it does seem to make more sense to keep
11 the regulation of this in a single jurisdiction namely
12 rather than divide regulation of this area between the
13 City and County for everything on the land and DLNR or
14 BLNR for everything on the water.

15 It would just make more sense to keep
16 everything within a single jurisdiction, namely the
17 City and County of Honolulu. Thank you.

18 PRESIDING OFFICER WONG: Thank you.

19 Mr. Kitaoka.

20 MR. KITAOKA: The City has no objection to
21 the motion.

22 PRESIDING OFFICER WONG: Commissioners, you
23 have heard the presentation by the parties. Do I hear
24 a motion?

25 COMMISSIONER LEZY: I have a question.

1 PRESIDING OFFICER WONG: Question.

2 COMMISSIONER LEZY: Ms. Izu, you indicated
3 in your brief that the findings of fact, and
4 conclusions of law on the docket don't include any
5 discussion or explanation as to why Condition No. 9
6 was originally imposed.

7 MS. IZU: That's correct.

8 COMMISSIONER LEZY: So we have absolutely no
9 idea why the Commission when they issued this order
10 felt that this condition was appropriate.

11 MS. IZU: There's nothing in the findings of
12 fact. As I pointed out this was done by MSM and
13 Associates, which was a predecessor in interest. They
14 went through bankruptcy.

15 When Haseko acquired the Project all we had
16 was the decision and order -- findings of fact,
17 conclusions of law, decision and order. I went back
18 through the environmental impact statement that
19 supported this, and there was absolutely nothing in
20 those documents either that would suggest why the
21 Commission adopted this. I did not have access to the
22 transcripts so the transcripts might have something in
23 there, but I didn't have access to that.

24 COMMISSIONER LEZY: Okay. Does the State
25 have any idea why this condition was imposed?

1 MR. YEE: No. And, quite frankly, when we
2 discovered that DLNR had no objection to it we didn't
3 feel it was worthwhile to move further into the
4 question.

5 COMMISSIONER LEZY: Thank you.

6 MS. IZU: May I? One surmise I had was that
7 most of the marinas in this state are built seaward of
8 the shoreline. And in that case -- seaward of the
9 natural shoreline -- in which case the Department,
10 DLNR definitely has an interest in keeping those lands
11 in conservation.

12 That might have been a reason why the
13 Commission thought, well, all marinas are in
14 conservation district. So I'm just guessing at that.

15 COMMISSIONER LEZY: Was there ever any
16 representation by the petitioner that there was going
17 to be seaward areas included in the marina in this
18 instance?

19 MS. IZU: At one time there were supposed to
20 be two jetties that extended seaward of the shoreline.
21 Because of the impact on surfing spots Haseko
22 redesigned the marina so that the jetties don't jet
23 out seaward of the shoreline.

24 COMMISSIONER LEZY: Thank you.

25 PRESIDING OFFICER WONG: Commissioner

1 Chock.

2 COMMISSIONER CHOCK: What kind of community
3 dialogue did Haseko have in terms of this releasing
4 Condition 9? Was there any dialogue between the
5 developer and the community?

6 MS. IZU: As far as this Condition 9, no
7 there wasn't.

8 COMMISSIONER CHOCK: Can you kind of briefly
9 summarize where you're at in terms of the development
10 of the marina component of the Project?

11 MS. IZU: Yes. When Haseko first came
12 before the Commission, I believe it was in late 1988,
13 1989 when they first acquired the Project, a
14 portion -- probably the majority, two thirds of the
15 lands had already been classified by MSM and prior
16 owners and developers.

17 Haseko came in to reclassify the last
18 remaining portion. At that time the intent was that
19 the marina was one of the first things that was going
20 to be constructed within the development.

21 After Haseko obtained all of the land use
22 entitlements, or I should say most of the land use
23 entitlements, there was, there were discussions with
24 the city about concerns with the marina crossing over
25 the Honouliuli sewer outfall.

1 So because that would have -- let me back up
2 a step. The plans for the marina at the time included
3 140 acres. It was going to be a big basin near the
4 shoreline and then you'd have waterways that kind of
5 snaked through the development. So the total marina
6 was going to be about 140 acres.

7 About half of those acres would have been
8 east of the Honouliuli sewer outfall. The big basin
9 was west of the outfall. As you know the City owns
10 and manages the sewer outfall and they were having
11 concerns about actually touching it. In order to have
12 the marina be navigable they would actually have to
13 syphon the outfall.

14 After, in about early 2000, 2001 it was
15 decided that really nobody wanted to touch the
16 outfall. And so Haseko had to basically redesign the
17 marina, cut off everything that was on the east side
18 of the sewer outfall.

19 But because of all of these discussions
20 Haseko just really couldn't proceed with the
21 construction of the marina as initially planned to do
22 that first.

23 And so the housing portion of the
24 development went forward. Haseko was allowed to
25 construct close to 5,000 homes -- 4,850 homes.

1 Currently they've done over 2500, constructed and sold
2 over 2500 homes. So over half.

3 They've excavated the marina because the
4 excavation from the marina was used as fill for the
5 rest of the development. So there's water in the
6 marina, but the shoreline has not been breached yet.

7 Haseko, as it started developing,
8 experienced a lot of vandalism, especially along the
9 shoreline area. That area used to be a dumping
10 grounds. You'd find cars, appliances, and whatnot.
11 Haseko did have to clean up a lot of it.

12 They found that even after they put up
13 fences and whatnot there was still a lot of vandalism.
14 There was a natural anchialine pool that people threw
15 down appliances into the pool. They dumped some toxic
16 substances into the pool. They've thrown trash like
17 dirty diapers into the pool.

18 So Haseko came to the realization that until
19 the area close to the shoreline was actually developed
20 which would be the commercial and the resort area,
21 they really didn't want to finish the marina just
22 because of the security reasons.

23 They were intending to start actual
24 excavation of the area, the entrance channel to the
25 marina and bridging the shoreline. They were

1 originally planning to do it either late this year or
2 early next year. With a downturn in the economy
3 they're putting that off for probably one or two
4 years.

5 COMMISSIONER CHOCK: Are there plans to
6 downsize the original format of the marina in terms of
7 number of slips, amenities and so on, so forth?

8 MS. IZU: Because of not being able to
9 cross over the sewer outfall the marina was originally
10 downsized from 100 -- well, I think it went from 140
11 to 120. Then when they got rid of the eastern side it
12 came down to 70 acres.

13 Then through community, discussions with the
14 community who wanted more landside activities around
15 the marina -- just to give you an example: Working
16 with the kupuna in the area that Haseko's been working
17 with ever since Haseko obtained the Project, one of
18 the things that the kupuna wanted was a facility where
19 they could pass on their knowledge of the area. And
20 they wanted, they wanted not just the visitors to the
21 resort area but the residents to have that
22 opportunity.

23 So what that meant was trying to get more
24 land area around the marina so that you could do
25 educational type kiosks, outdoor museums plus do a

1 halau for the kupuna to have a place where they could
2 pass on their knowledge.

3 What that all meant was that you needed more
4 landside around the marina. So finally the latest
5 plan, which has been blessed by the city but not yet
6 by the board, Board of Land and Natural Resources, is
7 to have a 55-acre marina waterways. So the public
8 are -- the landside public area around the marina
9 would be expanded.

10 COMMISSIONER CHOCK: So how many slips? How
11 many public launch ramps? Just some of the
12 highlights.

13 MS. IZU: The number of slips really depends
14 on the market, the market on whether, you know,
15 they're bigger boats. Right now Haseko is finding
16 that the bigger boats are looking for places to berth.

17 They don't have -- they don't have the
18 places. So based on a configuration for larger sized
19 boats they're looking at 600 slips.

20 If there's a better market for smaller-sized
21 boats they can go up to, like, 800 slips in the
22 marina, based on requirements from both City and the
23 State at least half of the slips will have to be
24 available to the general public at reasonable cost.

25 So, in other words, I know people are

1 concerned because there's a resort on one side of the
2 marina that the resort will, there's concern the
3 resort will try to take up a lot of the slips. But
4 that's not Haseko's intent. As I said by other
5 entitlements Haseko is required to make at least half
6 of them available to the general public.

7 Both launch ramps, both the City and the
8 Board of Land and Natural Resources has required
9 Haseko to provide seven boat launching ramps. Right
10 now the requirement is for -- it's seven boat
11 launching ramps, 150 trailer parking stalls, outdoor
12 shower and bathroom facilities.

13 The condition as it reads right now from the
14 BLNR is that that facility is supposed to be built by
15 Haseko and then dedicated to the State. In
16 discussions with the Division of Boating and Ocean
17 Recreation, DOBAR, they really don't have the
18 resources to take on that facility.

19 So we're in negotiations with DOBAR for that
20 facility to remain a private facility but basically
21 provide all of the amenities that a state boat
22 launching ramp facility would have at the cost that a
23 state boat launching ramp facility would charge.

24 So basically for these small boaters you buy
25 a one year sticker and you can launch from any state

1 boat launch ramp facility. So the sticker will allow
2 you to launch from the Hoakalei Marina also.

3 So we are in negotiations with the division
4 right now just because they feel that even if we
5 turned it over to them they wouldn't be able to open
6 it.

7 COMMISSIONER CHOCK: So the community would
8 be getting a total of six, 24-hour public boat launch
9 ramps, 150 trailer stalls as part of the revised plan?

10 MS. IZU: Yes. The public would be able to
11 use that. Under the current requirements it's
12 supposed to be open 24/7. So it's going to be
13 available to the public 24/7. That's the status of
14 our negotiations right now. And Haseko is not trying
15 to alter that.

16 COMMISSIONER CHOCK: Thank you,
17 Mr. Chairman.

18 PRESIDING OFFICER WONG: Ms. Izu, I have a
19 question. You filed a motion to delete our Condition
20 9 which deals with the keeping the waterway in
21 conservation.

22 And being that the record is not absolutely
23 clear as to the rationale for that, can you help by
24 telling us why you filed the motion, what's the effect
25 of it being in conservation, how does it hurt you if

1 we keep the land in conservation? And how does it
2 benefit you by changing it?

3 MS. IZU: One clarification. It's currently
4 in urban. And the condition requires us that after
5 the marina is built to reclassify it back to
6 conservation. The reason why we started down this
7 track was what the condition says is that two years
8 after completion of the marina we have to move to
9 reclassify it.

10 So I was in discussions with the DLNR staff
11 about what constitutes completion of the marina. In
12 constructing the marina it's not just the hard
13 construction of excavation, whatnot, but it also
14 includes putting in docks, piers and whatnot.

15 And depending what the market is at certain
16 time Haseko may not put in, or whoever the marina
17 developer is, may not put in all the docks and piers.

18 Again, based on the market whether it's for
19 bigger boats or smaller boats, there may be changes
20 to, like, configuration of the docks and piers, et
21 cetera.

22 So if it's in conservation, every time we do
23 something like that there's a possibility that we have
24 to go back for a conservation district Use Permit
25 which is why I started the discussions with the DLNR

1 staff as to what they considered completion so that,
2 very frankly, we didn't have to go back quite so often
3 for conservation district.

4 And it was in those discussions the DLNR
5 staff basically said that they're not interested in
6 doing that kind of permitting for the marina. They
7 didn't feel like they were natural resources they
8 needed to protect to have oversight and to regulate
9 the marina, which is why it eventually came down to us
10 filing this motion.

11 PRESIDING OFFICER WONG: My question has to
12 do -- apparently you're talking about the question as
13 to when it's completed and when the two years begin to
14 run. Aside from the question, my focus is on
15 conservation.

16 In other words, what's the benefit to the
17 people of Hawai'i that the marina be conservation? Or
18 another way, what great benefit do you have by not
19 having it reclassified to conservation?

20 MS. IZU: Well, the benefit to Haseko is
21 that we don't have to continually apply for
22 conservation district use permits every time we want
23 to put in an additional dock or reconfigure the dock.
24 That's the benefit to Haseko.

25 As far as the benefit to the public in

1 having it conservation I don't know, which is why DLNR
2 basically said that, you know, that they're not
3 interested in regulating it.

4 PRESIDING OFFICER WONG: But if you put in
5 an additional dock, for example, would that additional
6 dock be part of the master plan? Or would it be
7 something you wake up one day and say, "Hey, I need
8 another dock and I don't want to go and get a
9 conservation permit"?

10 MS. IZU: That was what initiated the
11 discussion with -- part of what initiated the
12 discussion. One of the things that, you know, assume
13 that we had to reclassify it back to conservation.
14 What I was -- the discussion I was having with DLNR
15 was going to lead to if we had a master plan that
16 showed a maximum buildout of the marina could they,
17 could they, um, agree that that was, you know, the
18 completion of the marina. And as long as we stuck to
19 that master plan that we wouldn't have to go in for
20 conservation district Use Permit.

21 And it was in that context that, again, DLNR
22 said that they're not interested in regulating the
23 marina anyway.

24 PRESIDING OFFICER WONG: Do you have such a
25 master plan?

1 MS. IZU: As far as?

2 PRESIDING OFFICER WONG: The development of
3 the marina.

4 MS. IZU: Yes. The master plan changes from
5 time to time. Again, you know, I think when we
6 downsized the marina to 70 acres when they just cut
7 off the eastern portion of it, the thought was to try
8 to get as many slips as possible into the remaining
9 basin of the marina.

10 Discussions with the community where they
11 wanted more landside facilities rather than waterways
12 for more boats, that changed the configuration of the
13 marina again.

14 When Haseko started discovering that there
15 was a greater need for larger berths rather than
16 smaller berths, the size of the berths started to
17 change. It's something that continually changes, but
18 not to, not to such a significant degree that you
19 won't recognize it from one plan to the next.

20 PRESIDING OFFICER WONG: Thank you.
21 Mr. Kitaoka, you want to present first?

22 MR. KITAOKA: The City has just no objection
23 to the motion and has no evidence to present.

24 PRESIDING OFFICER WONG: Mr. Yee.

25 MR. YEE: Nothing further, thank you.

1 PRESIDING OFFICER WONG: I have a question,
2 Mr. Yee. What benefit, if any, or what adverse effect
3 would deleting Condition No. 9 have upon the people of
4 Hawai'i? Because the previous Commissioners, previous
5 Land Use Commission, felt it was appropriate to have
6 the waterway reclassified to conservation.

7 And recognizing the record may not be clear
8 as to why, do you see any adverse or negative impact
9 to the people of Hawai'i if we granted this motion to
10 delete No. 9?

11 MR. YEE: We did not. As was indicated
12 before, unlike other marinas which are created by
13 creating the marina seaward, this was actually a hole
14 dug in the ground.

15 So it's a marina that was actually created
16 from just land. It's a resource that was not
17 preexisting. It was created by the developer.

18 And having created this the difference
19 between the classifications of urban and conservation
20 where you often think of conservation as protecting a
21 particular resource, in this particular case there's
22 no likelihood that they're ever going to be building
23 condos in the water.

24 They have already built the marina. They
25 have already put water in it. It's going to be used

1 as a marina.

2 So the purpose of having a conservation
3 classification didn't seem to have any particular
4 value in this particular case. And was, I think, of
5 some assistance in -- because of the fact that they
6 created the resource themselves.

7 We also thought it was useful to keep the
8 jurisdiction of the regulation within a single entity.
9 So rather than subdivide the jurisdiction of who
10 decides what's built on land, who decides what's built
11 on water, it would be better to have a single entity
12 that decides the whole thing.

13 That way they will be better able to
14 coordinate and protect, I think, the total resource
15 together.

16 So from our perspective we didn't think
17 there was any significant detriment to the public and
18 would actually be a better regulatory structure.

19 PRESIDING OFFICER WONG: Thank you, Mr. Yee.
20 Commissioners, any questions?

21 MR. OMILDA: Can I approach the stand and
22 rebut what they said?

23 PRESIDING OFFICER WONG: I'm sorry, no.
24 Let's proceed. Any questions by Commissioners? What
25 is the pleasure of the Commissioners on this motion to

1 amend?

2 COMMISSIONER LEZY: Chair.

3 PRESIDING OFFICER WONG: Commissioner Lezy.

4 COMMISSIONER LEZY: I'm inclined to,
5 personally, to grant the motion principally because
6 DLNR has indicated that they have no objection.

7 I will state, though, for the record that I
8 have some concerns that obviously when the D&O was
9 issued the Commission must have, I presume, good
10 reason to have imposed the condition.

11 And it's a little bit bothersome that we
12 don't have any idea why the condition was imposed.

13 But, again, because of the fact that DLNR
14 has indicated that they see no usefulness currently to
15 the condition, and the fact that we don't have any
16 real opposition, I'm inclined to grant.

17 So I would move that petitioner Haseko 'Ewa,
18 Inc.'s motion to delete Condition No. 9 of the
19 amendment to the agricultural land use district
20 boundary into the urban land use district for
21 approximately 101 acres at Honouliuli 'Ewa, O'ahu, TMK
22 Nos. 9-1-12:, 7, 8, 9, 11, 12, 13, 16, 17 and Portion
23 of 5 be granted.

24 COMMISSIONER CONTRADES: Second.

25 PRESIDING OFFICER WONG: Do I hear a second?

1 COMMISSIONER CONTRADES: Second.

2 PRESIDING OFFICER WONG: Second by

3 Commissioner Contrades. Discussion? No discussion.

4 Call for the question, Mr. Executive Director.

5 MR. DAVIDSON: Thank you, Chair. Motion to

6 delete Condition 9 as set forth by Commissioner Lezy.

7 Commissioner Lezy?

8 COMMISSIONER LEZY: Yes.

9 MR. DAVIDSON: Commissioner Contrades?

10 COMMISSIONER CONTRADES: Yes.

11 MR. DAVIDSON: Commissioner Teves?

12 COMMISSIONER TEVES: Yes.

13 MR. DAVIDSON: Commissioner Kanuha?

14 COMMISSIONER KANUHA: Yes.

15 MR. DAVIDSON: Commissioner Chock?

16 COMMISSIONER CHOCK: Yes.

17 MR. DAVIDSON: And Chair Wong?

18 PRESIDING OFFICER WONG: Yes.

19 MR. DAVIDSON: Motion passes six/zero,

20 Chair.

21 PRESIDING OFFICER WONG: Thank you.

22 MS. IZU: Thank you very much.

23 PRESIDING OFFICER WONG: We'll take a five
24 minute recess while we get organized for the next item
25 on the agenda.

1 Docket No. A85-595

2 PRESIDING OFFICER WONG: We're back on the
3 record. We're on item No. 2. This is a meeting on
4 Docket No. A85-595 Kuilima Development (O'ahu) to
5 consider Defend O'ahu Coalition's motion for issuance
6 of an order to show cause why the boundary
7 classification of Kuilima Development Company should
8 not be revoked for failure to perform conditions,
9 representations, and commitment by Kuilima Development
10 Company in Docket No. A85-595 filed on April 1, 2008.

11 This motion was briefed and argued by the
12 parties on July 11, 2009 and was taken under
13 advisement by the Commission.

14 At the February 6, 2009 Commission meeting
15 the Kuilima Development Company provided a status
16 report on the development that is the subject of this
17 docket. The Commission voted to defer any action
18 pending consultation with legal counsel on issues
19 mentioned during the meeting.

20 On March 16, 2009 the Commission received
21 written correspondence from Mr. Tim Vandever and Mr.
22 Ben Shafer.

23 On July 3, 2009 the Commission received a
24 written testimonial by email from Mary-Anne Willsey.

25 On February 1, 2010 the Commission received

1 Respondent Kuilima Resort Company's Supplemental Reply
2 Memorandum to Defend O'ahu Coalition's Motion for
3 Issuance of An Order to Show Cause.

4 On February 2, 2010 the commission received
5 State of Hawai'i's OP's Supplemental Argument.

6 On February 3, 2010, the Commission received
7 Defend Oahu's Coalition's Supplemental Memorandum in
8 Support of Motion for Issuance of an Order to Show
9 Cause.

10 Recently on February 4, 2010 the Commission
11 received a letter from Senator Ron Menor. Also on
12 February 4, 2010 the Commission received from Senator
13 Gary Hoosier.

14 Let me tell you briefly the procedure for
15 today on this docket. First, we will have the parties
16 identify themselves for the record. I will then call
17 for those individuals desiring to provide public
18 testimony to identify themselves. All such
19 individuals will be called in turn to our witness box
20 where they will provide their testimony.

21 Now, in looking at the list of people
22 testifying I see there are quite a number. And I see
23 a number of people here, possibly 50, 60 of you.

24 So in order that we try to accommodate, and
25 we want to accommodate as many people as possible, we

1 ask that the people testifying not just repeat what
2 you testified, someone testified before. And try to
3 keep your testimony to within three minutes. If it
4 appears that you're going too far, the Chair will
5 advise you to terminate your testimony.

6 Now, after completion of the public
7 testimony the Commission will hear the Defend O'ahu
8 Coalition's presentation followed by Kuilima Resort
9 Company's presentation and the City and County of
10 Honolulu's presentation and finally the Office of
11 Planning.

12 Since this matter was briefed and argued in
13 July 2008 the Chair will allow each party no more than
14 20 minutes to present their oral argument for or
15 against the motion. Now, I would also note that the
16 Commission will from time to time take short breaks.
17 And are there any questions on the procedure for
18 today? If not, let's proceed. Will the parties
19 please identify themselves for the record.

