

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3 CONTINUED HEARING

4 A07-774 NORTH KONA VILLAGE, LLC)
5 'O'OMA 2nd KALOKO, NORTH KONA,)
6 HAWAI'I.)
_____)

7

8 TRANSCRIPT OF PROCEEDINGS

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11 The above-entitled matter came on for a public hearing
12 at Ballroom #1, King Kamehameha's Kona Beach Hotel,
13 75-5660 Palani Road, Kailua-Kona, Hawai'i commencing
14 at 9:40 a.m. on Wednesday, June 16, 2010 pursuant to
15 Notice.

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

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1 June 16, 2010

2 PRESIDING OFFICER JUDGE: Good morning.

3 Today is June 16th and this is a meeting of the Land

4 Use Commission. The first item on our agenda is the

5 adoption of the minutes from the June 4th, 2010

6 meeting. Any comments or corrections? Is there a

7 motion to adopt the minutes?

8 COMMISSIONER LEZY: So moved.

9 PRESIDING OFFICER JUDGE: Is there a second?

10 COMMISSIONER CONTRADES: Second.

11 PRESIDING OFFICER JUDGE: Moved by

12 Commissioner Lezy, second by Commissioner Contrades.

13 All those in favor say aye.

14 VOICE VOTE: Aye.

15 PRESIDING OFFICER JUDGE: Those opposed?

16 Minutes are adopted. Next is the tentative meeting

17 schedule. Dan, could you give us an update please.

18 MR. DAVIDSON: Commissioners, you have the

19 meeting schedule before you including a very important

20 July 1 O'ahu meeting. And we're pretty well booked

21 into September. Just today the city and county

22 announced a furlough Friday plan. Hawai'i County

23 already has a furlough Friday plan.

24 I'm not sure that any of the dates coincide,

25 so I'll be doing some checking when we get back to

1 Honolulu. But as of now no changes to the schedule.
2 As always, contact Riley if there are any schedule
3 conflicts or problems. Thank you.

4 PRESIDING OFFICER JUDGE: Thank you, Dan.
5 The next item on the agenda is a Docket A07-774. This
6 is a continued hearing on Docket No. A07-774 North
7 Kona Village, LLC 'O'oma 2nd Kaloko, North Kona,
8 Hawai'i to consider the reclassification of
9 approximately 181.169 acres of land currently in the
10 Conservation District into the Urban District at
11 'O'oma 2nd Kaloko, North Kona, Hawai'i, Tax Map Key
12 Nos: (3) 7-3-009:004 (portion and 7-3-009 portion of
13 State Right-of-way) for beachside residential
14 community with mixed uses.

15 On May 11, 2010 the Commission received
16 written correspondence from Lily Anne Souza.

17 On May 30, 2120 the Commission received a
18 copy of an e-mail from Janice Palma Glennie regarding
19 a completed Open Space Survey form in support of
20 relisting of 'O'oma to the Top 10 of the county's land
21 acquisition list, completed jointly by Kohanaiki Ohana
22 and the Surfrider Kona Kai Ea Chapter.

23 On May 4 through June 15th, the final e-mail
24 collection was at 3:30 p.m, the Commission received
25 written correspondence via e-mail from the following:

- 1 1. Kitty Lyons.
- 2 2. John Simmerman, the Chair of the Kona
- 3 Kai Ea Chapter of the Surfrider Foundation.
- 4 3. Thalia Davis.
- 5 4. Chama Cascade.
- 6 5. Marya Mann.
- 7 6. Stuart Coleman, the Hawai'i Coordinator
- 8 of the Surfrider Foundation.
- 9 7. Phyllis Hanson.
- 10 8. David (sic) O'Reilly.
- 11 9. Ed Fernandez.
- 12 10. Ann Goody.
- 13 11. Cory Harden.
- 14 12. Michael Reimer.
- 15 13. Kathy McMillen.
- 16 And, lastly, 14. Matt Binder. Also for the
- 17 record we received a correspondence today on June 16
- 18 from Mr. George A. Wilkins, a Kona resident.

19 Let me briefly describe our procedure for
20 today on this docket. First, we will have the parties
21 identify themselves for the record. Those individuals
22 desiring to provide public testimony will have the
23 opportunity to do so tomorrow, Thursday, June 17
24 starting at 1:30 p.m.

25 And the reason for setting the public

1 testimony for tomorrow is to allow the Commission to
2 make progress in hearing the parties' evidence today
3 since the Commission only has a limited number of days
4 to hear this matter.