20 MR. MATSUBARA: Good morning, Chair Wong and
21 Commissioners. Wyeth Matsubara, Curtis Tabata on
22 behalf of Kuilima Resort Company. With us is Stanford
23 Carr, representative for Kuilima Resort.

24 PRESIDING OFFICER WONG: Thank you.

25 MR. KITAOKA: Good morning, Commissioners,

1 Don Kitaoka, deputy corporation counsel on behalf of
2 the Department of Planning and Permitting, City and
3 County of Honolulu.

4 MR. YEE: Good morning. Deputy Attorney
5 General Bryan Yee on behalf of Office of Planning.
6 With me is Abbey Mayer, director of the Office of
7 Planning.

8 MR. KUGLE: Good morning, Vice-Chair Wong,
9 Commissioners, Greg Kugle, counsel for Defend O'ahu
10 coalition. Present with me in the back of the room
11 are also the co-chairs of Defend O'ahu Coalition, Tim
12 Vandever and Ben Schafer.

13 PRESIDING OFFICER WONG: All right. Will
14 the counsel for Defend O'ahu Coalition please
15 proceed -- I'm sorry public testimony. Who's first on
16 the list? Bob Boyle, please step forward followed by
17 Ralph Makaiau.

18 BOB BOYLE
19 being first duly sworn to tell the truth, was examined
20 and testified as follows:

21 THE WITNESS: Yes.

22 PRESIDING OFFICER WONG: State your name for
23 the record and your address and proceed.

24 THE WITNESS: My name that Bob Boyle. I'm
25 the vice president and general manager of the Turtle

1 Bay Resort, and regional director of operations for
2 Bankhouse Hospitality. And I live in Kahuku at the
3 resort.

4 I won't take much of your time. But I
5 appreciate the time you've given me this morning. I
6 just want to bring up a topic that always seems to get
7 lost in the noise of this particular issue.

8 The original goal of the community when in
9 1986 and the prior years that they worked on writing
10 this agreement, you will hear, I'm sure, from those
11 folks who were actually involved in it in those days
12 from Kahuku, La'ie, Hau'ula, Sunset, that the primary
13 goal was to save jobs.

14 It looked as if -- it didn't look as if --
15 the agricultural and the mill businesses were going
16 away. And those people who lived out on the North
17 Shore wanted to preserve jobs for themselves and
18 perhaps primarily for future generations so that they
19 might not have to come into town or go to the mainland
20 to secure a job.

21 So that was the primary goal and I think the
22 primary condition, while there's a lot of other
23 details in it.

24 I'd like to -- I'd like to represent that
25 the creation of jobs even with the one resort there

1 has been a phenomenal success. When we took over the
2 resort in 2001 there was 175 employees at Turtle Bay
3 Resort. Today there's 575 employees at Turtle Bay
4 Resort.

5 What that means to me is that people who
6 live on the North Shore can stay on the North Shore.
7 It means to me that young couples are deciding to get
8 married, young couples are deciding to move out of
9 their parents' house because they can afford their own
10 housing. Parents don't have to watch their kids go
11 into town.

12 I think when I look at the particular
13 wording in terms of failure to perform conditions,
14 representations and commitments by Kuilima, I would
15 just like to remind everybody the original primary
16 concern of the community was to provide jobs and that
17 certainly the current operation has delivered on that
18 commitment. Thank you.

19 PRESIDING OFFICER WONG: Thank you. Any
20 questions from the parties?

21 MR. MATSUBARA: No questions.

22 PRESIDING OFFICER WONG: City?

23 MR. KITAOKA: No questions.

24 PRESIDING OFFICER WONG: State?

25 MR. YEE: No questions.

1 PRESIDING OFFICER WONG: Movant?

2 MR. KUGLE: No questions.

3 PRESIDING OFFICER WONG: Commissioners, any
4 questions? Okay. If not, Ralph Makaiau.

5 THE WITNESS: Good morning.

6 PRESIDING OFFICER WONG: Let me swear you
7 in.

8 RALPH MAKAIU
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:..

11 THE WITNESS: I do.

12 PRESIDING OFFICER WONG: Please state your
13 name and address for the record.

14 THE WITNESS: Ralph Makaiau, 56-134
15 Pualalea Street, Kahuku, 96731. I'm here to testify
16 as an individual. And I'm here to request to deny
17 Defend O'ahu Coalition's motion. Now, having said
18 that I'm also, I have testified before this board
19 before.

20 So without repeating myself too much I would
21 like to let you know that I have been employed by
22 Kuilima Resort Company for the last 20 years. My last
23 nine years have been in the development branch of
24 Kuilima Resort Company. And I'm very familiar with
25 the process of the development at Turtle Bay.

1 I'd also like to state that for 2009 and
2 2010 I am the president of the Kahuku Community
3 Association.

4 We do not have a sleeping community out
5 there. In fact the host community association, Kahuku
6 Community Association and the La'ie Community
7 Association, as recently as October of 2009 did
8 participate in the submittal of an amicus brief to the
9 Hawai'i State Supreme Court.

10 So our community is not asleep. It may be
11 the silent majority, but we are formally and actively
12 participating in the current development issues at
13 Turtle Bay. Thank you.

14 PRESIDING OFFICER WONG: Any questions,
15 Counsel?

16 MR. MATSUBARA: No questions.

17 MR. KITAOKA: No questions.

18 MR. YEE: No questions.

19 MR. KUGLE: No questions.

20 PRESIDING OFFICER WONG: Commissioners?
21 Thank you, very much. Mr. Gil Riviere followed by
22 Junior Ah You.

23 THE WITNESS: Good afternoon. My name is
24 Gil Riviere.

25 GIL RIVIERE

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:

3 THE WITNESS: I do.

4 PRESIDING OFFICER WONG: State your name and
5 address for the record.

6 THE WITNESS: Gil Riviere. I live at 65-137
7 Hukilau Loop, Waialua.

8 PRESIDING OFFICER WONG: Proceed.

9 THE WITNESS: Thank you. Thank you all for
10 having this hearing. Thank you all for being here.
11 This is obviously a contentious issue for the parties.
12 My testimony today is in support of the motion by
13 Defend O'ahu Coalition.

14 I would like to state that to be clear I'm
15 the president of the Keep the North Shore Country. We
16 are involved in litigation regarding the need for a
17 supplemental environmental impact statement. And
18 that's presently before the Supreme Court.

19 I'm here to testify as an individual in
20 support of this. I'd like to make the following
21 observations: The resort has -- and compliments the
22 Benchmark and Mr. Boyle. Benchmark has done a
23 fantastic job in turning around the resort. I would
24 argue that the uniqueness of the resort has been
25 properly marketed at this point. It is not a

1 Ka'anapali. It is not a Waikiki. It is a unique
2 destination. And they have appropriately marketed it
3 as such.

4 The parent corporation, Kuilima Resort
5 Company, has been financially in trouble for the last
6 few years as evidenced by the foreclosure motion
7 brought by Credit Suisse. It's a very unusual
8 situation when you have a foreclosure that languishes
9 indefinitely. I'm not aware of any. There may be
10 cases. But that foreclosure, I believe, was brought
11 three years ago and it's still not resolved.

12 There's a holding company that's rumored to
13 be coming to take over. There are multiple owners
14 that have bought the notes. They want to get paid
15 out. They're trying to maximize their money. And
16 that is their interest that this property proceed. My
17 point is it's still a shaky proposition as to what's
18 going to happen with this resort.

19 Moving to another point. The recent traffic
20 study from April that Kuilima has presented, presents
21 a development schedule to be complete by the year
22 2018.

23 Their current traffic studies presume that
24 the Phase 1 of the resort at this point will be
25 completed by 2012, Phase 2 by 2014, and entire resort

1 built out by 2018. This is important because these
2 are the assumptions they're asking everybody to
3 comprehend as they go forward.

4 We know looking back that 25 years ago the
5 proposal was that they would be done by 1996. The
6 Project went dormant for many years. That's not
7 really in dispute. They can argue they did this or
8 that. But the Project was not going forward until the
9 most recent years.

10 Earlier the State Office of Planning
11 testified that they didn't think probably removing or
12 showing -- causing a motion to show cause might be
13 appropriate. But the State Office of Planning
14 indicated that putting a time fuse going forward may
15 be possible for this board.

16 Again, I think that after 25 years of not
17 realizing the resort I think you have every right, in
18 my opinion, to ask for Show Cause especially in the
19 light of financial situation, their plans, the
20 likelihood of actually moving this forward and based
21 on their plans or their presentations that they may
22 actually complete this in eight years.

23 So as a backup I would say that this board
24 should, if it cannot go all that way to this distance,
25 this Commission should impose a deadline, use their

1 schedule, give 'em a couple years of flexibility in
2 there and in no way allow this resort to go on for
3 more than 10 years as proposed. That would be my
4 recommendation. And I appreciate your listening to my
5 thoughts. Thank you.

6 PRESIDING OFFICER WONG: Thank you. Any
7 questions, parties?

8 MR. MATSUBARA: No questions.

9 MR. KITAOKA: No questions.

10 MR. YEE: No questions.

11 MR. KUGLE: No questions.

12 PRESIDING OFFICER WONG: Commissioners?
13 Thank you very much.

14 JUNIOR AH YOU
15 being first duly sworn to tell the truth, was examined
16 and testified as follows:

17 THE WITNESS: I do.

18 PRESIDING OFFICER WONG: Please state your
19 name and address for the record.

20 THE WITNESS: Junior Ah You, 55-690 Wainapea
21 Street, Laie, Hawai'i.

22 PRESIDING OFFICER WONG: Proceed.

23 THE WITNESS: Ladies and gentlemen, aloha.
24 Thanks for having us here. I'm here to testify before
25 you and ask you to deny the motion by Defend Coalition

1 before you. The reasons are very obvious as stated by
2 Mr. Boyle, Bob Boyle. The goal of the hotel was to
3 provide jobs.

4 Well, we need a lot more jobs than what
5 they've offering. There's nothing out there to
6 provide jobs for our children.

7 We have six children. They all had to move
8 to the mainland because lack of housing, the lack of
9 jobs. As you know our logistics we are an hour or so
10 away from town.

11 Having two parents work in town away from
12 their children creates an entirely dangerous
13 proposition for us not having parents at home with
14 their children.

15 If they can at least find, one of them find
16 a job out there in the country they're that much
17 closer to their homes. I'm asking you to please help
18 support the hotel because our family needs it.

19 Support the country country is good but how
20 good is it if you don't have your family here to enjoy
21 it with you? What's the sense of having a beautiful
22 country and you gotta send your kids away? You ask
23 yourself that. Would you want to have your children
24 here with you or ask them to leave?

25 They have every right to earn a job, to get

1 a home where they were born and raised. No one has
2 the right to tell 'em they gotta move out of their
3 birthplace because they don't want to see no more
4 homes and they don't want to see no more hotels.

5 I'm asking you, please, think of the many
6 families, thousands of 'em, my family included. I have
7 four children living with me. My daughter's moving
8 back. She's living with me. They have a thriving
9 business in the mainland but they want to come home.
10 Home is home wherever home is. And the country is
11 their home. And no one, not these guys with the green
12 shirt, has the right to tell them they gotta move.

13 And last, but not least, I want to share
14 with you I'm very involved with my community. I'm the
15 longest serving member of the Laie Community
16 Association, almost 30 years.

17 We have been to the hotel to ask them for
18 help. Their doors are open. Everything and anything
19 the community is in need of the hotel is there to help
20 us.

21 They've done many wonderful things for the
22 school, for the community. They continue to do that
23 from the day I came back after I retired and I went to
24 them for help. And they're still helping us.

25 So I'm asking you, please, for the sake of

1 our children and our family help them so they can help
2 our kids stay home. Thank you very much.

3 PRESIDING OFFICER WONG: Thank you. Any
4 questions from the parties?

5 MR. MATSUBARA: No questions.

6 MR. KITAOKA: No questions.

7 MR. YEE: No questions.

8 MR. KUGLE: No questions.

9 PRESIDING OFFICER WONG: Commissioners, any
10 questions? Thank you, Mr. Ah You. Ipolani Thompson
11 followed by Ben Shafer.

12 IPOLANI THOMPSON

13 being first duly sworn to tell the truth, was examined
14 and testified as follows:

15 THE WITNESS: Yes, I do.

16 PRESIDING OFFICER WONG: Please state your
17 name and address for the records.

18 THE WITNESS: My name is Ipolani Thompson.

19 I live at 55-1648 Naupaka Street, La'ie, Hawai'i
20 96762. My phone number is 808 -- area code 808.

21 PRESIDING OFFICER WONG: You don't need your
22 phone number. You don't want to have calls at 2:00 in
23 the morning. (Audience laughter)

24 Proceed.

25 THE WITNESS: Mr. Chair, may I just turn

1 this microphone around? I have a problem with my --
2 is that -- is that legal? (Moving chair)

3 PRESIDING OFFICER WONG: Yes, that's fine.

4 THE WITNESS: All right. Aloha.

5 AUDIENCE MEMBER: Aloha.

6 THE WITNESS: I'm here. I'm a kupuna,
7 served at the La'ie School for years. I'm here. I'm
8 very honored to be here. I was always taught don't
9 face your back to the audience. You have to see who
10 you're talking to.

11 I just want to say something for the record.
12 Some months ago I spoke and they had a meeting in
13 Sunset. And I spoke about the legends of Kuilima
14 because this is where the children that ran on the
15 reef.

16 We knew where everything was, where to fish
17 and why people couldn't catch the fish because they
18 were in sacred grounds.

19 All of those legends I know because we were
20 raised there. We used to have fights because Marconi
21 Street, we used to say Mah-koni. And as we grew up
22 there was a "r" in Marconi. Because our way was, 'Eh,
23 meet you down Mah-koni." Then I married a palangi, a
24 guy, my husband said, "Hon, it's Marconi." I said,
25 "You weren't raised here. It's Mah-koni." But he was

1 right.

2 My point here is months ago I spoke about
3 the life of that area. And I'm all for keeping
4 country country. I'm a country girl. I've lived on
5 the mainland, but I've always been a country girl.
6 You can take the girl out of the country but you
7 cannot take country out of the girl. So I understand.

8 But I'm also here for jobs. They have
9 closed schools. Later on they have baby booms and
10 they have to reopen, reopen schools. But we don't
11 know the future.

12 All I know is that we're going to need
13 places for our children, jobs to provide and still
14 have country, you know. I was all pro-country. But
15 there's so much land that we can share and have two
16 things. But now you have to make a choice and I am
17 for jobs.

18 So our children who are going to school,
19 whether they're in the hotel business or whatever,
20 they can come home and use their education to better
21 our country.

22 I'm not for country where you put up closed
23 gates; you have to have a number tick, tick, tick,
24 tick, tick. Then it goes sh-sh-sh-sh-sh- and gates
25 open. I'm not that kind of child that was raised like

1 that, you know. And then there's a guard at the gate.

2 No. Country is for everyone.

3 We're always going to have problem, we are

4 always. And this contentious feeling? Scratch that

5 word. I wasn't raised with that word "contention".

6 There's enough for everyone.

7 I know that we need jobs for our children.

8 By the time all of this is done maybe our

9 grandchildren already at school.

10 I have attended school, Kahuku, all of the

11 elementaries, I know Marconi because I went there and

12 I go there often. Often I can tell you the legends

13 that were passed on. I can tell you that because my

14 kupuna told us that.

15 Why the iwaiwa's rot? Are these all just

16 fabrications? No, they are not. They are not. All

17 of that area over Marconi, over Turtle Bay, really

18 Kuilima. Where did they get Turtle Bay? Ku'i lima.

19 I know that ancestors were buried there. But we need

20 to open.

21 Too many things are closed in our state.

22 Where we used to run it's gated. Kapu. You're

23 thinking it's a "man". But it's not. It's

24 "forbidden".

25 "Who owns this place? Kapu?" They think

1 it's a person. No. You, "Who's Mr. Kapu?" No such
2 thing.

3 But I just am here to say that there is
4 room. We just need to move on what is right, you
5 know, put up museums so the children, before we kupuna
6 go away and cannot share what people are fighting
7 over.

8 And on top of that, nobody owns the land.
9 It will not work when people are fighting. It never
10 does. But I want to say this for our children, our
11 grandchildren and now our great-grandchildren it is
12 open.

13 You have to ride down to Marconi, go down
14 that dirt road, go by Tanaka Store and it is for
15 everyone to share, you know, before it's closed.

16 PRESIDING OFFICER WONG: Thank you,
17 Ms. Thompson.

18 THE WITNESS: Do I have one last second,
19 dear?

20 PRESIDING OFFICER WONG: Go ahead.

21 THE WITNESS: Yes. So that's what I'm here
22 for. I'm a country girl. But I'm also ready to open
23 up to so that we can -- there's roads, there's one
24 main road and when you come home if you go to Wal-Mart
25 you don't want to travel by yourself in the night. It

1 is so dark it looks like it's always pokano night.

2 PRESIDING OFFICER WONG: Okay.

3 THE WITNESS: But you will see the gates.

4 And they're all closed gates. And, I'm a kupuna.

5 Don't do that. Open up now. Jobs. And -- oh, thank

6 you, sir.

7 PRESIDING OFFICER WONG: Thank you.

8 (Applause). Ben Shafer. I'm sorry. Any questions,

9 parties?

10 MR. MATSUBARA: No questions.

11 MR. YEE: No questions.

12 MR. KITAOKA: No questions.

13 MR. KUGLE: No questions.

14 THE WITNESS: I just --

15 PRESIDING OFFICER WONG: Members of the

16 Commission?

17 THE WITNESS: Mr. Chair, I promise I just

18 want to say one thing?

19 PRESIDING OFFICER WONG: Oooh, you know

20 what, we got a lot of people. You get a chance maybe

21 after that. Okay.

22 THE WITNESS: Okay. Just one thing.

23 PRESIDING OFFICER WONG: I'm trying to

24 accommodate everybody --

25 THE WITNESS: One? (Laughter) (Witness

1 leaving the stand)

2 PRESIDING OFFICER WONG: -- so everybody has
3 a chance.

4 BEN SHAFER
5 being first duly sworn to tell the truth, was examined
6 and testified as follows:

7 THE WITNESS: I will.

8 PRESIDING OFFICER WONG: Please state your
9 name and address for the record.

10 THE WITNESS: Benjamin Shafer, 52-210
11 Kamehameha Highway, Hauula, Hawai'i, 96717 co-chair
12 for the Defend O'ahu Coalition. And aloha kakou, LUC
13 board members, and Vice Chair and members of our
14 community.

15 I think the biggest issue -- I enjoyed all
16 of the ones that testified before me -- I think the
17 biggest issue on today's agenda what we're here for is
18 the 236 acres that's in question, whether it should be
19 reverted back to ag or stay in urban.

20 If they didn't develop it, didn't move it
21 forward for the last 20 years should it stay in urban
22 or should it move back? As we know nowadays we gotta
23 be more sustainable. Once they move 'em back to
24 agriculture they can work off the land just as well.

25 By the way, I support Turtle Bay 100

1 percent. I go there. I eat there. We have a lot of
2 activities there. So I support them on that part, but
3 I do not support anything else.

4 But this particular hearing is on that ag
5 land that was reverted to urban and nothing was done
6 for 20 years.

7 A number of years ago we went before the
8 Department of Land and Natural Resources to get a
9 permit to build our home where my grandfather had it.
10 And they told us we had a year to come up with the EIS
11 and all the plans to build where we were at.

12 And we ended up having a three-month
13 extension, another three-month extension. And finally
14 they said, "No. You finished already. You gotta
15 move," because we couldn't come up with all the, all
16 the paperwork that was needed. Yeah. Year and-a-half
17 and we were out already of that, my grandfather's own
18 lot.

19 Why would corporate America be any
20 different? Why do corporate America get a longer
21 extension on anything that they do? I'm not against
22 jobs because if you look at Kapolei where they said
23 they're going to be the second city, you see all that
24 hundred thousand cars coming into town every morning.
25 And that's supposed to be where all the jobs supposed

1 to be. So we know no matter where they build there
2 will be a whole bunch of traffic on that side.

3 Another point I wanted to bring up was that
4 we heard about jobs. We heard about housing. Yet 20
5 years later still the same hotel, no housing, and no
6 more jobs.

7 There's a lot of different things that we
8 can do to help build up the community. But this
9 hearing is on that ag land, specifically on the ag
10 land whether to keep it urban or to revert it back to
11 agriculture.

12 In the long run we would be better off
13 planting agriculturally instead of planting cement
14 because we're going to need it. And that's all I have
15 to say. Thank you.

16 (Applause)

17 PRESIDING OFFICER WONG: Thank you. Any
18 questions? I'm going to ask the audience to keep this
19 thing down because we've got a lot of people to
20 testify and I'm trying to accommodate. And all this
21 interruption only delays the process. Parties, any
22 questions?

23 MR. MATSUBARA: No questions.

24 MR. KITAOKA: No questions.

25 MR. YEE: No questions.

1 MR. KUGLE: No questions.

2 PRESIDING OFFICER WONG: Members of the
3 Commission? No questions? All right. Next testifier
4 is James O'Shea followed by Mark Manley.

5 JAMES O'SHEA,
6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: I do.

9 PRESIDING OFFICER WONG: Please state your
10 name and address.

11 THE WITNESS: James O'Shea, 59-171 Keanui
12 Road, Haleiwa.

13 PRESIDING OFFICER WONG: Please proceed.

14 THE WITNESS: I know you all have mountains
15 of testimony from previous hearings and submitted
16 testimony. So I just want to mention that one of the
17 things about the development that has been brought up
18 quite a bit is resource constraints, most notably
19 that's been traffic and sewage.

20 But the two resources that haven't been
21 discussed very much are the increased need for
22 electricity and water. I'm not sure if they're in the
23 plans for the development, but the existing power
24 lines run right by folks' houses.

25 To increase the voltage that's going to

1 travel over those lines would be detrimental not only
2 during the construction but also the health risk posed
3 by increased power usage. And obviously the costs for
4 increasing the water capacity. That's it.

5 PRESIDING OFFICER WONG: Thank you. Any
6 questions, parties?

7 MR. MATSUBARA: No questions. Chair.

8 MR. KITAOKA: No questions.

9 MR. YEE: No questions.

10 MR. KUGLE: No questions.

11 PRESIDING OFFICER WONG: Members of the
12 Commission? Thank you. (Applause starting)

13 PRESIDING OFFICER WONG: Hold on. Hold on.
14 Come on. We cannot do this. Okay? Let's do things
15 properly, people. Mark Manley.

16 MARK MANLEY
17 being first duly sworn to tell the truth, was examined
18 and testified as follows:

19 THE WITNESS: I do.

20 PRESIDING OFFICER WONG: Please state your
21 name and address for the record.

22 THE WITNESS: My name is Mark K. Manley.
23 My address is 57-69 Kamehameha Highway.

24 PRESIDING OFFICER WONG: Proceed.

25 THE WITNESS: I've been testifying before

1 you, the board here, almost the last two years. I
2 hope today we can resolve this.

3 First off I want to say I do support the
4 hotel. I understand what Junior is saying about jobs.
5 Of the four children in my family I'm the only one
6 left here. They have all had to move to the mainland
7 for jobs and Na'alehu also for jobs.

8 All you have to do here is issue an Order to
9 Show Cause why the 236 acres should be reclassified
10 back to ag --should not be classified back to
11 agriculture.

12 The developers have not met almost all of
13 the conditions for the state boundary reclassification
14 in 1986. That's 24 years. I've heard that maybe they
15 can have it done by 2018. So that's eight years to do
16 the whole thing.

17 The Commission was formed to prevent land
18 speculation. That's where we ask you because there's
19 no more important time to act than now.

20 It's your responsibility to stand up not
21 only for the iwi that's buried there, the Native
22 Hawaiians, but all the citizens of Hawai'i from
23 Waiohini to Waianaha. So in closing I'd just like to
24 ask, order them to show cause. Thank you.

25 PRESIDING OFFICER WONG: Thank you. Any

1 questions, parties?

2 MR. MATSUBARA: No questions.

3 MR. KITAOKA: No questions.

4 MR. YEE: No questions.

5 MR. KUGLE: No questions.

6 PRESIDING OFFICER WONG: Any question by the
7 Commission? Thank you. Margaret Primacio and
8 followed by Bob Leiman.

9 MARGARET PRIMACIO
10 being first duly sworn to tell the truth, was examined
11 and testified as follows:

12 THE WITNESS: I do.

13 PRESIDING OFFICER WONG: Please state your
14 name and address for the record.

15 THE WITNESS: Margaret Primacio, 480 New
16 Camp, Kahuku. And I've lived there all my life. I'm
17 a director, board member of Defend O'ahu Coalition, a
18 board member of Keep Kahuku Country.

19 And that organization represents and tries
20 to help the former plantation camps rehab the camps
21 and redevelop the area. We also stand for protecting
22 our shorelines and access to the shorelines.

23 I'm here today on a personal level as well
24 because I believe that Kuilima Resort is in default of
25 these conditions that were agreed upon 23 to 24 years

1 ago.

2 The conditions that affect my family
3 personally is Condition 2 regarding affordable
4 housing. Their promise for 10 percent of affordable
5 housing being available for rent or sale in our area
6 was a very much needed condition.

7 And one of our family of seven is in a
8 permanent housing. The rest are awaiting these
9 23-year-old promises. These conditions are very
10 important to our area. We're faced with the fire sale
11 of land in our area. So we are faced with now seven
12 developers instead of one hotel developer.

13 So the condition agreed upon in this
14 reclassification of 236 acres of good agricultural
15 land, valuable agricultural land needs to be reverted
16 back. And Kuilima Resort Development needs to come
17 back and answer to the public.

18 The second condition of great importance to
19 our family is Condition 6 with regard to protecting
20 archaeological sites. These include burial sites in
21 the area. I think they are very -- have not been
22 transparent with the public, with the community that
23 they claim will benefit from this development.

24 And they haven't been transparent in that --
25 well, maybe they have, because it made the newspaper

1 that they pulled their cultural survey that called for
2 more testing in the area of their hotel expansions,
3 that where hotels were to be located has a very high
4 probability of burial not only sites but burial
5 grounds.

6 And I believe, and our family believes -- my
7 mother is not from the area -- she's from Maui but we
8 would be, I think, considered cultural descendants of
9 the area, not lineal descendants.

10 But just because we don't have Punchbowl
11 crosses out there on all the burials out in the area
12 doesn't mean it's not valid for being protected and
13 honored. So these two I wanted to mention to the
14 Commission. Mahalo.

15 PRESIDING OFFICER WONG: Thank you. Any
16 questions by the parties?

17 MR. MATSUBARA: No questions, Chair.

18 PRESIDING OFFICER WONG: Any questions by
19 the Commissioners? Bob Leinau.

20 BOB LEINAU
21 being first duly sworn to tell the truth, was examined
22 and testified as follows:

23 PRESIDING OFFICER WONG: Please state your
24 name and address for the record.

25 THE WITNESS: My name is Bob Leinau. I live

1 at 59-424 Pokauka Street in Pupakea.

2 PRESIDING OFFICER WONG: Proceed.

3 THE WITNESS: Aloha kakou. I appreciate the
4 opportunity to address this body. I would like to say
5 that the issue as it's been stated before is that
6 there's a dereliction here.

7 There were nine conditions. And that -- I
8 know the carrot guys went out and said, "Whad ya want?
9 Whad ya want?" Got people to agree, "Okay. That's
10 what we want. That's what we're gonna do."

11 You guys set the conditions. They agreed to
12 'em. The haven't done 'em. It's totally appropriate
13 to come and say: Hold the developer's feet to the
14 fire. These aren't the guys maybe that were involved
15 20 years ago except for Ralph. He's been around for
16 40 years.

17 I started work at that hotel before Ralph
18 there. In fact, it was a vacant lot when I started
19 work there. Mind you I'm not working there now.

20 I have been in community affairs, involved
21 in them since 1968. So I've been keeping my antenna
22 up and going to a lot of meetings for a very long
23 time. And everyone in the community is very proud of
24 the hotel and they've done a great job.

25 The future's another story. Right now my

1 personal feeling is a little bit of a sucker play.
2 The developers have made a bunch of promises. The
3 carrots are all hanging out there.

4 The way the lay of the land is now those
5 carrots could be dangling in front of us 200 years
6 from now and we still don't get the assets and
7 benefits to the community that they said we should be
8 getting.

9 It's this body's -- I mean I don't -- in
10 your job description -- I don't mean to insult anybody
11 here, but the word "shall" gets used now and again.
12 It seems to me it's incumbent upon you folks to hold
13 these guys' feet to the fire. Mahalo.

14 PRESIDING OFFICER WONG: Thank you. Any
15 questions by the parties?

16 MR. MATSUBARA: No questions, Chair.

17 MR. YEE: No questions.

18 PRESIDING OFFICER WONG: Any questions by
19 Commissioners? Thank you. Bob Nakata, followed by
20 Stuart Coleman.

21 BOB NAKATA,
22 being first duly sworn to tell the truth, was examined
23 and testified as follows:

24 THE WITNESS: I do.

25 PRESIDING OFFICER WONG: Please state your

1 name and address for the record.

2 THE WITNESS: I'M Bob Nakata. I live at
3 47-237A Waihe'e Road. And I'm here to ask you to
4 support the request for the show cause order. I'll
5 refer back to some historical things here.

6 As the previous speaker mentioned, a lot of
7 promises were made that have not been fulfilled. And
8 I would rather use the number 25 years than 20. It
9 gives a better sense of what has happened here because
10 the planning for this expansion really happened 25
11 years, or more years ago.

12 And it's 236 acres. A long time before
13 that, I believe it's 1964 when the first General Plan
14 for the City and County of Honolulu was produced, that
15 plan did show resort development in this area,
16 600 acres, maybe a little bit more than 600.

17 And somewhere around 1970 the existing hotel
18 was built. In those earlier days in the '60s there
19 was a plan. The General Plan, I believe, showed a
20 highway from Kaneohe running along the base of the
21 Ko'olaus back of Kualoa Valley all the way up to where
22 Kuilima is now. So that was the plan back then.

23 Kahalu'u was planned for the second city.
24 Most of what you see in Kapolei now was also being
25 planned for Kahalu'u.

1 Because of the victory of the Kapolei
2 developers, the infrastructure -- and part of the
3 reason for their victory is that infrastructure
4 funding by the state and by the county was all in the
5 direction of Kapolei.

6 The major highways, the freeways, the deep
7 draft harbor, all of those things went in that
8 direction, sewers, water, whatever.

9 Nothing went up in the direction of Kahuku.
10 And even now with the rail transit system, maybe we'll
11 get it.

12 But if we get it that's five, six billion.
13 When will the time come for Kamehameha Highway to be
14 improved? And in any case on the Windward side a lot
15 of homes are going to be taken if Kamehameha is
16 improved.

17 But back to my point. The infrastructure,
18 everything is down in this part of the island,
19 southern O'ahu. When will it be the time for
20 infrastructure up to Kahuku, up to the North Shore?
21 That is decades away.

22 And it's those kinds of questions that the
23 developer needs to answer. What is the justification?
24 In their 1986 request they were talking about -- well,
25 they did a market study. They said Kahuku was the

1 best place for a full service resort. Waikiki they
2 said was already filled up. Queen's Beach was too
3 windy.

4 Kapolei, well, you had the industrial park,
5 Barbers Point, the Naval Air Station was there, a very
6 noisy and dangerous operation. And there are several
7 other reasons why they said Kapolei --

8 PRESIDING OFFICER WONG: Mr. Nakata, can you
9 wrap it up.

10 THE WITNESS: So with all of those things --
11 even with all of those things the development went to
12 Kapolei and no infrastructure for Kahuku. And the
13 main reason, I think, it was the same landowner and
14 that landowner, the Campbell Estate, put all their
15 planning resources into Kapolei and nothing for
16 Kahuku.

17 On the issue of the iwi, the bones, Turtle
18 Bay has already prepared a new mitigation plan. They
19 have one approved in 2005.

20 In 2006 they did some grubbing illegally.
21 They went to the State Historic Preservation Division
22 said, "Well, okay. We'd do a new mitigation plan
23 according to the new rules."

24 Then when that became public and the SHPD
25 asked them to redo their entire plans, they have taken

1 that new mitigation plan back.

2 I think in whatever you do you should tell
3 them, if they're going to proceed, they have to go
4 back to SHPD and get that approved. They shouldn't
5 rely on an old mitigation plan. Thank you.

6 PRESIDING OFFICER WONG: Thank you. Any
7 questions by the parties?

8 MR. MATSUBARA: No questions, Chair.

9 MR. KITAOKA: No questions.

10 MR. YEE: No questions.

11 MR. KUGLE: No questions.

12 PRESIDING OFFICER WONG: Commissioners?
13 Thank you, Mr. Nakata. Stuart Coleman followed by
14 Kent Fonoimoana.

15 STUART COLEMAN,
16 being first duly sworn to tell the truth, was examined
17 and testified as follows:

18 THE WITNESS: I do.

19 PRESIDING OFFICER WONG: Please state your
20 name and address.

21 THE WITNESS: My name is Stuart Coleman,
22 and I live at 2121 Algaroba Street, Honolulu, Hawai'i.

23 PRESIDING OFFICER WONG: Please proceed.

24 THE WITNESS: Thank you. Aloha to community
25 members. I represent the Surfrider Foundation. We

1 have 4,000 members across the state. And we have a
2 lot of our members that live on the North Shore. And
3 this has been one of our biggest issues over probably
4 the last ten years and one of our biggest campaigns.

5 And I bring a more unique perspective, some
6 might say an outsider that I live in town, but I'm a
7 frequent visitor to the North Shore. Like many people
8 we love -- what draws us there is the fact that it is
9 country and the rural aspect of it.

10 And so that's something that draws not only
11 myself but millions of people throughout the year.
12 That's partly why they come because they want -- a lot
13 want to get away from Waikiki and the developments
14 there.

15 I have a question for you all if you
16 wouldn't mind. How many of you have driven out to the
17 North Shore in the last couple of years on the
18 weekends?

19 PRESIDING OFFICER WONG: I think you can
20 testify. We're not here to answer or wave hands. Go
21 ahead, testify.

22 THE WITNESS: With all due respect it is a
23 very important question. Have any of you traveled out
24 on the weekends to the North Shore?

25 PRESIDING OFFICER WONG: Again, proceed with

1 your testimony.

2 THE WITNESS: I will, thank you. The reason
3 I ask, sir, is if you had gone out there you'll know
4 that the traffic situation is incredibly bad. It's
5 bumper-to-bumper on the weekends. And all these
6 people who live out there know this very well. So the
7 infrastructure cannot handle this kind of massive
8 development plans.

9 And that kind of brings me to my point about
10 what people have said about jobs which is a very, very
11 important issue especially in this economy. And we
12 need jobs.

13 But it's the kinds of jobs we need and the
14 kind of employers that's really important that you
15 have to kind of consider in your deliberations about
16 this issue.

17 Because it's about working with good faith
18 partners. We have had partners, so-called partners in
19 the Kuilima Resort Company and Oaktree that have not
20 made good on their commitments through previous
21 developers, treated our Local 5 workers poorly; have
22 not fulfilled their plans, have not agreed to do a
23 supplemental EIS statement.

24 So we're working with people that have
25 really dishonored the local community. So I ask you

1 to consider that.

2 One of our big issues at Surfrider
3 Foundation is beach access. And one of the arguments
4 that the Kuilima Resort Company, if we are allowed
5 this development we will provide beach access.

6 Why do we have to succumb to their demands
7 to have beach access? We should have beach access
8 anyway. As the previous aunty said, when we were
9 talking about no more gates, we are talking about
10 building no more resorts.

11 Why not have more sustainable businesses,
12 more agricultural which we desperately need for food
13 security?

14 So I ask you to consider these issues, the
15 kinds of jobs that we want, they will honor for these
16 jobs? It's very important that people will honor
17 commitment.

18 PRESIDING OFFICER WONG: Any questions by
19 the parties?

20 MR. MATSUBARA: No questions.

21 MR. KITAOKA: No questions.

22 MR. YEE: No questions.

23 MR. KUGLE: No questions.

24 PRESIDING OFFICER WONG: Any questions by
25 the Commissioners? Our court reporter has been

1 working feverishly trying to get down every word and
2 we need to give her a break. So we'll take a 10
3 minute recess.

4 (Recess was held.)

5 PRESIDING OFFICER WONG: (11:30) We're back
6 in session. Kent Fonoimona followed by Laura Gray.

7 KENT FONOIMONA
8 being first duly sworn to tell the truth, was examined
9 and testified as follows:

10 THE WITNESS: Yes, sir.

11 PRESIDING OFFICER WONG: Please state your
12 name and address.

13 THE WITNESS: My name is Kent Fonoimoana.
14 My address is 56-423 Pahalehala Loop, Kahuku, 96731.

15 PRESIDING OFFICER WONG: Please proceed.

16 THE WITNESS: Thank you, Commissioners, for
17 hearing this morning. We're all here -- well, the
18 guys in green shirts are here to ask you folks to
19 approve the motion to, or Order to Show Cause from the
20 developers.

21 As how many you guys have heard already 23
22 years, 24, whatever the timeframe, enough time has
23 gone by for them to make good on their representations
24 that they made good to the community those many years
25 ago when the Project was first accepted by our

1 neighborhood.

2 They bring up the issue of jobs. That's
3 true, we need jobs. But if they were allowed to build
4 out their proposed development to the scope that they
5 would like to, there's an estimate that there's
6 3,000 -- 3,500 jobs they would create. Currently
7 there's not that many people out there that are
8 looking for jobs in the resort industry.

9 Therefore all of these employees, 20 years
10 down the road should it go through all these folks
11 that are going to be coming out there to work, will be
12 traveling on Kam Highway which will increase the
13 traffic impact to our community directly.

14 You were asked earlier if any of you folks
15 had been out there on the weekend. Rather than say
16 that I'll say it in a different manner. Our community
17 is grateful for what we do have.

18 We're grateful that Turtle Bay is there.
19 We're grateful that we are a destination for surf
20 contests and they're all the time during the winter.

21 We can accept and support the traffic
22 implications that we have to deal with on the weekend
23 or during the week because it's not just on weekends.
24 And we support what is going on there now.

25 However, should the developer be allowed to

1 fully develop what they want to do, those conditions
2 will be a daily basis. And that's unacceptable to us,
3 not to mention safety hazards and everything else.

4 So the job issue's important but understand
5 the people that will be coming to work there will be
6 coming from outside the community.

7 I am very active in my community. I am a
8 member of the Defend O'ahu Coalition as well as the
9 Kahuku Community Association of which Ralph Makaiau is
10 the president. And although she did not mention it
11 Margaret Primacio sits on the board, both boards with
12 us.

13 Whether you're wearing a green shirt, aloha
14 shirt, a knit shirt, if you're a member of the
15 community it is not disrespectful and you do have a
16 right to involve yourself in the process. And I thank
17 you all of the witnesses or the people who are here in
18 support whichever side that they're on. Thank you for
19 your involvement in your communities.

20 PRESIDING OFFICER WONG: Wrap it up.

21 THE WITNESS: I don't think it's too much to
22 ask after 20 somethin' years for this board to ask the
23 developers: Here's the nine conditions that you guys
24 said that you were gonna do. What's up with that?
25 You haven't done any of 'em.

1 Now, Stanford wants to proceed, give us a
2 park and we can come back and talk later.

3 PRESIDING OFFICER WONG: Thank you. Any
4 questions by the parties? Any questions by the
5 Commissioners? Thank you. Laura Gray followed by
6 Mark Cunningham.

7 LAURA GRAY

8 being first duly sworn to tell the truth, was examined

9 and testified as follows:

10 THE WITNESS: I do.

11 PRESIDING OFFICER WONG: Please state your
12 name and address for the record.

13 THE WITNESS: It's Laura Gray, 53-416 B Kam
14 Highway, Punalu'u.

15 PRESIDING OFFICER WONG: Please proceed.

16 THE WITNESS: I'm five generations Hawai'i
17 and I live in Punalu'u. And it's very bad, the
18 traffic right now. It's a little bitty shore road
19 never meant for a big development. There's also no
20 infrastructure as far as emergency management.

21 My husband's a fireman and it's very
22 dangerous, the situation, because if you had a
23 hurricane or tsunami or earthquake it would be very,
24 very bad.

25 Kahuku Hospital is really a clinic. It's

1 just not meant for this type of development. So I
2 have a big concern about that, the runoff.

3 We need jobs but they need to be
4 sustainable. We need agriculture here so Hawai'i can
5 support itself. So please do the people's work here.
6 I know you all -- actually I have to thank you for
7 working for us 'cause you do work for us. Thank you.

8 PRESIDING OFFICER WONG: Thank you. Any
9 questions by the parties?

10 MR. MATSUBARA: No questions.

11 PRESIDING OFFICER WONG: Any questions by
12 the Commissioners? Thank you. Mark Cunningham
13 followed by Tim Vandever and Kevin Kelly.

14 MARK CUNNINGHAM
15 being first duly sworn to tell the truth, was examined
16 and testified as follows:

17 THE WITNESS: Yes, sir.

18 PRESIDING OFFICER WONG: Please state your
19 name and address for the record.

20 THE WITNESS: (off mic) My name is Mark
21 Cunningham and -- (on mic) aloha, Commissioners. Two
22 years later my name is still Mark Cunningham. Two
23 years later I still reside at Kawela Bay, 57-469
24 Kamehameha Highway.

25 PRESIDING OFFICER WONG: Please proceed.

1 THE WITNESS: Thank you, sir. Two years
2 later all we're asking for is simple issuance of an
3 Order to Show Cause as to why the boundary
4 classification of Kuilima Development Corporation
5 should not be revoked for failure to perform
6 conditions, representations and commitments.

7 Twenty-four years later nearly half of the
8 nine conditions agreed by the developer and the
9 Commission have not been met. The developer lied to
10 your predecessors and to the community. Who's to stay
11 they're not lying to you now?