5 Next, the Petitioner will present its case.
6 Once the Petitioner is completed with its presentation
7 it will be followed in turn by Hawai'i County, the
8 State Office of Planning and the National Park
9 Service.

10 The Chair would also note for the parties
11 and the public that from time to time I will be
12 calling for short breaks as is necessary. Are there
13 any questions on our procedure for today?

14 MS. BENCK: No questions.

15 MR. YEE: Chair, if I could just make one
16 comment. The Office of Planning is unable to call
17 Director Brennon Morioka because he's currently in
18 Japan. We have gotten agreement from the National
19 Park Service on their willingness to call their
20 witness ahead of ours to allow -- to make sure we hear
21 as many witnesses as possible. So with respect to the
22 order of witnesses the National Park Service has
23 agreed to go in front of the Office of Planning.

24 PRESIDING OFFICER JUDGE: Okay. So then
25 we'll have the Petitioner, followed by Hawai'i County,

1 followed by the National Park Service, followed by the
2 State Office of Planning, is that correct?

3 MR. YEE: Yes.

4 PRESIDING OFFICER JUDGE: Any objections?

5 MS. BENCK: No objection from Petitioner.

6 PRESIDING OFFICER JUDGE: Commissioners?

7 Okay that will be fine. Would the parties please
8 identify themselves.

9 MS. BENCK: This is Jennifer Benck. And to
10 my right is Steven Lim. We're both here to represent
11 Petitioner North Kona Village now known as 'O'oma
12 Beachside Village.

13 MR. GONZALEZ: Good morning. Deputy
14 Corporation Counsel Brandon Gonzalez. To my right is
15 Planning Director Bobby Jean Leithead-Todd from the
16 county of highway. And behind me is Planner Phyllis
17 Fujimoto from the Hawai'i County Planning Department.

18 PRESIDING OFFICER JUDGE: Good morning.

19 MR. YEE: Good morning. Deputy Attorney
20 General Bryan Yee on behalf of the Office of Planning.
21 Abbey Mayer will be joining us shortly but is not
22 currently here.

23 PRESIDING OFFICER JUDGE: Thank you. Good
24 morning.

25 MR. LIND: Greg Lind from the Office of the

1 Solicitor Department of the Interior representing the
2 National Park Service. With me is Melia Lane-Kamahele
3 from the National Park Service and Sallie Buchal
4 behind me from the National Park Service.

5 PRESIDING OFFICER JUDGE: Thank you. Good
6 morning. Are there any new exhibits that the parties
7 are seeking to introduce?

8 MS. BENCK: Petitioner doesn't have any new
9 exhibits.

10 MR. GONZALEZ: None from the county.

11 MR. YEE: The Office of Planning has
12 submitted an amended list of witnesses and an amended
13 list of exhibits as well as Exhibits 29 and 30. Just
14 for your information we originally listed seven
15 witnesses. We would now be calling four. But we did
16 add -- we deleted several. We are also adding a
17 representative from NELHA which is a neighboring
18 tenant and a state agency.

19 Exhibits 29 and 30 constitute the written
20 testimony of Mr. Baird or NELHA and Exhibit 30 is just
21 a map to explain or demonstrate the location relative
22 to NELHA.

23 We would ask that Exhibits 29 and 30 be
24 admitted.

25 PRESIDING OFFICER JUDGE: Thank you. Do any

1 parties have any objections to the State's exhibits?

2 MS. BENCK: Petitioner has no objection.

3 PRESIDING OFFICER JUDGE: County?

4 MR. GONZALEZ: None from the county.

5 MR. LIND: No objections.

6 PRESIDING OFFICER JUDGE: Commissioners?

7 Then the exhibits as you described are admitted.

8 MR. YEE: Thank you.

9 MR. LIND: In addition, the National Park
10 Service has filed Exhibit 31 which is the written
11 testimony of Sallie Buchal from the National Park
12 Service. We also listed two witnesses initially. We
13 only have one, Ms. Buchal testifying.

14 So we ask that Exhibit No. 31 be admitted
15 into evidence.

16 PRESIDING OFFICER JUDGE: Okay. Do any of
17 the parties have any objections to the National Park
18 Service Exhibit 31 being accepted?

19 MS. BENCK: No objections.

20 MR. GONZALEZ: County no objection.

21 MR. YEE: No objection.

22 PRESIDING OFFICER JUDGE: Commissioners?

23 Hearing none Exhibit 31 is now accepted into evidence.
24 Mrs. Benck would you like to go ahead and proceed with
25 the presentation of your case.