12 What they're saying your rules,
13 requirements, and conditions don't pertain to them.
14 They seem to be able to ignore them. I think all of us
15 here can agree to this: None of the promised hotels
16 have been built, therefore no jobs.

17 None of the promised housing, affordable
18 housing rentals have been built.

19 No Kamehameha Highway improvements have been
20 done.

21 No parks, easements, accesses or
22 right-of-way. A quarter of a century later the
23 conditions have not been met.

24 However, one project that was completed was
25 the new 50 ocean villas with a price range of \$1.6 to

1 \$4 million per unit. The developer did find the time,
2 energy and money for that project.

3 Commissioners, I beg you to please stop this
4 absurd foot dragging and procedural stalling. And
5 simply order an Order to Show Cause and have that
6 hearing out on the North Shore so the community can
7 find out what the hell is going on.

8 This Commission was created to prevent land
9 speculation in Hawai'i. Commissioners, please
10 represent the citizens, taxpayers and your friends and
11 neighbors in this decision, not offshore investors,
12 speculators and lawyers.

13 With all due respect to Messrs. Makaiau and
14 Kau -- Makaiau, their reference to a silent majority
15 in support of this Project I find laughable. Over the
16 past three years our simple grassroots organization,
17 Defend O'ahu Coalition, has sold and distributed over
18 20,000 Keep The Country Country bumper stickers.

19 We have also sold over 10,000 tee shirts
20 with the same message. I have yet to see a single
21 shirt or sticker that says, "Build More Hotels."

22 The issue the past two years before you has
23 not been about jobs, housing, traffic, environmental
24 impact statements, tourism or quality of life. It is
25 simply the issue to hold a hearing and to have our

1 island community get some answers.

2 In closing, Commissioners, two years later I
3 again implore you to leave your legacy with pride. Be
4 able to tell your children and grand-children that you
5 helped keep the country country.

6 (Audience starting to clap)

7 PRESIDING OFFICER WONG: Thank you. Hold
8 on. Hold on. Come on. Any questions by the parties?

9 MR. MATSUBARA: I have no questions, Chair.

10 MR. KITAOKA: No questions.

11 MR. YEE: No questions.

12 MR. KUGLE: No questions.

13 PRESIDING OFFICER WONG: Commissioners, any
14 questions? Next witness? Thank you. Tim Vandever
15 followed by Kevin Kelly.

16 TIM VANDEVEER

17 being first duly sworn to tell the truth, was examined
18 and testified as follows:

19 THE WITNESS: I do.

20 PRESIDING OFFICER WONG: Please state your
21 name and address for the record.

22 THE WITNESS: Timothy Vandever. I live at
23 59-080 Kamehameha Highway unit B in Haleiwa.

24 PRESIDING OFFICER WONG: Proceed.

25 THE WITNESS: Aloha, Commissioners. Thank

1 you once again for hearing our Motion for the Issuance
2 of a Show Cause Order. I wanna thank you and also say
3 that it is almost two years since we originally filed
4 this thing.

5 I think I feel like I'm getting to know some
6 of you. I'd like the record to reflect you've only
7 grown better looking over the last two years.
8 Hopefully wiser as well.

9 What we're looking at here is 236 acres.
10 That's what this whole thing is about. This is what
11 you have jurisdiction over. This is what the
12 developer in 1986 had upzoned from agricultural land
13 to urban/resort land.

14 And that 236 acres had a timeline
15 originally. It might not have had a hard and fast
16 timeline that the Land Use Commission imposed, but it
17 did have a timeline that the developer -- in getting
18 this classification approved the developer alluded to
19 the fact that they would be done with this development
20 by 1996. And that never happened.

21 And the nine conditions that you did impose,
22 of those nine conditions definitely four of them --
23 and you could argue that maybe five, if you take into
24 account what Reverend Nakata mentioned about the
25 archaeological mitigation plan that the developer

1 rescinded, which mentioned all the possibilities of
2 not just finding individual burials but entire burial
3 grounds. And they pulled that back from SHPD. and
4 that was not considered.

5 When you consider that that's over half of
6 the nine conditions have not been met. That's the
7 only thing that we're talking about today. I work for
8 Turtle Bay. I'm a member of the Defend O'ahu
9 Coalition. We support the existing hotel. I see a
10 lot of my co-workers in the audience. I respect their
11 position.

12 But I think it's important to realize in the
13 argument that they make they talk about jobs. And
14 they talk about the intent of the developer in 1986.
15 I think it was admirable back then. But that wasn't
16 what was delivered.

17 The goal was jobs, those jobs never
18 materialized. The affordable never materialized. The
19 condominiums, more hotels, that that never happened.
20 So what we're asking is that the Commission simply
21 issue the Order to Show Cause.

22 I would also argue that most of the folks
23 that are here in support of the development either
24 work for Turtle Bay or work for the developer, or
25 stand in some capacity to benefit in some way from

1 additional hotels there.

2 And what we're saying we don't disagree --
3 we support Turtle Bay. We simply disagree with what
4 they're asking right now. We don't feel it is timely
5 or sustainable.

6 The community, the vast majority, not the
7 silent majority, the vast majority of people also
8 oppose this proposal. It's just simply outdated.

9 So we ask that you issue this order if for
10 no other reason than to bring the hearings to the
11 North Shore. The people that are in the back of the
12 room, all the green shirts, those folks have come here
13 before the Commission six times on workdays during
14 work hours to see this continually, this can
15 continually be kicked down the road.

16 And so we'd love for you to bring this --
17 issue the order, we'd love for you to bring it to our
18 community, allow the residents that would be most
19 severely impacted by this development to take part in
20 the process and hold this developer accountable.

21 To allow this to move forward is to
22 encourage land speculation. And I submit to you
23 that's the reason the Land Use Commission was created
24 was to prevent that. What kind of developers do we
25 want to attract here?

1 We're not against all development. We're
2 against, if you would pardon my comments, we're
3 against stupid development. This doesn't make any
4 sense in this day and age. I'm not against all
5 development. I think something in the footprint of
6 Turtle Bay, that might work.

7 But we're asking the developer to come back
8 to the community. Do you realize that Credit Suisse,
9 the chief credit holder for the resort right now,
10 basically the bank that's making all the decisions,
11 they're currently being sued by four different resort
12 owners and ski lodge owners on the mainland because
13 they came up with schemes that caused those properties
14 to go into default. And now they're controlling those
15 properties.

16 We don't feel like this is the kind of
17 developer we want in Hawai'i. So we ask that you
18 issue, simply issue -- we're just asking for a Show
19 Cause.

20 That's all we're asking is for another
21 meeting so that we can force the developer to
22 introduce evidence, tell us why you deserve to keep
23 this zoning.

24 And I thank you very much for your time.

25 PRESIDING OFFICER WONG: Thank you. Any

1 questions by the parties?

2 MR. MATSUBARA: No questions.

3 MR. KITAOKA: No questions.

4 MR. YEE: No questions.

5 MR. KUGLE: No questions.

6 PRESIDING OFFICER WONG: Any questions by
7 the Commissioners? Kevin Kelly.

8 KEVIN KELLY

9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: I do.

12 PRESIDING OFFICER WONG: Please state your
13 name and address for the record.

14 THE WITNESS: My name is Kevin Kelly, I live
15 at 56-103 Alapa Place in Kahuku. Thank you,
16 Commissioners, for hearing me. I really think you
17 were right, what was it, a year ago, to go and get
18 legal counsel on this decision. Because you heard
19 about Gil Riviere their lawsuit. It's in the Supreme
20 Court now.

21 What you haven't heard about, hadn't been
22 touched on today is the Department of Permitting and
23 Planning continues to give discretionary extensions to
24 permits to the developers at Kuilima.

25 They do this out of fear of litigation.

1 These are discretionary permits, but because of the
2 unilateral agreement that they have with the
3 developers they feel locked in that they have to
4 continue on to allow progress to happen.

5 As Ben Shafer said, he didn't get extensions
6 on his family's land, his family's home. But yet the
7 developer here gets six month, after six month, after
8 six month extensions to do their work.

9 This is what's been frustrating in our
10 community is that while we're trying to get a hearing,
11 a show cause hearing, the developer keeps plugging
12 away and keeps making progress. Eventually we feel
13 this community's gonna be beaten down.

14 Now, this board is incredibly important to
15 the community because it's one of the only regulatory
16 agencies in the state that can act on behalf of the
17 people, and in this case act on behalf of the people
18 only because of the lack of progress by the developer
19 and the developers that came before them.

20 It's nobody else's fault that the conditions
21 of the permits were not fulfilled. It's only because
22 people put it off. They speculated. They turned the
23 land over.

24 And even now the new owners bought that
25 land, bought into that property knowing what the

1 conditions were. Now it's in foreclosure. There is
2 no money on the forefront. There are no development
3 partners in hand.

4 It's to me ludicrous to think there is
5 anything that's going to happen in the near future
6 anyway. So really to have a show cause hearing would
7 really bare the facts. I think it's a discussion the
8 community deserves and needs to have.

9 So I do hope you issue an Order to Show
10 Cause and I thank you for hearing us all. Thank you.

11 PRESIDING OFFICER WONG: Thank you. Any
12 questions by the parties?

13 MR. MATSUBARA: No questions.

14 MR. KITAOKA: No questions.

15 MR. YEE: No questions.

16 MR. KUGLE: No questions.

17 PRESIDING OFFICER WONG: Any questions by
18 the Commissioners? Mr. K.C. Conners followed by
19 Bonnie -- can't pronounce this name -- Leadingaga.

20 K. C. CONNERS
21 being first duly sworn to tell the truth, was examined
22 and testified as follows:

23 THE WITNESS: My name is K. C. Cathleen
24 Conners. I am now staying in Kaneohe with a friend
25 so....

1 PRESIDING OFFICER WONG: Please proceed.

2 THE WITNESS: I come here on two accounts. I
3 come as a person trained in economic development and
4 as a foster mom and mentor for young people.

5 I've heard a couple things that really upset
6 me. First of all, about the jobs issues. Let's say
7 my foster kids and all the kids I know want those high
8 quality, interesting, 21st century well-paying jobs,
9 film and TV jobs that are filmed at Turtle Bay.

10 Right now so many of the films and TV are
11 filmed at Turtle Bay. The TV shows, the films, that
12 is the one huge beach that they use. And if you put
13 the development there it will devastate Hawai'i's film
14 and TV industry which is 21st century jobs. So many
15 are filmed at Turtle Bay.

16 And, secondly, the traffic it will cause.
17 The other places up and down our side, Ko'olauloa, the
18 North Shore, Hollywood comes here because of our
19 spectacular scenery. And if we overbuild, if we have
20 bumper-to-bumper traffic, and overcrowded beaches they
21 will take all those films, those TV, those
22 high-quality jobs somewhere else.

23 So first the amount of film and TV jobs that
24 are at Turtle Bay I ask you to look at that, those
25 high quality jobs. Those are the kinds our kids want.

1 Secondly, the traffic will impact other film
2 places along that one little road all the way from
3 Kaneohe to Haleiwa. That's Kualoa Ranch. Look at
4 your films. You can see how many films Chinaman's
5 Hat's in. Right now, you know, Pirates of the
6 Caribbean is coming. Hawai'i 5-0 pilot may do a
7 pilot. We still have Lost going. We have the Korean
8 soap operas.

9 Just even small, uhm, sometimes the TV comes
10 up for a couple episodes like The Hills came up at
11 Turtle Bay. There's a whole list of things. Saving
12 Sarah Marshall.

13 And, thirdly, all those film and TV industry
14 there's tremendous advertising for Hawai'i's tourist
15 industry, you know. You'll see that beautiful shot of
16 Hawai'i, people come.

17 That saves our state tons of money. On
18 Regis and Kelly they show a beautiful shot of Turtle
19 Bay and give away a stay at Turtle Bay.

20 What are they going to show? Five hotels,
21 huge parking lots, and crowds? You think that's going
22 to make people come? You're going to damage our
23 ability to advertise with these films.

24 And, fourthly, our youth. I'm sorry. My --
25 the kids I mentor they would prefer these high quality

1 interesting film and TV jobs. In front and behind the
2 cameras our kids can shine.

3 Wai'anae 'Olelo, Wai'anae High School has a
4 huge media and TV training center. Kahuku tiny, tiny.
5 We have just started to try to grow that. These are
6 the kinds of jobs our kids want. Waianae has shown
7 that our kids can work behind the camera, with the
8 cameras, with the technology.

9 And particularly on our side our kids are
10 great, our community is great, music, dance, you know,
11 performing arts. A couple of the stunt people in
12 Avatar were from O'ahu. Hey, our side knows how to do
13 that. They're very athletic, know how to fight.
14 Pirates of the Caribbean. They'd love to be pirates
15 and they have that ability. Those are their gifts and
16 talents.

17 The music. We would love to see more
18 Hawai'i people write scores. If you kill our side and
19 where the film and TV industry is, that's the high
20 quality 21st century jobs. That's the visual
21 technology. We have it both in front and behind the
22 camera. We can use it to lift our whole community if
23 we have the right vision instead of low-scale jobs.
24 I'm sorry, my children would prefer --

25 PRESIDING OFFICER WONG: Can you wrap it up,

1 please.

2 THE WITNESS: Yes. If this goes ahead it
3 will devastate the film and TV industry of Hawai'i.
4 Pro golf is already damaged. The tourist industry
5 will become a third class tourist destination if you
6 have such massive overcrowding on your scenic North
7 Shore.

8 And the traffic will damage the ability of
9 everyone all the way from Kaneohe to Haleiwa to get to
10 their jobs. So everyone trying to work they can't get
11 to their jobs. They can't make money.

12 So I'm sorry about the jobs that Turtle Bay
13 will make. It will make low-skilled jobs, some high
14 school jobs. It will devastate other aspects of
15 Hawai'i's economy. And it will change the whole
16 structure of Hawai'i's economy. You're already known
17 as overcrowded. You will become a third-rate tourist
18 destination devastating for your economy and all the
19 jobs on O'ahu. Thank you.

20 PRESIDING OFFICER WONG: Thank you. Any
21 questions by the parties? Any questions by the
22 Commissioners? Thank you. Bonnie -- I can't
23 pronounce your last -- I can read it but it looks like
24 Leadigaga followed by Bill Quinlen.

25 BONNIE LEADINGAGA (Phonetic)

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:

3 THE WITNESS: I do.

4 PRESIDING OFFICER WONG: Please state your
5 name and address for the record.

6 THE WITNESS: My name is Bonnie Leadingaga.
7 I live at 56-402 Leleuli Street in Kahuku. I've been
8 there since 1983. And I'm the former manager of the
9 Laie Inn that just recently closed on November 1st. I
10 just wanted to let you know that I'm requesting that
11 you deny the petition.

12 I support Turtle Bay. We do need more jobs.
13 We had 17 employees. Most of them were fulltime
14 employees. It's devastated a lot of their lives as
15 far as losing their jobs. We came to work about,
16 almost nine years ago. On the front page of the
17 newspaper says, "New hotel for Laie. \$30 million hotel
18 for La'ie."

19 Eight and a half years later they finally
20 closed us. So the wheels of government move at a
21 certain pace, not as quickly as a lot of us would
22 like. But, um, the lot is designated for new hotel
23 but they don't have any permits.

24 I know one of our, one of our housekeepers
25 ended up going homeless because of the loss of her

1 job -- and with her, her son and daughter-in-law and
2 four grandchildren because of the fact they don't have
3 a job.

4 I just support the development. The traffic
5 is there already. And there is a huge need for more
6 accommodations on the North Shore. I'd like to thank
7 you for your time.

8 PRESIDING OFFICER WONG: Thank you. Any
9 questions by the parties?

10 MR. MATSUBARA: No questions.

11 MR. KITAOKA: No questions.

12 MR. YEE: No questions.

13 MR. KUGLE: No questions.

14 PRESIDING OFFICER WONG: Any questions by
15 the Commissioners?

16 THE WITNESS: Thank you very much.

17 PRESIDING OFFICER WONG: Bill Quinlon.

18 BILL QUINLON

19 being first duly sworn to tell the truth, was examined
20 and testified as follows:

21 THE WITNESS: I do.

22 PRESIDING OFFICER WONG: Please state your
23 name and address for the record.

24 THE WITNESS: My name is Bill Quinlon. I
25 live at 59-035 Kahauola Street in Haleiwa. I've been

1 here for six months.

2 My concern -- and I'd like to thank all of
3 you guys for doing a job that really doesn't get the
4 recognitions it deserves.

5 My concern is that the emotion of the
6 testimony here is getting us away from what the real
7 issue is and what you guys, the Commissioners, need to
8 deal with.

9 I respectfully suggest that a lot of what we
10 have heard about today should be at the next hearing I
11 hope we will have. But you guys have got a
12 responsibility to try and work out in fairness to the
13 developer, fairness to the people as to what the next
14 step should be.

15 What I would suggest -- we have a new game
16 in town. The people who made the commitments 24 years
17 ago are not here. We now have a receiver. And the
18 receiver's responsibility, if I understand it, is to
19 maximize the benefit to the investors. It's as simple
20 as that.

21 The man's doing his job. That's what he's
22 supposed to do. I would expect if I had his job I'd
23 be doing the same thing. I've got to maximize what my
24 investors get.

25 So I try and play by whatever rules I'm

1 given, but that's what I'm trying to do.

2 What I respectfully suggest, we're the
3 people, you represent us. And I think this is the
4 time when we all ought to take a step back, take a
5 deep breath, say: Gee, the people are not here who
6 made the commitments.

7 We've got a new game in town. I think it's
8 real wonderful opportunity if we look at all these
9 people today who obviously emotions are running
10 strongly on both sides.

11 I think it's your opportunity to let us have
12 an opportunity to have an interface with the new
13 people. Let's get the issues out. Let's make it
14 healthy, and let's just not fight about it all day.
15 Thank you.

16 PRESIDING OFFICER WONG: Any questions by
17 the parties?

18 MR. MATSUBARA: No questions.

19 MR. KITAOKA: No questions.

20 MR. YEE: No questions.

21 MR. KUGLE: No questions.

22 PRESIDING OFFICER WONG: Any questions by
23 the Commissioners? All the people who signed up have
24 already testified. I take it there's no others. In
25 that case let me tell you the rest of the schedule. I

1 see that it's already lunchtime so no sense of the
2 parties making their presentations at the moment. So
3 what we'd like to do is indicate to you that we're
4 going to take a lunch break.

5 But before that I think there are a number
6 of legal issues and concerns on the legal side. And
7 the Chair would entertain a motion regarding an
8 executive session.

9 COMMISSIONER KANUHA: So moved.

10 COMMISSIONER CONTRADES: Second.

11 PRESIDING OFFICER WONG: So moved by
12 Commissioner Kanuha and seconded by Commissioner
13 Contrades. All those in favor raise your right hand.
14 What we are going to do for the rest of the schedule
15 so that you can be informed, the Commission will go
16 into executive session. And then since it will be
17 lunchtime we'll take a recess and reconvene at 1:45.
18 Thank you.

19 (Executive session and lunch recess was held.
20 12:36 to 1:50)

21 PRESIDING OFFICER WONG: The Land Use
22 Commission is again in session. Before our recess
23 before lunch the Commission heard the public
24 testimony. So public testimony is now deemed closed.
25 And we will proceed with argument by counsel.

1 Arguments will be made in the following
2 order: By Mr. Kugel on behalf of the Defend
3 Coalition, Mr. Matsubara on behalf of Kuilima. And is
4 the City planning to make an argument?

5 MR. KITAOKA: Just a statement.

6 PRESIDING OFFICER WONG: Okay. One
7 statement. And then Mr. Yee.

8 MR. YEE: The Office of Planning's position
9 will be presented by Mr. Mayer today.

10 PRESIDING OFFICER WONG: All right.
11 Mr. Kugle, you're on.

12 MR. KUGLE: Thank you, Mr. Chairman and
13 Commissioners. And I want to echo what's been said
14 earlier today. And that is I want to thank you all
15 for the sometimes-thankless job that you do and the
16 attentiveness and also the politeness and courtesy
17 that you've shown to everybody who's testified before
18 you, no matter what side they're on both today and in
19 the several hearings we've had in the past.

20 I think everybody's is sincere in their
21 gratitude for you dedicating your time to hear this on
22 what we believe and what you've seen based on the
23 public testimony to be a very important issue for
24 which there's a lot of interest.

25 I think I want to start my presentation

1 today actually with somewhat of a conclusion. That is
2 what I want to say is you're really going to hear --

3 PRESIDING OFFICER WONG: Mr. Kugle, I'm not
4 sure if I said earlier but counsel each have 20
5 minutes, so you can proceed.

6 MR. KUGLE: Very good. Thank you. There's
7 really going to be two positions you're going to hear
8 today I believe from the parties up here before you.

9 On the one hand you're going to hear from
10 Kuilima, the developer. They're going to tell you
11 that the Land Use Commission should do nothing today.
12 That it should dismiss this Motion for an Order to
13 Show Cause because either the conditions, the
14 representations, and the commitments that are
15 contained in the Commission's 1986 Findings of Fact,
16 Conclusions of Law, decision and order are
17 unenforceable by the Commission.