1 MS. BENCK: Thank you. Yes, we do, Chair.
2 To let you and the Commissioners know our lineup for
3 witnesses today will start with Ann Bouslog of Mikiko
4 Corporation, who's our market and econ-fiscal expert.
5 Then we'll go on to Tom Schnell from PBR, one of our
6 planning experts, followed by Warren Yamamoto who's
7 our traffic expert. Then our last witness today will
8 be Petitioner himself, Dennis Moresco.

9 If I may I would like to start with Ann
10 Bouslog of Mikiko.

11 PRESIDING OFFICER JUDGE: Thank you. I'll
12 just swear her in.

13 MS. BENCK: Thank you.

14 PRESIDING OFFICER JUDGE: Good morning,
15 Ms. Bouslog.

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

19 THE WITNESS: I do.

20 PRESIDING OFFICER JUDGE: Okay. If you
21 could just state your name and address for the record
22 please.

23 THE WITNESS: My name is Ann Bouslog. My
24 address is P. O. Box 62074 Honolulu 96839.

25 MS. BENCK: And just to get it on the

1 record. At our first hearing all the parties agreed
2 to stipulate to our experts' qualifications, so I'm
3 not going to march through that if I may. Thank you.

4 DIRECT EXAMINATION

5 BY MS. BENCK:

6 Q Good morning, Ann.

7 A Good morning.

8 Q Hi. So I know you're with Mikiko
9 Corporation. If you could, how long has Mikiko
10 Corporation been in business and what does Mikiko do?

11 A I've been in business since 1997. We do
12 market, financial feasibility and economic and fiscal
13 impact assessments for proposed land and residential
14 real estate developments.

15 Q When did you start working on this Project,
16 'O'oma Beachside Village?

17 A In fall 2006.

18 Q And you prepared a few reports, correct?

19 A Yes, I did. I prepared a market and
20 economic fiscal economic assessment for this Project.
21 The first was a market assessment done for 'O'oma
22 completed in December '07. It's been included as
23 appendix K to the FEIS.

24 Secondly, an economic and fiscal impact
25 assessment for 'O'oma which was completed in probably

1 '08. It was include as appendix L in the FEIS.

2 Thirdly, in May '09 we were asked to update
3 both of those studies because of the significant
4 changes that had occurred in the marketplace. That
5 report was submitted as Petitioner's Exhibit 13.

6 Finally, last fall we reviewed the market
7 absorption of the Project from a phased standpoint
8 looking at what might be absorbed in the first 10
9 years for a first phase of 'O'oma's development. That
10 report was submitted as Petitioner's Exhibit 14.

11 Q Thanks. Ann, based on all your reports,
12 from a market perspective is 'O'oma a viable Project?

13 A Yes. In fact the timing for it could be
14 ideal.

15 Q Why is that?

16 A Well, real estate markets are cyclical.
17 That mirrors what happens in the general economy but
18 it's really more pronounced in the real estate
19 industry for a variety of reasons. We are currently
20 in a down cycle.

21 And even though there's been some dramatic
22 fallout and consequences over the past years that
23 everybody's aware of, there's every reason to believe
24 that today's conditions will be followed by another
25 cycle of rising market conditions in the coming years.

1 With respect to 'O'oma, if you look at the
2 residential development in the first phase there's
3 between 530 and 650 residential units proposed in the
4 Petition Area. This is a little different from what I
5 had reported on in the October 2009 update where I
6 mistakenly attributed 555 to 680 units in the Petition
7 Area.

8 But those units do include condominium units
9 in the makai village, estate lots and single-family
10 homes in the residential village as well as some
11 multi-family homes within the residential village.

12 We assume that all necessary entitlements
13 for the Petition Area would be in place by early 2012
14 based on information that the planning team provided
15 me.

16 Q So, again, we're talking about the point in
17 the real estate cycle that we're in. And you're
18 saying all entitlements are expected to be in place by
19 the next couple years. What do you mean by "all
20 necessary entitlements"?

21 A LUC reclassification, county rezoning, SMA
22 permit, those would be assumed to be obtained by the
23 January 2012 and final subdivision approval later that
24 year.

25 Q So we're anticipating -- your reports are

1 anticipating that we'll actually have product for
2 sale?

3 A The earliest product would probably be the
4 estate lots because it's not built and could be
5 produced earlier, and that is sometime in the second
6 half of 2013. The first built product, meaning homes
7 or multi-family units, could be available for
8 occupancy by early 2014.

9 Q So in light of the Commission's rule about
10 substantial completion inside of 10 years, 10 years
11 forward is about 2020. What do you expect to see by
12 2020 at 'O'oma?