18 Or because they're going to say they just
19 have an infinite amount of time to build out this
20 Project, which really means there are no conditions at
21 all. There's no conditions, commitments, or
22 representations because if they have eternity to
23 fulfill them they don't really exist.

24 On the other hand, Defend O'ahu Coalition
25 and the Office of Planning are in agreement with what

1 the Commission should do today. We are both in
2 agreement that the Commission should act now, and to
3 move this into a process which will consider all the
4 parties' interests, the equities of the situation to
5 everybody involved, including both Kuilima and its
6 neighbors and the public and the State.

7 There's really only a slight difference in
8 the position that's going to be taken by the Office of
9 Planning and the position being taken by Defend O'ahu
10 Coalition. And I'll explain that position now.

11 The Defend O'ahu Coalition argues today that
12 the Commission should issue an order to show cause
13 along with the notice and the service, that's provided
14 under the rules, to Kuilima which would then move this
15 matter forward to the next phase.

16 And in that next phase there would be an
17 opportunity for the parties to air their positions
18 about this Project, about what's been done, what has
19 not been done, why what's not been done has not been
20 done and what the Commission should do about it.

21 That gives the Commission the opportunity to
22 consider fairness, to consider the facts and the
23 parties' rights and to fashion the appropriate relief
24 all done in public and with the approval and under the
25 auspices of this Commission. That's Defend O'ahu

1 Coalition's position.

2 That differs slightly from the Office of
3 Planning which I believe will tell you that there's no
4 doubt that Kuilima has failed to perform the
5 conditions, the representations and the commitments
6 that are contained in the 1986 findings of fact,
7 conclusions of law and decision and order.

8 And they're going to tell you that this
9 Commission has both the power and the duty to take a
10 look at that original order and to modify it.
11 Planning differs from the Defend O'ahu Coalition only
12 because the Planning Department says that perhaps you
13 should deny the motion today and issue some
14 alternative order, and I'm not sure what that order
15 is.

16 But it would be an order saying the
17 Commission is going take up the original order and
18 consider modifying it. Which is in effect what I'm
19 saying you should do. And is, in effect, what you can
20 do with the Order to Show Cause.

21 So in reality we really don't differ on our
22 positions. We both advocate that the Commission
23 should keep control of this matter and move on to the
24 next phase where it can consider the parties'
25 interests.

1 I want to remind the Commission of what I'm
2 sure it knows its duty is at today's hearing. And
3 that is to look at the very low threshold necessary
4 under Rule 15-15-93. Rule 15-15-93, the order to show
5 cause rule, says quote, "Whenever the Commission shall
6 have reason to believe that there's been a failure to
7 perform according to the conditions imposed or the
8 representations or commitments made by the petitioner,
9 the Commission shall issue an order to show cause why
10 the property should not revert to its former
11 classification or be changed to a more appropriate
12 classification." Unquote.

13 There are two significant aspects of that
14 rule which I think the Commission needs to be focused
15 on. The first is you just have a reason to believe
16 that there's been a failure to perform conditions,
17 representations or commitments, all three words are
18 right there in the rule, then you shall issue an Order
19 to Show Cause.

20 And that's all that we're focused on today.
21 We're not focused on what has been done or why things
22 haven't been done. It's just whether there's been a
23 failure.

24 We're fortunate that the Hawai'i Supreme
25 Court has considered this very rule coming from and

1 applied by this very Commission. In 2006 in the case
2 of Kaniakapupu v. Land Use Commission, that case dealt
3 with a boundary classification in Nu'uuanu. Then there
4 was an Order to Show Cause motion filed by an
5 interested party such as the Defend O'ahu Coalition.

6 What the Supreme Court said about the very
7 role that you have today is this, quote, let me find
8 the Supreme Court's opinion. "In other words, the
9 only determination the LUC was required to make when
10 hearing the instant motion for an order to show cause
11 was whether it had reason to believe that Myers had
12 failed to perform (1) according to the condition
13 imposed by the November 1989 Order, or (2) any
14 representations or commitments made that led to the
15 November 1989 Order." Period, end quote.

16 So we have the Supreme Court and we have
17 Rule 93 saying that the Commission looks at whether
18 the petitioner, Kuilima, has failed to perform
19 conditions, representations or commitments.

20 Now, there was something filed in the papers
21 that I saw the other day that said perhaps Kuilima is
22 not obligated to meet the representations that it made
23 to this Commission in 1986 when it came forward, made
24 some promises to obtain the boundary reclassification.

25 And if the words of the Hawai'i Supreme

1 Court and your rules aren't enough, we have Hawai'i
2 Revised Statutes 205-17 which, as you're probably
3 aware, is the Land Use Commission decision-making
4 criteria.

5 It says, quote, "In its review of any
6 petition for reclassification the Commission shall
7 specifically consider the following:" and No. 4 in
8 that list is "the representations and commitments made
9 by petitioner in securing a boundary change."

10 So there's little doubt that Kuilima's bound
11 not just by the conditions that are in the 1986 order
12 but as well as by the representations and commitments
13 that it made to a prior Commission in 1986 to obtain
14 the boundary reclassification.

15 Now, let me turn to really what is the key
16 issue. That is you've heard the argument made before
17 in prior hearings that there is no time limit put on
18 these conditions. They have in perpetuity to do them.
19 They can build it next year, ten years, 20, 50. It
20 doesn't matter. They don't have to fulfill these
21 conditions at any time.

22 Well, I suggest to you that's why the
23 Commission included finding of fact No. 60. This is
24 Exhibit A to the petition itself. I believe the other
25 parties have submitted the findings of fact,

1 conclusions of law and order. But Condition 60 is
2 critical. That's the representation that's part of
3 what the Commission decided when it issued this
4 boundary reclassification.

5 Finding of fact 60 says, quote, "Petitioner
6 proposes to complete substantial portions of the
7 infrastructure, as defined under Finding of Fact 17,
8 as well as 315 of the proposed 1,000 resort
9 condominium units within five years of the
10 Commission's approval and to complete the entire
11 resort development by 1996." There's no ambiguity
12 there.

13 That was their representation. It made its
14 way into the Findings of Fact, Conclusions of Law,
15 decision and order and it is enforceable.

16 And that is the reference point by which any
17 of the conditions that come in the last two pages of
18 this 30-page document they define. That's the
19 Project. They go hand in hand. They make the
20 proposal. Your predecessors act on it. And they have
21 the right to rely on it.

22 Let's turn now to what I believe should be a
23 simple showing, and I think it's actually undisputed,
24 that a number of the conditions and representations
25 simply have not been fulfilled. That triggers the

1 duty under section 93.

2 Condition No. 1 says, "Develop full service
3 hotels offsite to ensure employment opportunities on
4 the North Shore." Finding of fact No. 27 says, that
5 the petitioner anticipates 2600 jobs to be created on
6 the property and 6300 islandwide.

7 So that's the purpose. You build the
8 hotels, you create the jobs. You've heard a lot of
9 public testimony about that today. Well, I think it
10 is undisputed and when Kuilima makes its presentation
11 you can ask if they've built any of these hotels.
12 They have not. It's undisputed.

13 Condition No. 2: "Provide housing
14 opportunities for low and moderate income residents
15 and employees not less than 10 percent of the
16 condominium units built on the property."

17 That's 1000 units as shown in finding of
18 fact No. 13, 10 percent is 100 units. Again, there's
19 no dispute that they have not built any of the
20 condominium resort units. They have not built any of
21 the affordable housing. If there is any question you
22 can ask Kuilima.

23 Condition No. 3: "Petitioner shall fund,
24 design and construct improvements to Kamehameha
25 Highway including fully channelized intersections at

1 Marconi Road, Kuilima Drive and West Kuilima Drive."

2 That dovetails hand in hand with finding of
3 fact No. 51 which says, "Petitioner proposes to
4 construct left turn lane at Kamehameha Highway and
5 Kuilima Drive, to construct fully channelized
6 intersection at Kamehameha at the proposed West
7 Kuilima Drive and the existing Marconi Road and to
8 install traffic signals on the highway at all of these
9 intersections in order to mitigate the traffic
10 impact."

11 And again we've all been out there. We've
12 all driven it. And I think it's undisputed there are
13 no three channelized and signalized intersections at
14 Kamehameha Highway at those locations. In fact, we
15 don't even believe Kuilima owns or controls Marconi
16 Road nor even has the right to make those
17 improvements.

18 Finally, Condition No. 7: "Petitioner shall
19 ensure free public access and parking for parks and
20 rights-of-way along the shoreline. Continuous
21 pedestrian access along the shoreline shall also be
22 assured. Petitioner shall dedicate 10 acres to the
23 City for park purposes."

24 That's condition No. 7. Elsewhere in the
25 findings of fact there are several findings of fact

1 that further explain how many parks, where they'll be
2 located, what size, et cetera.

3 You have a 10-acre public beach park on the
4 property, you have a 6-acre private park. Offsite, in
5 other words off of these 236 acres, you have another
6 31.8 acres and 2 acres private parks. That's all
7 contained in finding of fact 13.

8 There is more detail about where those parks
9 are located. Finding of fact 38 says there should be
10 five public parks rights-of-way to the shoreline with
11 15 public parking stalls at each right of way. And
12 they shall dedicate continuous public access along the
13 shoreline.

14 Again, I submit to you this number of public
15 parks, rights-of-way, and public parking don't exist
16 today.

17 So I will be brief today and I'll conclude
18 with this. There's no dispute that these things have
19 not been done. There's also no dispute that these
20 were the representations that they made in 1986 when
21 they came before this Commission and they proposed
22 these findings of fact. And this Commission adopted
23 them.

24 The key one is finding of fact No. 60 which
25 talks about the time limit. They say: We will do

1 certain things in five years. We will do everything
2 in ten years. We will do it by 1996. That's because
3 they were required to include -- they were required by
4 rule 6-2 which was in effect in 1985, when they could
5 not complete the whole Project in five years they had
6 to give the Commission a schedule.

7 Their schedule was: In five years we'll do
8 350 condo units; we'll do infrastructure and the
9 following five years we'll complete everything by
10 1996. And they haven't done it. They are held to
11 those representations. Those representations are
12 enforceable by virtue of Rule 93, by virtue of the
13 Hawai'i Supreme Court decision that I mentioned and
14 also by virtue of Hawaii Revised Statute 205-17.

15 So, therefore, we do ask that the
16 Commission -- we have met the threshold, the threshold
17 of Rule 93 which says, "If there's been a failure to
18 perform representations or conditions the Commission
19 shall issue an Order to Show Cause."

20 And so we believe having met that threshold
21 this Commission should issue an order to show cause,
22 should schedule further hearings on the North Shore
23 where the people affected on every side of this issue
24 reside and so that they can come out.

25 It would be in such a proceeding that

1 Kuilima can come forward and explain to the Commission
2 what it has done, not that it's relevant today, what
3 it has not done which is very relevant today, why it
4 that has not done those things, also not relevant
5 today, but it will be relevant in the future. And the
6 Commission will hear from the parties. The Commission
7 can consider these facts and decide what to do.

8 And I think I'm not going to presume to tell
9 the Commission what it can do. But its options range
10 from refusing to issue a revocation or downzoning it
11 back to ag or to some other category.

12 It could downzone it or it could do anything
13 in between, as Mr. Yee has said in the past. This
14 Commission has the power and the authority, in fact
15 the duty to modify the prior order.

16 And so I say we are at a unique opportunity
17 today and this Commission in particular is. It's
18 unique because Kuilima said in 1986 it was going to
19 build these additional hotels and condo units and it
20 didn't do it.

21 It said it would be done by '96 and it
22 didn't do it. So we're sitting here in 2010 where
23 they're saying: We may go ahead with this at sometime
24 in the future but it's not done.

25 And as long as it's not done it's a clean

1 slate? And this Commission can step in, as it's been
2 asked to do by the Defend O'ahu Coalition and its
3 members as well as by the State Planning Office and
4 can correct the problems, and take a look at this and
5 fashion a fair solution.

6 That's what we ask for. And I might add if
7 we move forward today and when this Commission does
8 look at this original order in whatever form, whether
9 it's an order to show cause proceeding, whether it's
10 the alternative proceeding that the Office of Planning
11 is going to suggest, I think there are a number of
12 conditions. There's timing, there's a lot of things
13 that everybody is interested in.

14 And I want to highlight just a few of the
15 other ones that you've heard of today. Aside from
16 timing issues those are the financial wherewithal of
17 the developer to actually perform.

18 If it comes forward and tells you it will be
19 done with this Project in another five years, ten
20 years I think good grounds ask for some evidence about
21 how they will do that, given that it's in foreclosure.

22 I also suggest as you revisit conditions in
23 the original order you may consider that in 1986 the
24 needs for affordable housing were different than they
25 are today. The requirements are different than that

1 are today. You may want to revisit that percentage as
2 well.

3 Another issue you heard today was the burial
4 plan, what role the State Historic Preservation
5 Division has or does not have. That was a condition
6 of the original order.

7 And I suggest that this Commission may want
8 to take a closer look at what the developer has to do
9 with respect to the known burials that are out there
10 under the sand dunes.

11 So with that I thank you. I think I still
12 have some time left. If I do have any I would like to
13 reserve it for rebuttal. And I'd also love to answer
14 any questions you'll have.

15 PRESIDING OFFICER WONG: You'll have five
16 minutes for rebuttal. Commissioners, any questions?
17 If not, Mr. Matsubara.

18 MR. MATSUBARA: Thank you, Chair Wong,
19 Commissioners. Appreciate the opportunity to speak to
20 you today. Again, I will be brief as these issues
21 have come up before you, have been briefed before. I
22 want to make clear that Kuilima's position on Defend
23 O'ahu Coalition's motion should be dismissed or denied
24 at this time.

25 We also believe that -- and understand that

1 the Commission on its own can issue an Order to Show
2 Cause. We also believe that the Commission does not
3 need to issue an Order to Show Cause as petitioner has
4 been in compliance with the 1986 decision and order.

5 At this time I want to kind of take a step
6 back and bring you up to speed about what we have done
7 since the last hearings.

8 We took a look at the record. We took a
9 look at the proceedings. And there was a lot of
10 issues that were raised loud and clear.

11 At that time we believed that there was
12 really no communication with the Office of Planning.
13 We believe that's imperative for Kuilima to go
14 initiate discussions with them.

15 The Office of Planning is the State's
16 department in charge of the overall framework and
17 guidelines in the State's planning process. They are
18 clearly very critical of Kuilima in the last
19 proceedings.

20 To tell you the truth, they're critical of
21 all of our petitions that we have been in front of
22 this Commission. And I say that with respect.

23 We felt that it would be prudent upon
24 Kuilima to initiate these discussions with the Office
25 of Planning to discuss the significant planning issues

1 that were, arisen. We wanted to do that prior to the
2 LUC hearing.

3 We did initiate communications with the
4 Office of Planning to discuss some of those
5 significant planning issues to see what, if anything,
6 we could do to figure out their position on some of
7 these matters, find out if there's anything that we
8 could try to accomplish prior to coming before you
9 today.

10 As I said, a funny thing happened on the way
11 here. The Supreme Court issued cert. to hear a
12 separate issue, but yet an issue that could still have
13 potential effects on this matter. That is an issue
14 regarding an environmental impact statement, the EIS.

15 The Office of Planning and Kuilima decided
16 that because of the potential impacts that are
17 unknown, whether what effect they may have on this
18 petition going forward, development going forward, we
19 decided to hold off on our discussions with full
20 intent to continue discussions once the Supreme Court
21 issues their decision.

22 Now, you have to understand it puts Kuilima
23 in a difficult position at this time with the Supreme
24 Court kind of cloud hanging over their head with
25 determining whether the current EIS is still valid or

1 not.

2 I think you have to understand and
3 appreciate Kuilima's position on this. There's a high
4 probability that there will be some lawsuits coming
5 around if the Supreme Court does decide that the EIS
6 is not valid.

7 Now, going on to the legal argument. It's
8 clear that the Lana'i Case clearly holds that the LUC
9 cannot enforce conditions that are not expressly
10 stated. And that's clear.

11 No condition in the 1996 decision and order
12 requires completion dates or deadlines to the
13 development of this petition on outside of the
14 development area.

15 The LUC cannot come in now and force
16 construction of conditions that were not expressly
17 adopted. Furthermore, none of the conditions in the
18 '86 D&O talk about completion dates or deadlines in
19 any of the conditions.

20 Talk about you need to substantially
21 progress development, they talk about you need to
22 start these things. But there's nothing in the
23 conditions that require hotels to be finished, homes
24 to be finished, affordable housing or roads to be
25 completed at this time.

1 The statutory provision in Hawaii Revised
2 Statutes that gives the Commission the authority to
3 grant an Order to Show Cause is found under Hawaii
4 Revised Statutes 205(4) (g) .

5 The relevant portion of that statute reads,
6 "The Commission may provide a condition..." Now we
7 all know what condition the Land Use Commission
8 provides in the decision and orders to bring that
9 hammer down.

10 The condition that's always found in the
11 D&O's: "Petitioner shall develop the property in
12 substantial compliance with the representations made
13 to the Commission. Failure to do so develop the
14 property may result in reversion of the property to
15 its former classification or change to a more
16 appropriate classification."

17 That is the condition that this Commission
18 puts within their decision and orders to bring forth
19 an Order to Show Cause. That condition is clearly not
20 in this 1986 decision and order. There's no condition
21 in the 1986 decision and order that would allow for or
22 would trigger the issuance of an Order to Show Cause.

23 Furthermore, Hawaii Administrative Rule 15-
24 15-1983 was created after this 1986 decision and order
25 was granted. You can't apply these rules retroactive

1 to the decision and order. Again, the Lanai Company
2 says conditions need to be expressed. You can't
3 imply conditions on timing if they're not expressed.

4 Final legal argument is that petitioner is
5 in compliance with this 1986 decision and order.
6 Petitioner has made substantial progress in the area
7 redistricted pursuant to its decision and order.

8 Again, it's been brought up that the rule in
9 effect at the time, 1986, when this decision and order
10 was created, it does provide some timeframe guidance.
11 However, the timeframe clearly only applies to the
12 area redistricted, only to the petition Area. Does
13 not apply to development outside of the petition Area.

14 I'd like to point out the language that's
15 found in Section 6-3, "Petitioners requesting
16 amendments to the district boundaries shall make
17 substantial progress in the development of the area
18 redistricted."

19 So clearly at that time the rule in effect
20 on petitioner at that time did designate that the
21 Commission would have an ability to perform some
22 timeframe on there not more than five years.

23 And that petitioner at that time, once they
24 got their boundary amendment would need to start
25 substantial progress in the development, not

1 substantial completion, not finalize development. You
2 just have to substantially progress development within
3 a five-year timeframe.

4 The Commissioners in 1986 clearly understood
5 and contemplated the issues regarding a condition to
6 develop outside the petition Area, specifically the
7 hotels. Some Commissioners in 1986 had grave concerns
8 with this condition.

9 The Commissioners knew that they did not
10 have any jurisdiction over the development timeframe
11 outside the petition Area.

12 They also understood the dynamics and
13 difficulty of developing a large master planned
14 Project. They understood the complex and the need for
15 flexibility in the development of a Project that's in
16 part driven by the market.

17 The Commissioners specifically chose not to
18 implement any time conditions on the development
19 outside of the petition Area. The Commissioners in
20 1986 carefully crafted the decision and order.

21 And while it may not be a perfect decision
22 and order it is definitely not defective or flawed.
23 And no modification to the decision and order is
24 required.

25 In regards to the timeframe issue that was

1 upon the petitioner at that time, again, all that was
2 required is a substantial progress of developing the
3 area. Petitioner has satisfied that.

4 Within the first five years that the D&O was
5 approved the petitioner commenced forward with the
6 related infrastructure improvements including permit
7 applications for the eventual construction of the
8 wastewater plant and wells to service the petition
9 Area.

10 An 18-hole Palmer Golf Course, the related
11 infrastructure and comfort station was completed
12 within the first five years. That cost was in excess
13 of over \$20 million.

14 Improvements to the total Punaho'olapa Marsh
15 were completed within the five years. And petitioner
16 continues to perform regular maintenance of that marsh
17 area.

18 Furthermore, petitioner continuous to make
19 progress in the development of the redistricted area
20 including subdivision, Traffic Impact Analysis Report,
21 locations for affordable housing.

22 The petitioner clearly met the burden of the
23 rule to at least substantially progress development in
24 the petition Area. That's the only confines we have
25 here. Nowhere does the rule or any condition require

1 completion of the development. The standard of the
2 Commission rules is not completion but substantial
3 progress of development within the Petition Area,
4 which petitioner has done.

5 In closing, there's been no breach by
6 petitioner of the 1986 decision and order. Therefore
7 the issuance of an Order to Show Cause should not
8 be -- should not occur.

9 Furthermore, in regards to what the Office
10 of Planning has put forward in their Position
11 Statement, that they'd like a limited amount of time
12 to have the opportunity to discuss the issues and
13 present positions on the issues.

14 While we agree with the Office of Planning
15 that we should have some time to discuss with them and
16 try to work out some type of agreements or conditions
17 or standards to come before you to discuss, we do not
18 feel that a modification or an intent to modify the
19 decision and order is needed.

20 But we strongly agree that we should be
21 required, especially in light of the Supreme Court
22 case, be required to go and continue discussions with
23 the Office of Planning to figure out what we can do on
24 this matter. Thank you again for your time.

25 PRESIDING OFFICER WONG: Thank you. Any

1 Commissioners have questions? Commissioner Lezy.

2 COMMISSIONER LEZY: Good afternoon,
3 Mr. Matsubara.

4 MR. MATSUBARA: Good afternoon,
5 Commissioner.

6 COMMISSIONER LEZY: If we accept your
7 argument that Rule 6-3 limits our consideration to the
8 area redistricted as far as the substantial progress
9 issue is concerned -- again, let's assume for
10 argument's sake that is the correct reading of the
11 rule -- can you tell me right now what has not been
12 accomplished within the area redistricted as the
13 petitioner had represented would be undertaken and
14 completed at this point in time?

15 MR. MATSUBARA: Just to clarify what within
16 the petition Area alone would still need to be
17 accomplished.

18 COMMISSIONER LEZY: What has not been done
19 that was represented would be done?

20 MR. MATSUBARA: I can comment. Then I can
21 have Mr. Carr with me with Kuilima and he can describe
22 that, if that's okay with the Commission.

23 COMMISSIONER LEZY: That's fine with me,
24 subject to the Chair, of course.

25 PRESIDING OFFICER WONG: Mr. Carr, may I

1 swear you in.

2 STANFORD CARR,
3 being first duly sworn to tell the truth, was examined
4 and testified as follows:

5 THE WITNESS: Yes, I do.

6 PRESIDING OFFICER WONG: State your name and
7 address for the record.

8 MR. CARR: Stanford Carr. My address 1100
9 Alakea Street, 27th Floor, Honolulu, Hawai'i.

10 PRESIDING OFFICER WONG: You want to respond
11 to the question from our Commissioner?

12 MR. CARR: Yes.

13 PRESIDING OFFICER WONG: Two minutes,
14 Mr. Carr.

15 MR. CARR: May I approach the easel? I have
16 the site plan. Here we have the overall master plan
17 of Kuilima Resort. The petition Area that we're
18 discussing here today is the 236 acres situated on the
19 eastern edge of the resort.

20 As you can see by the hatched areas, about
21 approximately 50 percent of the 236 acres has already
22 been improved with the Palmer Golf Course, the
23 Punaho'olapa Marsh, the comfort station and related
24 infrastructure.

25 What still needs to be built in the petition

1 Area is the equestrian center, approximately 96 acres
2 of condominium resort lands, Park 3 and Park 2. Park
3 2 is a part of a subdivision approval application that
4 we currently have a tentative subdivision approval.

5 And if you recall when we were here a year
6 ago as to the status of this community, we were just
7 given a month prior, the guidelines to do a
8 round-about analysis as far as our Traffic Impact
9 Analysis Report.

10 We submitted our TIAR on April 2009. On
11 July 22nd of last year we obtained an accepted TIAR
12 which poises us that much further of getting final
13 subdivision for Park 2.

14 What we also accomplished within the last
15 year is an agreement with the three adjacent
16 landowners of Marconi Point, Campbell Estate for a
17 deceleration lane along Kam Highway and ourselves for
18 the development of Marconi Road. So a lot of progress
19 has been made in the last year.

20 PRESIDING OFFICER WONG: Commissioner Lezy.

21 COMMISSIONER LEZY: So if I understand,
22 then, your testimony correctly, Mr. Carr, none of the
23 condo units have yet been constructed.

24 MR. CARR: That's correct.

25 COMMISSIONER LEZY: And it sounds to me like

1 there is, at this juncture anyways, no indication of
2 when that will occur.

3 MR. CARR: It can occur after we obtain
4 final subdivision approval. I would suspect we will
5 get final subdivision approval within 60 days.

6 In the last year we have invested \$9 million
7 in the resort, 5.3 million alone satisfying one of the
8 conditions of the unilateral agreement which was the
9 expansion of Kuilima Drive from two lanes to four
10 lanes.

11 Over the past year we've completed that
12 \$5.3 million expansion.

13 We are also completing the upgrades of the
14 opana wells, another condition of our subdivision
15 application, at a tune of \$800,000.

16 The additional \$3 million that we have
17 invested in the resort over the last year has been on
18 design work for Park 1 Kawela Bay. The State
19 Department of Transportation just obtained its SMA
20 approval to build a new Kawela Stream bridge along Kam
21 Highway. This has just been done.

22 And that allows us to proceed with the
23 design and construction of Park 1 Kawela Bay where we
24 will be building comfort station, access parking,
25 picnic areas, landscape and hardscape.

1 COMMISSIONER LEZY: Back to you, please,
2 Mr. Matsubara. So, again, if we assume for the moment
3 that your reading of the prior Rule 6-3 is correct,
4 then you would agree with me that although there was
5 no specific condition imposed in the prior D&O, it was
6 certainly the knowledge of the petitioner -- the
7 petitioner was on notice that substantial completion,
8 pardon me, substantial progress in the area that had
9 been redistricted needed to be accomplished within
10 five years of the date of the decision and order,
11 correct?

12 MR. MATSUBARA: I believe that's a fair
13 statement that substantial progress is required within
14 the development area.

15 COMMISSIONER LEZY: Was it also a fair
16 statement that that was the knowledge of the
17 petitioner at the time that the decision and order was
18 issued? Would you agree with that?

19 MR. MATSUBARA: I would agree with that.

20 COMMISSIONER LEZY: Also in addition to the
21 acknowledgment by the petitioner that substantial
22 progress had to be made within that five year period,
23 there was also a representation made by the petitioner
24 that there would be completion of the proposed
25 development within the redistricted area within ten

1 years, by 1996, correct?

2 MR. MATSUBARA: Well, what I want to clarify
3 here is that there clearly was statements made and the
4 transcript is the transcript. What happened what
5 happened. What was submitted to the LUC in '86 was
6 '86.

7 What I want to be clear about what happened
8 here is that there was no -- we are commingling rules
9 now with, in terms of representations made. Those
10 rules were not in effect at that time. Those rules do
11 not apply to this decision and order.

12 If the decision and order had the condition
13 that I read out earlier, then, yes, those
14 representations clearly would have been a condition
15 upon the petitioner to, in fact, have these
16 representations to be enforced.

17 But what we have here is we have the older
18 rules that applied that did not discuss anything about
19 representations. The only representation that was
20 required was that you have substantial progress. And
21 it only related to the petition Area. That's the
22 discourse.

23 Currently we all know very well about the
24 Order to Show Case and the representations made.
25 However, this 1986 decision and order is void of those

1 requirements of that decision.

2 COMMISSIONER LEZY: Can you, for our
3 benefit, can you explain one more time your position
4 on the fact that the petitioner is not bound by
5 representations under the prior rules as opposed to
6 the current rules.

7 MR. MATSUBARA: Our position is the Lana'i
8 Case holds that a condition needs to be expressed.
9 Okay. It can't be a condition and then some kind of
10 understanding later on about what that condition
11 really meant. The condition needs to be expressed.
12 If you had fair warning, then that's part of it.

13 But the condition needs to be expressed.
14 There's no expressed conditions in terms of any
15 timeframe within the decision and order at all. Okay.

16 Now, if you want to talk about an Order to
17 Show Cause or reversion, the reversion rules and
18 statute at that time only speak as to conditions. If
19 the Commission imposed a condition that you're
20 responsible for your representations made, you got us.
21 That rule does not -- there's no rules or regulations
22 that apply to this 1986 decision and order.

23 Many of the decision and orders that we have
24 and we have been bringing before this Commission over
25 the last few years, have that condition that I read

1 off, the condition that the Commissioners imposed on
2 the petitioner that they're required to comply with
3 the representations made.

4 But if you look at all the rules that
5 applied in 1986 there's no such wording as to
6 representations made. It only related to conditions.
7 "You need to comply with the conditions."

8 COMMISSIONER LEZY: So as we sit here today,
9 Mr. Matsubara, it is your position that the reference
10 in the prior D&O regarding the amount of time that
11 would be required to develop the Petition Area to
12 completion does not amount to a binding representation
13 on the part of the petitioner?

14 MR. MATSUBARA: To the Petition Area?

15 COMMISSIONER LEZY: Yes.

16 MR. MATSUBARA: Well, Commissioner Lezy, if
17 you look at the transcript in 1986, a lot of the
18 Commissioners at that time struggled with that issue.
19 They struggled with what was being represented, and
20 they struggled with what was, what the total master
21 plan was. A lot of them had concerns with it and for
22 the very reason we're probably here today.

23 COMMISSIONER LEZY: I understand that may be
24 the case. But all I'm looking at is the decision and
25 order. And the decision and order indicates, as was

1 pointed out by the movant, that the, as I take it, the
2 representation made by the petitioner was separate and
3 apart from what Rule 6-3 might require, that there
4 would be completion of the development of the Petition
5 Area within ten years of the issuance of the decision
6 and order.

7 What I'm trying to get at is are you telling
8 me now that that was not a binding representation on
9 the petitioner?

10 MR. MATSUBARA: According to the rules and
11 regulations by this Land Use Commission at that time,
12 the representation made at that time was not made to
13 the condition. There's no condition that would be
14 able to enforce that timing.

15 If a condition was made that enforced
16 timing, then I would agree with that, Commissioner.
17 But the way I look at this decision and order and the
18 rules that would apply to this decision and order at
19 this time, it is clearly outside.

20 COMMISSIONER LEZY: And I guess my last
21 question to you is, Mr. Carr was kind enough to
22 outline what remains to be accomplished within the
23 Petition Area which obviously begs the question these
24 are things that were not done within the five-year
25 time period.

1 You outlined the things that were done
2 within the five-year time period, completion of the
3 golf course and some other infrastructure issues, the
4 modifications made to the marsh.

5 What argument would you make that those
6 efforts without what, at least to me, seems to be the
7 primary component to the development of the Petition
8 Area, the condominium development, how does that
9 amount to substantial completion or substantial
10 progress?

11 MR. MATSUBARA: And I would agree if there
12 was a substantial completion wording in that rule I
13 would agree with you, it would be arguable whether or
14 not that we substantially completed development within
15 that Petition Area.

16 But the key term is "substantial progress of
17 the development". And I think the underlying
18 infrastructure, put in the wells, the sewer treatment
19 center, the wastewater treatment center as well as the
20 infrastructure for the golf course, over 50 percent of
21 that is done. To me that's substantial progress in
22 the development within the first five years.

23 Basically the rule at that time was like
24 everybody's discussion here is that they didn't want
25 somebody to come in, get the upgrade entitlement and

1 sit on it. Okay.

2 This petitioner went in and immediately
3 after got its entitlement to urban started immediately
4 doing development progress on that site. And that's
5 the whole gist of what that rule was in place for at
6 that time to get somebody to come in and actually do
7 the work, not just have this land, upzone it, and be
8 able to sell it off.

9 I believe that petitioner has complied with
10 that rule and they've done substantial progress in the
11 development of that area based on what they have done
12 so far.

13 They have definitely not completed it, but
14 there's no requirement for the petitioner to complete
15 it. It's just at least substantial progress in the
16 development of that Petition Area.

17 COMMISSIONER LEZY: Wouldn't you agree with
18 me though, Mr. Matsubara, that the anticipation would
19 be that once a petitioner makes a substantial progress
20 that then should lead to completion?

21 MR. MATSUBARA: That could be argued. But
22 with a lot of development and progress we see other
23 petitioners that are here before you, we see market
24 affecting some of these larger developments.

25 As long as the petitioner is moving forward

1 in good faith and making progress in the development
2 of their entitled lands, I believe that that should be
3 the standard. I believe they're fine.

4 COMMISSIONER LEZY: Okay. Thank you.

5 PRESIDING OFFICER WONG: Thank you.
6 Commissioner Chock.

7 COMMISSIONER CHOCK: Thank you, Mr. Chair.
8 I think a lot of the questions by Commissioner Lezy
9 kind of addressed some of the questions I had.

10 But I'd like to go back to Rule 6-3 that was
11 in effect at the time of the '86 decision and order
12 that talks about this term that we're sort of stuck on
13 right now "substantial progress".

14 In your legal opinion how do you define
15 "substantial progress"? Is that 20 percent,
16 50 percent, 75 percent of the Petition Area that we're
17 talking about today the '86 D&O? What is the
18 definition?

19 MR. MATSUBARA: Commissioner Chock, I don't
20 really have a legal definition, but I know at one
21 point in time "substantial compliance" used to mean
22 just infrastructure. We used to consider having your
23 infrastructure in, that would be you're substantially
24 complying with what's there.

25 To me "substantial progress" would be

1 similar, is that the petitioner is making use in going
2 forward with the intended use of that Petition Area.

3 I think what's really clouding a lot of this
4 is that they're trying to factor in the development on
5 the outside of the Petition Area. But the Petition
6 Area itself, that 236, has much of the needed
7 infrastructure there.

8 And I think, in that terms I think they've
9 progressed enough to be able to test any reversion.
10 Because I think petitioners have put enough work in
11 underlying infrastructure and getting the permits and
12 proceeding with the development consistent with the
13 use of that land.

14 COMMISSIONER CHOCK: What's the total value
15 of the improvements that have been made in the
16 Petition Area?

17 MR. MATSUBARA: The only one I was given was
18 that the golf course was in excess of \$20 million.
19 Mr. Carr may be able to comment further on that.

20 MR. CARR: In addition to the over \$20
21 million of improvements in the Palmer Golf Course and
22 comfort station and the dredging of the moat of the
23 Punaho'olapa Marsh, approximately \$10 million in
24 engineering work has been completed to date for the
25 alpha roads which is the parkway roads going east and

1 west.

2 More importantly, though, the -- we recently
3 stated earlier July 22nd we obtained an approved TIAR
4 from the State Department of Transportation. That was
5 critical because that addresses the intersections of
6 both Kuilima Drive, Marconi Road, the channelized
7 intersection that was referred to earlier as well as
8 the alpha road west.

9 So there's a tremendous millions of dollars
10 spent on design costs and fees and work product to
11 date.

12 COMMISSIONER CHOCK: In terms of the condo
13 units that are remaining as part of this '86 D&O, how
14 many units are we talking about? And does that
15 include your affordable housing requirement within
16 that?

17 MR. CARR: Yes. Commissioner Chock, the
18 affordable housing, if you recall, was tied to
19 10 percent of the total condominiums developed. The
20 Project has entitlements to build up to a thousand
21 condominiums. But that doesn't mean necessarily you
22 build a thousand.

23 COMMISSIONER CHOCK: That's thousand market?

24 MR. CARR: Thousand market. We are actually
25 suggesting to the anticipated new owners -- which will

1 happen within the next two weeks, the lenders are
2 going to take ownership of the property -- that we
3 proceed with delivering the affordable housing prior
4 to even commencing development of the condominiums on
5 parcel A-4 along Marconi Road.

6 This will allow us to at least proceed and
7 get the participation of the three other adjacent
8 owners of Marconi Point to participate in the
9 construction of the right-of-way from Kamehameha
10 Highway up until that first roadway along our alpha
11 east driveway.

12 A-4 is an approximately 6-acre site where
13 we feel that we can build approximately 80
14 multi-family rental units much like something that we
15 just broke ground two weeks ago in 'Ewa where we're
16 doing 150 rentals out there. And this is what we are
17 advocating and suggesting we proceed with the new
18 owners.

19 COMMISSIONER CHOCK: So in terms of your
20 development timetable on the affordable component,
21 where are you? Are you in for building permit? Or do
22 you have designs completed? What stage of that
23 process are you?

24 MR. CARR: As I said, we have a board
25 meeting next month with the new owners and the board.

1 We would like to seek approval to proceed with the
2 design and pre-development to trigger the construction
3 and the development of the rentals on parcel A4.
4 that's where we're at.

5 It was originally anticipated and planned
6 when Oaktree at the time was looking at development of
7 utilizing the mauka lands across the street where we
8 have 469 acres of ag lands as a portion of that for
9 multi-family. My comment to that is that would be a
10 spot zoning. Why not have it on the same side of the
11 highway as our resort.

12 This is why we are also saying to give us
13 the time. With the cloud over our head, with the
14 Supreme Court justices taking under advisement the
15 need of a supplemental EIS on that appeal, that to
16 give us the opportunity, the time to continue our
17 discussions with the Office of Planning to work out a
18 understanding on the proceeding with the affordable
19 housing.

20 As I just stated earlier we are proceeding
21 with Park 1 Kawela Bay in designs. One of the
22 logistic issues was State DOT in getting SMA approval
23 for the bridge there. They just obtained that.

24 COMMISSIONER CHOCK: So in terms of the
25 affordable component, would you say you're six months

1 away from starting construction, one year away? Where
2 are you at in terms of a timetable?

3 MR. CARR: If I use a timetable for the
4 project that we just broke ground two weeks ago for
5 the Sisters of St. Francis, it took three years from
6 the time that they came to our office to ask us for
7 help to put that project together because it was
8 complicated with layered financing, CDBG funding,
9 federal and state tax credits, rental housing, trust
10 fund and grant money in order to structure the
11 financing. Then the private activity bond finance.
12 So it took three years.

13 COMMISSIONER CHOCK: Thank you, Mr. Chair.

14 PRESIDING OFFICER WONG: Just for the
15 record, Mr. Carr, I think you mentioned the marsh
16 area --

17 MR. CARR: Yes.

18 PRESIDING OFFICER WONG: -- was part of the
19 Petition Area. It's my understanding that it's still
20 conservation land and not part of the Petition Area
21 although the developer may have made some
22 improvements. Is that correct?

23 MR. CARR: That's correct. One of the
24 conditions was to dredge a moat around and maintain to
25 protect our native birds from feral animals. And we

1 continue to do that and do annual surveys.

2 PRESIDING OFFICER WONG: Mr. Matsubara, you
3 know, Section 6.3 under regulations that you've been
4 discussing a while ago, it says here that "petitioner
5 requesting amendments shall make substantial
6 progress," and I'm paraphrasing, "in the development
7 of the area redistricted within the period specified
8 by the Commission."

9 And it goes on to say, "not to exceed five
10 years from the date of approval."

11 Do you agree that the Commission if it had
12 stated a time period could not have given you six
13 years?

14 MR. MATSUBARA: I believe that would be
15 appropriate.

16 PRESIDING OFFICER WONG: So that five years
17 would have been an outside limit. Even if the
18 Commission wanted to give six years it could not have
19 done so, right?

20 MR. MATSUBARA: Yes.

21 PRESIDING OFFICER WONG: So does that not
22 suggest the time period to do completion is, in fact,
23 not to exceed five years?

24 MR. MATSUBARA: I disagree with that,
25 Commissioner.

1 PRESIDING OFFICER WONG: Okay. I just
2 wanted to ask. Okay, anybody, any more questions?
3 Commissioner Kanuha.

4 COMMISSIONER KANUHA: Thank you,
5 Mr. Chairman.

6 Petitioner, the tie between compliance on
7 the conditions was related to what was submitted as
8 the resort expansion master plan, is that not correct?

9 MR. MATSUBARA: That seems to be the case.

10 COMMISSIONER KANUHA: The exhibit that you
11 have up there depicts the master plan to the best of
12 your knowledge the Commission utilized in making their
13 decision back in 1986?

14 MR. MATSUBARA: I believe so.

15 COMMISSIONER KANUHA: So in the Petition
16 Area according to that master plan is, let me see,
17 golf course.

18 MR. MATSUBARA: That's correct.

19 COMMISSIONER KANUHA: Public beach parks.

20 MR. MATSUBARA: Yes.

21 COMMISSIONER KANUHA: Resort condominium.
22 That's I guess the purple.

23 MR. MATSUBARA: Purple, correct.

24 COMMISSIONER KANUHA: Purple areas. Is that
25 still the intent of what the petitioner intends to go

1 forward with those resort condominiums?

2 MR. MATSUBARA: Yes. Would you like
3 clarification from Mr. Carr?

4 COMMISSIONER KANUHA: Whoever can clarify
5 it.

6 MR. CARR: That is correct. I mean by
7 "condominiums" it could be single-family condominiums
8 because, you know, obviously we are going to build for
9 what the market would demand and desire.

10 The reason I stated that earlier that we
11 have approvals for up to a thousand but it's not
12 necessarily we will build a thousand. Because I see
13 and I envision some of the linear parcels of having
14 single-family home condos along those fairways, which
15 is much less density.

16 You'd basically be building to about two
17 and-a-half units to an acre density as opposed to the
18 12 units to an acre density that they have allowed on
19 the 96 acres for a thousand units.

20 COMMISSIONER KANUHA: So what you're telling
21 me it's highly possible you won't be developing
22 according to the representations you made back then?

23 MR. CARR: No, not true. Absolutely we will
24 be building to the representations made back in 1986.
25 We will be.

1 COMMISSIONER KANUHA: Okay. And you
2 represented a thousand units.

3 MR. CARR: You could build -- you have
4 entitlements up -- to build up to a thousand units,
5 but it does not necessarily mean that you build a
6 thousand units. Much like many of the resorts we have
7 throughout our state that have not built to its
8 maximum density, allowable density, they have built a
9 lot less.

10 For example, as just as an example, Mauna
11 Lani was allowed to build up to, I think, four hotels
12 although they only built two. One of the super pads
13 instead of a hotel being built, single-family homes
14 were built.

15 I was just stating the fact that we have up
16 to a thousand -- permit, permission to build up to a
17 thousand units, but it's not necessarily the case that
18 we would build a thousand. But it'd still be
19 condominiums. It's still the same use as represented
20 back in 1986.

21 COMMISSIONER KANUHA: Well, you represented
22 a thousand units. If you're telling me you may build
23 up to a thousand units, then that's not in accord with
24 the representations you made back then, is it?

25 MR. CARR: I was not there in 1986 to read,

1 you know, the transcripts that they were intended to
2 build 1,000.

3 In my experience we get zoning and
4 entitlement approvals based on the permissible
5 underlying zoning, but not necessarily you'd build up
6 to that maximum density. Sometimes less is much more
7 desirable. Obviously the market has to support what
8 your vision is and what you're building.

9 You know, it may be back then they gave you,
10 allotted you up to a thousand units to be built but
11 it's up to you how much you actually do built is at
12 your discretion.

13 No matter what's in the future here any time
14 we build on any one parcel we will be taking it
15 through a process through the Department of Planning
16 and Permitting which will require us to go out to the
17 community and engage through discussions in addressing
18 impacts or concerns.

19 That's something that we have been doing on
20 every neighborhood or community we've built on each of
21 the islands.

22 And the same would be required no matter who
23 owns the land even though you do have zoning. It's a
24 requirement. DPP requires that you take it out to the
25 Neighborhood Board.

1 In the future when there is an intended
2 proposed development plan, it would be taken back out
3 to the Neighborhood Board, to the community and will
4 be a transparent process.

5 COMMISSIONER KANUHA: Don't get me wrong. I
6 think the community and maybe even some members of
7 this Commission would be really happy if you didn't
8 build a unit out there. But it seems to me in reading
9 the transcript of what occurred back then, a lot of it
10 was based on the petitioner's representations of what
11 they were going to do both on site and off site.

12 Do any of you have a copy of the D&O handy?

13 MR. MATSUBARA: Yes, we have one.

14 COMMISSIONER KANUHA: Finding of Fact No.
15 15. It's on Page 8. It states that the "petitioner
16 proposes to develop the following off-site
17 improvements: One production water well:" Done or
18 not done?

19 MR. CARR: Done.

20 COMMISSIONER KANUHA: One standby well.
21 Done or not done?

22 MR. CARR: Done.

23 COMMISSIONER KANUHA: A new reservoir.

24 MR. CARR: Done.

25 COMMISSIONER KANUHA: A new distribution

1 line.

2 MR. CARR: Done.

3 COMMISSIONER KANUHA: Wastewater treatment
4 plant.

5 MR. CARR: Done.

6 COMMISSIONER KANUHA: Okay. Skip down to
7 Finding of Fact 17: The petitioner proposes to
8 include the following improvements in the first phase:
9 Sewage treatment plant.

10 MR. CARR: Done.

11 COMMISSIONER KANUHA: Improvement of
12 portions of Kamehameha Highway fronting the resort.

13 MR. CARR: Um, plans have been done. Again,
14 part of it was a TIAR. That's just been accepted.

15 COMMISSIONER KANUHA: Drainage improvements?

16 MR. CARR: Done.

17 COMMISSIONER KANUHA: Internal roadway?

18 MR. CARR: Portions have been done.

19 COMMISSIONER KANUHA: Wells? You already
20 stated they were done, correct?

21 MR. CARR: Correct.

22 COMMISSIONER KANUHA: Water distribution
23 system?

24 MR. CARR: Yes.

25 COMMISSIONER KANUHA: Electrical telephone

1 lines?

2 MR. CARR: Yes.

3 COMMISSIONER KANUHA: Improvement of the
4 Punaho'olapa Marsh?

5 MR. CARR: Yes.

6 COMMISSIONER KANUHA: Improvement of the
7 existing golf course?

8 MR. CARR: Yes.

9 COMMISSIONER KANUHA: New golf course?

10 MR. CARR: Yes.

11 COMMISSIONER KANUHA: Hotel along Kawela
12 Bay?

13 MR. CARR: It was started. Back in 1991
14 they have pulled permits. 1990 they drove piles.
15 1991 they terminated the construction due to
16 financing --

17 COMMISSIONER KANUHA: So no.

18 MR. CARR: -- with Asahi Junken. Started
19 but shut down.

20 COMMISSIONER KANUHA: Okay. Commercial
21 area?

22 MR. CARR: No new commercial area. However,
23 what is the commercial area is where we have the
24 restaurant/pro shop for the golf course.

25 COMMISSIONER KANUHA: Building pads for

1 condominium sites and a stable?

2 MR. CARR: The existing stable is on the
3 western portion. We still need to proceed with the
4 equestrian center along Marconi Road and Kam Highway.
5 That will commence when we proceed with improving
6 Marconi Road.

7 Again, as I stated earlier, we just
8 finalized the agreement with the adjacent landowners
9 for the design and agreement to proceed with Marconi
10 Road.

11 COMMISSIONER KANUHA: Okay. Thank you very
12 much.

13 MR. CARR: You're welcome.

14 PRESIDING OFFICER WONG: Any other questions
15 from Commissioners? Mr. Kitaoka, I think you said you
16 had a statement. I wasn't sure whether it was one or
17 "a".

18 MR. KITAOKA: I have a statement that
19 consists of a few sentences. Basically I just want to
20 set forth the City's position and perspective on this
21 Project.

22 The City has found that this Project is
23 consistent with all applicable City plans and
24 policies. And the City will continue to ensure that
25 it remains consistent with such plans and policies and

1 will continue to monitor compliance with all City
2 permits and all other land use approvals and their
3 conditions.

4 And such City permits includes the zone
5 change -- unilateral agreement that came out of the
6 zone change; the SMA, Special Management Area Permit
7 and the Shoreline Setback Variance Permit which also
8 had several conditions in it; and subdivision which
9 it's currently going through.

10 So the City is just stating its position
11 that it's monitoring compliance with all City
12 approvals and ensuring consistency with City plans and
13 policies.

14 So if there's any effort by this Commission
15 to impose calendar-type deadlines, I would just
16 caution this Commission that some of the timing is
17 dependent upon the City processing of its permits.

18 So any unrealistic calendar deadlines that
19 would invade or intrude upon the City's timing of its
20 permits I would discourage.

21 Other than that the City will leave it to
22 this Commission's discretion to determine the
23 enforceability or interpretation of its own conditions
24 in its D&O.

25 PRESIDING OFFICER WONG: Thank you. Any

1 questions from Commissioners? Mr. "Abbey" you've got
2 your 20 minutes.

3 MR. MAYER: Thank you, Mr. Chair. Good
4 afternoon, Commissioners.

5 PRESIDING OFFICER WONG: You don't have to
6 take all 20.

7 (Laughter)

8 MR. MAYER: I might. I'm going to try to be
9 a little bit more concise than my attorney typically
10 is.

11 The Office of Planning is in general
12 concurrence with the goals of the Movant. Assuming
13 you find reason to grant standing and take up the
14 substance of the motion for order to show cause, the
15 Office of Planning is submitting, has submitted three
16 briefings to you since, I believe it was February or
17 April, excuse me, of 2008.

18 The first briefing we regarding the Order to
19 Show Cause should be denied. We do not deny, though,
20 petitioner has failed to meet its representations but
21 really, they have not yet fulfilled the conditions.

22 We too don't find that they have violated
23 conditions expressly because there is no condition
24 that holds the petitioner to its representations. And
25 there is no condition that includes explicit timeline.

1 Now, it is true and Movant has made the
2 point, that you can still issue an Order to Show
3 Cause. But in the end we feel like if you have no
4 legal foundation to actually revert the land why go
5 ahead and issue an Order to Show Cause?

6 In our second filing of May 23rd, 2008, OP's
7 response to Kuilima Resort Company's response, OP went
8 on to argue that while equitable estoppel may prevent
9 the LUC from restricting now, the lands, it does not
10 prevent you from modifying the decision and order.

11 We fully briefed that issue and stand by
12 that concurrence by that position. I'd also like to
13 point out that while we have been talking about
14 section 6-3 of the rules that were in effect at the
15 time, there also exists Rule 7-4 entitled
16 "Modification or Deletion."

17 And I'll quote. "On good cause shown by the
18 petitioner or by the county planning commission or
19 upon its own motion, the Land Use Commission may act
20 to modify or delete any of the conditions imposed."
21 And it goes on from there.

22 So we feel like under today's rules, and we
23 have briefed it, you have the power to modify
24 conditions. 15-15-94(b) expressly gives the LUC the
25 power. And under the rules of the day the LUC

1 expressly has the power.

2 Furthermore, we feel that the LUC maintains
3 an implied power. Because you issued this decision
4 and order you have the implied power to modify it and
5 the implied power to act so as to fulfill your
6 responsibilities.

7 We have suggested that if you do modify the
8 decision and order and decide that that's the
9 appropriate course of action, that it would be
10 appropriate to add a time limit.

11 Our office has been very vocal in its
12 support of time limits on decision and orders and also
13 mandatory time limits in our administrative proposals
14 before the Legislature.

15 We look at the five-year time period that
16 existed under Rule 6-3 which has been talked about a
17 lot. And I do want to add one thing, that
18 Mr. Matsubara and Kuilima has discussed very
19 specifically, the term "substantial progress". But I
20 also want to point out that rule goes on.

21 The second half of the rule states, "The
22 Commission may act to reclassify the land to an
23 appropriate district classification upon failure to
24 perform within the specified period according to
25 representations made to the Commission."

1 So Kuilima tried to discount the value of
2 the representations made. But clearly there is
3 reference to representation. The question there is
4 whether that term "the specified period" what does
5 that term refer to?

6 Does the term "specified period" refer back
7 to the five years? Or does it refer to the specified
8 period in the representations? Or does it refer to
9 the specified period that's explicitly given in
10 conditions?

11 I think there's a lot of room to argue that
12 point that the whole issue is substantial progress. I
13 also think that it would be appropriate to define
14 "substantial progress" in conditions.

15 And that the explicit definition of the term
16 "substantial progress" would be appropriate in order
17 for the LUC to then be able to have the foundation and
18 take further action on enforcement.

19 So at the same time that OP feels like a
20 time limit is appropriate, we also recognize the
21 complexity of this case; that there has been some
22 progress made in development, there's been a great
23 deal of investment made in the property based on the
24 entitlements that are given.

25 That the extent of entitlements, the amount,

1 sheer quantity of units, hotels, et cetera, seems
2 inappropriate from today's point of view, that it may
3 not be in the best interest of anyone, either the
4 state, the petitioner or the community to simply apply
5 a straight time limit.

6 For that reason I've asked you, if you do
7 move or issue an intent to modify, to give the parties
8 of the case time to reach a stipulated agreement of
9 some kind that might work in everybody's benefit.

10 So, for example, in negotiations the State
11 can ask for accelerated time limits for delivering
12 public benefits. The State can ask for decreasing
13 densities on particular sensitive parcels within the
14 Project.

15 And if the parties do reach a stipulated
16 agreement, the LUC would still be the ultimate arbiter
17 and decision-maker: Is it appropriate to modify the
18 decision? Is some other form of agreement sufficient
19 to fulfill the concerns in the case?

20 And if the parties cannot reach an agreement
21 whether because the petitioner feels bound or
22 restricted by the Supreme Court's action or pending
23 action or for any other reason, then the LUC can still
24 act to add a time limit or any other appropriate
25 conditions.

1 so I don't feel like we lose anything. I
2 feel like most particularly that the intent to modify
3 or the action to modify will continue to bring the
4 petitioner to the table. So while I feel like I would
5 request a denial of the Order to Show Cause, I do feel
6 like this motion has been positive in that it's
7 brought the petitioner to the table for discussions.

8 But I feel like now would be more
9 appropriate to issue the correct motion, that this
10 order to show cause is not the correct motion but a
11 motion to modify is the correct one. And that will
12 have the same effect of bringing the petitioner to the
13 table for substantive new talks and possible mutual
14 agreements.

15 I thank the Commission for its
16 consideration. And, of course, I'm available for any
17 questions.

18 PRESIDING OFFICER WONG: Commissioners, any
19 questions? Commissioner Chock.

20 COMMISSIONER CHOCK: Thank you, Mr. Chair.
21 So in the opinion of the Office of Planning has
22 substantial progress been made in the Petition Area
23 based on the '86 D&O?

24 MR. MAYER: Quite honestly I don't think
25 it's explicitly stated anywhere what "substantial

1 progress" means.

2 COMMISSIONER CHOCK: What in your mind --
3 how do you define that, "substantial progress"?

4 MR. MAYER: In my mind it's appropriate to
5 on a case-by-case basis to look at -- I don't think
6 there's a single definition or at least in our
7 research we haven't been able to find a single
8 definition.

9 So I looked back at the decision and order.
10 And I noted, as Commissioner Kanuha brought out in his
11 questioning, that there has been progress on a lot of
12 the infrastructure.

13 But there are other conditions on this D&O
14 that require progress off site. I know Rule 6.3 talks
15 about the redistricted area. There are conditions
16 regarding the hotels, affordable housing, parks,
17 off-site improvements where we feel like there's been
18 very little, if any, substantial progress.

19 So typically I would default to an expressly
20 stated definition within either the findings or
21 somewhere within the decision and order, hopefully
22 within the conditions. But without that it becomes
23 unclear.

24 I think in issuing a motion for modification
25 then we could present our cases as to what that should

1 or shouldn't be or what that should or shouldn't do.

2 COMMISSIONER CHOCK: Okay. So in terms of
3 your read that is not expressly stated in the '86 D&O.

4 MR. MAYER: Yeah.

5 COMMISSIONER CHOCK: Okay. So for the
6 record, Office of Planning, do you support or oppose
7 the issuance of an order to show cause?

8 MR. MAYER: We oppose the issuance of an
9 order to show cause.

10 COMMISSIONER CHOCK: Thank you, Mr. Chair.

11 PRESIDING OFFICER WONG: Commissioner
12 Kanuha.

13 COMMISSIONER KANUHA: Thank you,
14 Mr. Chairman. Actually it's a follow-up question to
15 Commissioner Chock's question. I guess, can you tell
16 us a little more what you're thinking of in terms of
17 what you envision these modifications might entail?

18 MR. MAYER: Well, my intent was to --

19 COMMISSIONER KANUHA: Obviously one of them
20 would be some kind of a timeframe, for example.

21 MR. MAYER: Correct.

22 COMMISSIONER KANUHA: What other areas did
23 you envision?

24 MR. MAYER: Well, it was my intent to see,
25 again, because this Petition Area is only the

1 easternmost 236 acres, it does not include the areas
2 of the hotels. And I think a lot of the kind of most
3 contentious or most, yeah, contentious or fought-over
4 aspects of the development were outside the Petition
5 Area.

6 It was my intent to see if the petitioner
7 was willing to come to the table in order to help --
8 in order to perhaps downzone some of the proposed
9 development off site in order to have an appropriate
10 amount of time on site to complete those parcels.

11 So in my mind I was particularly looking at
12 the parcels around Kawela Bay to see if there was
13 something that could be done to remove some of the
14 development density of those areas.

15 COMMISSIONER KANUHA: Mr. Chairman, can I
16 direct the question to the petitioner?

17 PRESIDING OFFICER WONG: Go ahead.

18 COMMISSIONER KANUHA: Petitioner, did I
19 understand that you are in somewhat agreement to enter
20 into negotiations to modify along the lines that we
21 just heard from the Office of Planning?

22 MR. MATSUBARA: We're in agreement to
23 continue discussions. Our position is that we're
24 opposed to modification of the D&O. I don't feel that
25 there's a flaw or any defect in that decision and

1 order. I don't think that arises just cause in order
2 for anyone to modify the D&O.

3 However, that being said we definitely
4 initiated discussions with Office of Planning. His
5 downzone of certain areas is one of the things and
6 issues that he would like to see. That's one of the
7 issues that we will be discussing.

8 Whether we do that through -- how we
9 finalize that I'm not exactly sure how, either through
10 a stipulation or some type of agreement I feel maybe
11 could be possible. But we weren't in agreement of the
12 modification of the D&O. Anything short of that we
13 will definitely try to do.

14 COMMISSIONER KANUHA: I think that was where
15 I was trying to come from when I was raising the
16 discussion about the thousand units. And I think it's
17 along the same lines as what OP was talking about,
18 potential modification. That's just a comment. Thank
19 you, Mr. Chairman.

20 PRESIDING OFFICER WONG: Any further
21 questions? I have a question. Mr. Mayer, you're
22 suggesting that there be some modification to the D&O.
23 But yet no motion has been filed. How is the public
24 going to know what your proposed changes are going to
25 be?

1 Are you going to make a side deal or some
2 kind of deal with the petitioner and expect that to be
3 binding on this Commission without the public knowing
4 about it?

5 So, you know, it's okay to advocate that,
6 but I don't see a motion. And that motion before us
7 is not a motion to modify. It's a motion to whether
8 or not we should order an order to show cause.

9 So it would seem to me that all the
10 discussion about we're going to modify is not
11 relevant. Okay? So that's the end of my question.

12 I think I'd like to point out where we're
13 going with the rest of the schedule. Madam Reporter,
14 Mr. Kugle has five minutes. If it's possible we would
15 like to take the five minutes, take a recess and the
16 Commission will decide what it's going to do. Is that
17 okay?

18 THE REPORTER: (Nodding)

19 PRESIDING OFFICER WONG: Okay, Mr. Kugle,
20 you got five minutes.

21 MR. KUGLE: Thank you, Mr. Wong. And I will
22 take less than five minutes.

23 PRESIDING OFFICER WONG: Okay.

24 MR. KUGLE: I do want to say that we have a
25 -- "we" my clients, Defend O'ahu Coalition, have a

1 huge concern about what may transpire. We weren't
2 informed that there were communications.

3 We weren't informed that they broke off. I
4 don't know why they broke off if they're now saying
5 they can go forward.

6 But how the public has a role in this is
7 hugely important because as I think you've all seen
8 there's huge interest. So we do have that concern.

9 I wanted to make a handful of points to
10 answer some of the questions that the Commissioners
11 asked others. One was: What does "substantial
12 progress" mean in Rule 6.3? It's there in Rule 6-3.
13 "Substantial progress to the new use approved."

14 And it's very easy to see what the new use
15 approved is because that's contained back in Finding
16 of Fact No. 13 where they come in and they say exactly
17 what they're going to do on this parcel.

18 And, by the way, I should say the language
19 wasn't "we may do this" as Mr. Carr alluded to. It
20 says "we will do this." It says "The Resort will
21 include the following uses on this property." And then
22 it says, "Golf course, resort condominium 1,000 units,
23 public beach park, private park, stable."

24 As they walked through and they showed us
25 the map, and we have seen that before, of those new

1 uses on this property, on these 236 acres we have a
2 golf course today.

3 We don't have any resort condominium units
4 let alone the thousand and let alone the 10 percent
5 affordable housing that they said they would do.

6 We don't have a public beach park. We don't
7 have a private park at the marsh. And we don't have
8 the stable. The stable exists. It's the old stable
9 on the other side of the property.

10 So, again, I would say of the five new uses
11 they told you back in 1986 were going to be on that
12 property, they've done one, a golf course. They have
13 been making money off of that for a lot of years.

14 But the rest of the things, including the
15 public benefits that were so important to the
16 community then and as you heard are so important
17 today, those don't exist. No condominium units with
18 their affordable housing requirement, no public beach
19 park, no private beach park, and the stable.

20 So I'd say there's no substantial progress
21 even on the property.

22 I also appreciated that Mr. Mayer pointed
23 out the remainder of Rule 6.3 because I was somewhat
24 shocked when Kuilima argued: We're not bound by
25 representations.

1 We could say anything to you in 1986 and if
2 you didn't put it in the last two pages of that
3 30-page Findings of Fact then it just doesn't matter.

4 Rule 6.3 very clearly says if the
5 Commission -- I'll read it, "The Commission may act to
6 reclassify the land to an appropriate district
7 classification upon failure to perform within the
8 specified period according to the representations made
9 to the Commission."

10 It can't get any clearer than that. And I
11 don't think the Commission had to adopt a condition
12 that says you have to comply with your
13 representations. You didn't have to do that because
14 the statute says they do.

15 The regs in effect then say they do. The
16 regs in effect today say they do. The Supreme Court
17 says they do. It's pretty straight forward. We
18 looked at the representations and they were clear when
19 they were made.

20 I have one other concern. That is I think
21 the Commission asked the question of Mr. Carr that
22 was: When will these affordable units be built?

23 And what we learned was the Project for the
24 Sisters of St. Francis might take three years. We
25 didn't hear when these affordable units were going to

1 be built. You heard a lot of public testimony about
2 the need for housing up. And it's very true.

3 Again, we also heard that in two weeks
4 there's going to be a new owner. I'm not sure what
5 Mr. Carr's role will be with the new owner. Who are
6 we talking to?

7 And will everything change two weeks from
8 now? I think that's exactly why the process needs to
9 go forward as we've outlined.

10 The Commission has a procedure in place to
11 move forward. As Chairman pointed out there's no --
12 despite talk of a motion there's no motion pending.
13 Let them make a motion within the order to show cause
14 proceedings. Let's have that on the table. And let's
15 have the discussion with the public participation.

16 Those are the only points I have to make
17 other than I'm very concerned that my clients and our
18 interests and the public also be represented and
19 participate in this proceeding whatever form it takes.
20 Thank you very much.

21 PRESIDING OFFICER WONG: Thank you,
22 Mr. Kugle. Final arguments all done?

23 MR. MAYER: Mr. Chair, can I just clarify
24 one point 'cause I think it's important to make
25 especially for the benefit of the public as well as

1 the Commission.

2 You brought up two points in your comment to
3 me previous. One was: How would there be public
4 review? So if I went into negotiations with
5 petitioner and we came to some stipulated agreement,
6 it'd be my idea that the results, the agreement,
7 whatever that was, the result would be filed with the
8 Commission. It would become public record. Served on
9 all the parties. There'd be ample time for the public
10 to review it.

11 PRESIDING OFFICER WONG: You would
12 incorporate it as part of a Motion a Amend. Is that
13 it?

14 MR. MAYER: I'm sorry?

15 PRESIDING OFFICER WONG: You would
16 incorporate all of those provisions as part of a
17 motion to modify.

18 MR. MAYER: It would. And then also I never
19 wanted to suggest that any agreement would be binding
20 on the Commission. It's the Commission's power to
21 accept it or not. And it could also receive public
22 testimony at that time based on the substance of the
23 agreement.

24 PRESIDING OFFICER WONG: Okay. As far as
25 the arguments are concerned they're all done and

1 that's closed. We will take a ten minute recess and
2 the Commission will reconvene and the Commission will
3 decide whatever it's going to do. Recess.

4 (Recess was held. 3:15)

5 PRESIDING OFFICER WONG: We're back in
6 session. Do I hear any motion by any members of the
7 Commission?

8 COMMISSIONER LEZY: Chair?

9 PRESIDING OFFICER WONG: Yes.

10 COMMISSIONER LEZY: I'd like to move that we
11 enter into executive so that the Commission can
12 consult with our attorney on questions and issues
13 pertaining to the Board's powers and duties,
14 privileges, immunities and liabilities.

15 PRESIDING OFFICER WONG: Do I hear a second?

16 COMMISSIONER CHOCK: Second.

17 PRESIDING OFFICER WONG: It's been moved and
18 seconded. All those in favor of the motion to go into
19 executive session, raise your hand. Okay. Motion
20 passes. For the convenience of the public you all can
21 stay here. We will go find another office to have our
22 executive session.

23 (Executive session was held. 3:30)

24 PRESIDING OFFICER WONG: (3:45) The land
25 Use Commission is back in session again. At this

1 point the arguments have been concluded and the
2 Commissioners then can decide what it wants to do. So
3 do I hear any motion by any Commissioner to do
4 whatever? (Pause) I hear no motion.

5 COMMISSIONER CHOCK: Mr. Chairman.

6 PRESIDING OFFICER WONG: Go ahead,
7 Commissioner Chock.

8 COMMISSIONER CHOCK: Mr. Chairman, I'd like
9 to start by first of all acknowledging the community,
10 all aspects of the community that have come forward on
11 this very emotional, divisive issue, and acknowledge
12 the amount of time that all people from the community
13 have spent on this issue, in particular kupuna on both
14 sides of the argument.

15 I want to aloha both sides of the issue in
16 terms of helping to help lead us at least to making
17 an informed opinion today. To say that this 1986
18 decision and order is murky is sort of putting it
19 mildly.

20 But based on the evidence in the decision
21 and order and on the record that have been admitted to
22 date I'd like to move at this point in time to deny
23 the issuance on an order to show cause and go into
24 deliberation.

25 PRESIDING OFFICER WONG: Do I hear a second?

1 COMMISSIONER CONTRADES: Second.

2 PRESIDING OFFICER WONG: Discussion?

3 Commissioner Lezy.

4 COMMISSIONER LEZY: Thank you, Chair. With
5 all due respect to Commissioner Chock, I cannot
6 support the motion to deny the motion for order to
7 show cause. I should say initially I certainly
8 empathize with petitioner's position, Mr. Carr, the
9 current owner, which sounds like going to be a new
10 owner, you folks were saddled with obligations that
11 were created by people well over 20 years ago.

12 And you're now -- and I know during the
13 course of the questioning it was implication of
14 representations that you made or that you promised. I
15 understand.

16 But the unfortunate reality is when you
17 assume ownership of a petitioned area you undertake
18 the same obligations as the prior petitioner.

19 So with that said, what we're seeing here
20 today in my mind mirrors some very similar issues that
21 have been coming up in recent docket matters before us
22 concerning the obligation of petitioners to comply
23 with representations, conditions, commitments that
24 they made in connection with decisions and orders that
25 granted them entitlement, that gave them a right to do

1 something with a piece of property.

2 In this instance, as I look at the facts and
3 I look at what the decision and order required, I
4 believe that the Commission's prior Rule 6-3 the issue
5 of "substantial progress", I think it's quite clear
6 that substantial progress was not made within the time
7 period that was dictated by the rule.

8 As I see it a critical component of the
9 Petition Area that played into whether or not
10 substantial progress had been made had to do with the
11 resort condo units. I don't see any way around that.

12 Representations were made by the petitioner
13 that construction, development of those units would be
14 made within two years of the issuance of the decision
15 and order by 1988, well within the five years provided
16 for by 6-3.

17 And maybe more important there was a
18 representation made -- and I do personally believe
19 that those representation were binding on the
20 petitioner -- that the development in its entirety
21 would be finished within ten years of the date of the
22 decision and order.

23 So looking at those facts and holding them
24 up against the standard that is imposed on us in
25 deciding whether or not to issue an order to show

1 cause, all we have to do is have a reason to believe
2 that there's been a failure to perform within those
3 obligations.

4 We don't have to reach a firm conclusion.
5 We don't have to make a finding that, in fact, that's
6 occurred. All we have to do is have a reason to
7 believe that there's been a failure to perform.

8 And I think the facts before us show that
9 there has been that failure to perform. I believe
10 that it's incumbent upon us, the Commission, then to
11 issue the order so that all the facts can be layed
12 out, and the conclusion can be reached as to whether
13 it would be appropriate to revert this area either in
14 its entirety or in some lesser portion.

15 And for that reason with due respect I
16 cannot support the motion on the table.

17 PRESIDING OFFICER WONG: Thank you,
18 Commissioner Lezy. Other Commissioners, any
19 discussion? Commissioner Kanuha.

20 COMMISSIONER KANUHA: Thank you,
21 Mr. Chairman. I tend it echo some of the comments of
22 both Commissioners. We have just come off another
23 petition that we have had to revisit and try and
24 second guess what the Commissioners -- what the
25 Commission back then, what their rationale was in

1 doing some of the things they did. To a certain
2 extent this is no different.

3 I think in reading, going through the
4 transcripts and D&O, to me there was enough
5 uncertainty there in terms of what would be binding on
6 the petitioner and what bound what to what in as much
7 as this master plan, and, again, all it is is a master
8 plan, how binding that was on the whole Project for
9 one; and how binding it was as it related to the
10 Petition Area itself which is only a portion of the
11 whole, of the whole component.

12 When I look at the landscape back then and
13 the landscape now, besides infrastructure to move this
14 component along, the main representations in my mind
15 were the construction or the cause to be constructed
16 these additional hotels.

17 The golf course was there. Turtle Bay was
18 there. Kuilima Estates was there. So it's not really
19 clear in my mind what the ties to compliance would be
20 besides the actual physical construction of the
21 multi-family resort component within that 236 acres.

22 And, you know, based on the responses I got
23 today it's obvious that the petitioner has made some
24 strides in construction of infrastructure to get to
25 that point. Now, whether or not that's enough to pass

1 the test, um, I'm not really sure. It's just --
2 it's -- in my mind it's kind a questionable given what
3 was already there.

4 On the other hand, given that this is a
5 master plan, and I think it's obviously this is a good
6 example of how troublesome it is when you tie the
7 representations to a petitioner to a conceptual
8 development and how much flexibility that allows a
9 petitioner as we go through good times, bad times,
10 not-so-good times. It was kind of evident in some of
11 my questions in terms.

12 If I had rephrased the question and asked
13 you, "Well, would you build these resort units now in
14 this marketplace?" Obviously the answer is "No."

15 So, again, if I had to hedge any support for
16 either of those two motions I think at this point I
17 would be inclined to support Commissioner Chock's
18 motion. But, nevertheless, I think that doesn't go
19 far enough. I think we need to clearly get some
20 mechanism to cap or to get real specific in terms of
21 what applies to this Petition Area in terms of a solid
22 timeframe so that there's no ambiguity in terms of
23 when the expectations are to be met. And if they're
24 not then it's real clear what the next course of
25 action would be.

1 I think what's also left on the table at
2 some point in time is, in my mind, the issue of
3 standing of the Defend O'ahu Coalition's position in
4 this matter.

5 I've always taken the position on when in
6 doubt on matters of this nature that an intervention
7 should probably be granted, which it would allow some
8 level of participation depending upon what the final
9 outcome would be.

10 So I think somewhere along the way we also
11 need to address that as well. Thank you,
12 Mr. Chairman.

13 PRESIDING OFFICER WONG: Commissioner Chock.

14 COMMISSIONER CHOCK: Just a couple of
15 closing comments. Again, in terms of looking at the
16 DO&O and looking at substantial progress as defined by
17 Rule 6-3 at the time of the decision and order, I
18 think if you look at the improvements that have been
19 made: The wastewater plan, the 18 hole Palmer Golf
20 Course, related improvements, infrastructure, the
21 marsh as well as the golf course, that there has been,
22 in my opinion, a level of substantial progress that
23 has been made in terms of moving forward on the '86
24 D&O.

25 And just because substantial progress has

1 been made does not mean that total completion has
2 occurred.

3 And I think that part of the wisdom -- and I
4 side with some of the thinking in OP's brief that to
5 the extent the parties can come forward and clearly
6 identify issues that are of importance to the
7 community that have been expressed loudly during this
8 process, specifically timing on when we will have
9 total completion, I think is very important to this
10 Commission.

11 And I think and would strongly suggest and
12 advocate that Mr. Kugle, Defend O'ahu Coalition, be
13 party to those discussions and to those deliberations
14 so we can bring some sort of stronger sense of closure
15 to this issue. Thank you, Mr. Chair.

16 PRESIDING OFFICER WONG: Any other members
17 of the Commission have comments or questions for
18 discussion?

19 COMMISSIONER LEZY: Just one final comment.

20 PRESIDING OFFICER WONG: Go ahead,
21 Councilman Lezy. Commissioner.

22 COMMISSIONER LEZY: Oh, "Councilman",
23 thanks.

24 PRESIDING OFFICER WONG: "Commissioner".

25 COMMISSIONER LEZY: Again, with due respect

1 to Commissioner Chock and his last comment about, if I
2 understood correctly, trying to encourage the parties
3 to move towards some resolution, I think what the most
4 troubling issue is here and that has to do with
5 setting some time expectation for completion of the
6 development here.

7 Frankly, petitioner has made quite clear
8 that they have no desire to modify the prior decision
9 and order. And if the motion for issuance of an order
10 to show cause is denied, there will be absolutely
11 nothing that will compel petitioner to come to the
12 table to talk with anyone about anything, much less
13 with the Movant.

14 So I guess my caution is if there is that
15 desire to try to encourage some sort of middle ground,
16 some sort of resolution, then denial of this motion
17 certainly is not going to encourage that.

18 PRESIDING OFFICER WONG: Any more comments,
19 discussion by Commissioners? Commissioner Contrades.

20 COMMISSIONER CONTRADES: I'm going to vote
21 in favor of the motion. But I also think that --
22 well, I also want to see that movement be made on
23 especially doing the affordable housing.

24 And if our understanding is correct that as
25 Commissioners we have the right to request changes in

1 the original D&O; that we can modify according to the
2 rules that we have, then I'm going to make a request
3 that we do that afterwards; that a study be done.

4 If we have the right I'll make the request.
5 I have no problem doing that because I think they
6 should be doing these things. And I think we should
7 be moving on. And I think there should be housing out
8 there for the people.

9 We might even want to up the requirements if
10 we can. But I want to find out exactly what we can
11 do. I think if we have the ability to do that then we
12 should as Commissioners. If that's something we can
13 do, I think we should do it. And I would be
14 requesting it.

15 PRESIDING OFFICER WONG: Thank you. Let me
16 ask our legal advisor: If based upon what
17 Commissioner Contrades indicated and being that
18 there's no motion to modify, is it within the realm of
19 propriety or procedure that under an order to show
20 cause that there could be a modification? Or would
21 that have to be by reason of a separate motion either
22 by the parties or the Commission sua sponte?

23 MS. ERICKSON: I would prefer to give you
24 legal advice in executive session.

25 PRESIDING OFFICER WONG: Okay. All right.

1 Any other discussion? Let me make my comments with
2 respect to this motion. I'm concerned about the issue
3 of the threshold.

4 The threshold seems to be if this Commission
5 deems true there's a reasonable basis that the D&O has
6 not been complied with, then an order to show cause
7 may be issued.

8 On the other hand, that doesn't solve the
9 problem because apparently this decision and order
10 made over 20 years ago due to whatever reasons have a
11 number of open questions, questions as to when the
12 work was to be completed and other issues.

13 So it appears that some kind of modification
14 of the D&O is the appropriate method.

15 On the other hand, if nothing is done this
16 thing will continue forever. And the public will
17 think -- I mean the petitioner can get -- gives the
18 impression, for example, that it can take the next
19 hundred years to develop the property. I don't think
20 that's acceptable. And there must be a mechanism for
21 modification.

22 So on that basis and representation of
23 Commissioner Contrades that he would be making another
24 motion, I'm prepared to have the roll call. Any more
25 discussion?

1 MR. DAVIDSON: Commissioners, this is a
2 Motion to Deny the Order to Show Cause brought by
3 Movant Defend O'ahu.

4 Commissioner Chock?

5 COMMISSIONER CHOCK: Yes.

6 MR. DAVIDSON: Commissioner Teves?

7 COMMISSIONER TEVES: Yes.

8 MR. DAVIDSON: Commissioner Contrades?

9 COMMISSIONER CONTRADES: Yes.

10 MR. DAVIDSON: Commissioner Kanuha?

11 COMMISSIONER KANUHA: Yes.

12 MR. DAVIDSON: Commissioner Lezy?

13 COMMISSIONER LEZY: No.

14 MR. DAVIDSON: Chair Wong?

15 PRESIDING OFFICER WONG: Abstain.

16 MR. DAVIDSON: Motion fails four in favor,
17 one against, one abstain.

18 PRESIDING OFFICER WONG: Being that the
19 motion has failed, do I hear another motion,
20 Commissioners?

21 COMMISSIONER LEZY: Chair.

22 PRESIDING OFFICER WONG: Commissioner Lezy.

23 COMMISSIONER LEZY: Thank you, Chair. For
24 the reasons I previously outlined I move that the
25 Commission grant Defend O'ahu Coalition's motion for

1 issuance on an order to show cause why the boundary
2 reclassification of Kuilima Development Company should
3 not be revoked for failure to perform conditions,
4 representations and commitments by Kuilima Development
5 Company, and would ask the executive officer set an
6 appropriate hearing date for said Order.

7 PRESIDING OFFICER WONG: Do I hear a second?
8 (Pause) Not hearing a second the motion is -- I'm
9 sorry, do I hear a second? No second.

10 On that basis do I hear -- I think,
11 Commissioner Contrades, you indicated you were going
12 to make a motion to modify.

13 COMMISSIONER CONTRADES: (off mic) I want to
14 hear our legal counsel's advice first.

15 MS. ERICKSON: You can make a motion to put
16 that item on a future agenda.

17 COMMISSIONER CONTRADES: Okay. So I'll make
18 the motion that we ask our legal counsel to research
19 whether or not we have the authority as a Commission
20 to revisit the D&O and to make modifications to the
21 D&O.

22 PRESIDING OFFICER WONG: In other words,
23 it's a motion just to research or a motion to
24 modify....

25 COMMISSIONER CONTRADES: We have to get her

1 advice first.

2 PRESIDING OFFICER WONG: Okay. We'll take a
3 five minute recess.

4 (Recess was held. 4:10)

5 PRESIDING OFFICER WONG: Back on the record.
6 Commissioner Contrades.

7 COMMISSIONER CONTRADES: Mr. Chairman, I
8 move that the Commission modifies the 1986 decision
9 and order and that it be put on our calendar as soon
10 as possible dependent upon what our executive director
11 can do.

12 PRESIDING OFFICER WONG: Do I hear a second?

13 COMMISSIONER TEVES: Second.

14 PRESIDING OFFICER WONG: Do I hear any
15 discussion?

16 COMMISSIONER KANUHA: Mr. Chairman?

17 PRESIDING OFFICER WONG: Commissioner
18 Kanuha.

19 COMMISSIONER KANUHA: Point of
20 clarification. So the item on the agenda, would that
21 be deferred until we take up this motion, this
22 modification item?

23 PRESIDING OFFICER WONG: It's my
24 understanding it's a Motion to Modify the decision and
25 order. And there'd be a new hearing date for that

1 purpose. And that date will be determined in working
2 out with our executive director in scheduling all the
3 other matters before us.

4 COMMISSIONER KANUHA: Okay. But in the
5 meantime this item that's on the agenda would be
6 deferred and taken up.

7 PRESIDING OFFICER WONG: No. The matter is
8 off the calendar. The Motion to Issue an Order to
9 Show Cause as I understand is no longer before the
10 Commission.

11 COMMISSIONER TEVES: Failed to get a second.

12 PRESIDING OFFICER WONG: I'm sorry. Which
13 motion are you talking about? Commissioner Lezy's
14 motion?

15 COMMISSIONER KANUHA: No. I'm talking about
16 the item that's on the agenda. Movant's.

17 PRESIDING OFFICER WONG: Not having a
18 decision it just stays there.

19 COMMISSIONER KANUHA: Okay. Thank you.
20 Commissioner Lezy.

21 COMMISSIONER LEZY: I'd like to ask for
22 clarification, Chair, if I may, with what I understand
23 to be the pending motion. Would the current Movant be
24 allowed to participate in the hearing on that motion?

25 And if so I'd ask that they be provided with

1 some advice as to how they would assert their right to
2 participate.

3 PRESIDING OFFICER WONG: I'll turn to legal
4 counsel.

5 COMMISSIONER LEZY: I think under the
6 circumstances we have put our deputy attorney general
7 on the spot in public enough times.

8 I think I have to ask that we go into
9 executive session.

10 PRESIDING OFFICER WONG: Why we rule on the
11 motion or decide on the motion as to whether and how
12 the Movant Defend O'ahu can or cannot be a party be a
13 separate issue after our legal counsel has a chance to
14 revisit that issue.

15 COMMISSIONER LEZY: I think, Chair, with all
16 due respect I'd like to clarify that issue before we
17 take a vote on the motion because it may affect how I
18 vote.

19 PRESIDING OFFICER WONG: Okay.

20 COMMISSIONER LEZY: So if we could enter
21 into executive session I'd appreciate it.

22 COMMISSIONER CONTRADES: Second.

23 PRESIDING OFFICER WONG: Moved and seconded
24 to go into executive session. All those in favor
25 raise their hands. Executive session. Sorry, you all

1 have to leave.

2 (Executive session recess was held. 4:20)

3 PRESIDING OFFICER WONG: This Commission is
4 back in session. Commissioner Contrades.

5 COMMISSIONER CONTRADES: Mr. Chairman, I
6 withdraw my motion -- I forget what I said already --

7 PRESIDING OFFICER WONG: With respect to
8 modification --

9 COMMISSIONER CONTRADES: With respect to
10 modification.

11 COMMISSIONER TEVES: Withdraw my second.

12 PRESIDING OFFICER WONG: Withdrawal of
13 second. Fine. Motion having been withdrawn and
14 second also concurs, it appears to me that the
15 Commission is unable to rule on this motion brought by
16 Defend O'ahu.

17 As a result this matter is still on the
18 calendar but the date of the new hearing is going to
19 be set by our executive director. Commissioners, any
20 questions about that? If not, I think we shall
21 adjourn.

22 (The proceedings were adjourned at 4:30 p.m.)

23 --oo00oo--

24

25

1 C E R T I F I C A T E

2

3 I, HOLLY HACKETT, CSR, RPR, in and for the State
4 of Hawai'i, do hereby certify;

5 That I was acting as court reporter in the
6 foregoing LUC matter on the 4th day of February 2010;

7 That the proceedings were taken down in
8 computerized machine shorthand by me and were
9 thereafter reduced to print by me;

10 That the foregoing represents, to the best
11 of my ability, a true and correct transcript of the
12 proceedings had in the foregoing matter.

13

14 DATED: This _____ day of _____ 2010

15

16

17

18

19 _____
20 HOLLY M. HACKETT, CSR #130, RPR
21 Certified Shorthand Reporter
22
23
24
25