13 A We believe that about 660 units, all of the
14 Petition Area and perhaps a little bit more could be
15 absorbed by 2020.

16 Q That works out to an average about how many
17 units a year?

18 A Eighty-eight.

19 Q That's a little bit different than the
20 average in the report that was in the EIS, right?

21 A That's right.

22 Q Can you explain that difference?

23 A Right. The report that was prepared for the
24 EIS looked at 'O'oma as a whole from the current --
25 that time up through full absorption around 2030. So

1 that was a long-term projection.

2 When we're just looking at the initial
3 absorption of 'O'oma because it's a short-term
4 projection and we have a little bit more certainty at
5 this point in time as to when the Project could begin,
6 it was appropriate, I felt, to take into account the
7 position currently in the market cycle.

8 And so I looked at residential sales trends
9 in North Kona as well as for the entire island of
10 Hawai'i over the past two real estate cycles beginning
11 in 1981. And what I found is there's a prevailing
12 pattern of sales gradually increasing in years 1
13 through 3 of each cycle. Then picking up a great deal
14 of momentum in years 4 through 8 of the cycle.

15 All of the cycles we evaluated in their peak
16 sales years in years 9, 10 and/or 11 of that cycle
17 with a falloff for a few years right after that.

18 Putting this insight in the context of the
19 sales that are now evident on the island, it appears
20 that years 4 through 10 of the coming cycle could
21 coincide with the anticipated marketing period of the
22 Petition Area or about mid 2013 through 2020.

23 That's what our prior market study projected
24 on an average annual absorption of 70 units over the
25 life of the Project, or through 2030. If one were to

1 look at 'O'oma's development in phases, the first
2 phase in the Petition Area is expected to hit very
3 strong selling years. And we would expect it to see
4 higher than average sales.

5 While these last phases of the Project could
6 experience slower sales, still reaching the overall
7 average of about 70 units sold per year.

8 Q Thanks. So especially for the first 10
9 years we have a very positive outlook on what the
10 sales figures are going to be.

11 A Yes.

12 Q Other than market timing are there other
13 aspects of this Project that you think are going to
14 put it ahead of other projects in terms of sales?

15 A Definitely. First of all, 'O'oma's unlike
16 any other Project that's planned for Kona. It's the
17 only Project that's located makai of Queen Ka'ahumanu
18 Highway, but mostly planned for a primary resident
19 users.

20 Property like this is usually proposed for
21 resort/residential development or resort-related
22 development. And that's how this property itself has
23 been proposed in the past.

24 It's such a unique Project that there's few
25 directly comparable projects from which to determine

1 prices and absorption.

2 Secondly, we estimated that there was
3 pent-up demand for primary housing in this area when
4 we did our original study in 2007. And we believe
5 that the amount of pent-up demand has likely increased
6 since then due to the recent economic conditions and
7 more stringent lending terms.

8 Finally, in January 2008, as probably
9 everybody here knows, DBEDT revised its population
10 projection series for the Big Island. DBEDT's 2008
11 projections now anticipate 14 percent more population
12 on the Big Island by 2030 than they had projected
13 previously in their 2004 series.

14 Using those updated DBEDT numbers Mikiko
15 projected population growth within an area around
16 'O'oma which we call the "competitive residential
17 market area" which is the southern half of South
18 Kohala and the northern half of North Kona.

19 We projected that area might grow at a rate
20 of 4.5 percent annually over that period. Considering
21 these population projections as well as very detailed
22 surveys, Mikiko conducted an existing housing stock in
23 the area as well as planned entitled residential
24 developments in the area. Mikiko projected a shortage
25 of 7,300 housing units for the primary market between

1 2008 and 2030.

2 Q Thanks, Ann. You said earlier that one of
3 the reasons why this Project is unique is because it's
4 not a resort development. What are the average prices
5 that you are anticipating in your report?

6 A Yeah. We developed estimates based on the
7 pricing of other homes in the area. In 2009 dollars
8 we concluded that single and multi-family homes built
9 product could average about \$450,000. While the
10 estate lots could be priced at an average of about
11 \$500,000.

12 These figures were revised downward from
13 those that were presented in the December 2007 market
14 study to reflect the changes that occurred in the
15 marketplace over that period.

16 But when you look at these prices there's a
17 couple things to keep in mind. First, because, as I
18 mentioned the Project is unique, there are very few
19 comps for it. And also in recent years there's been
20 essentially no new development occurring on the
21 island. It was very difficult to find pricing for new
22 product in the immediate area.

23 So our study looked a little bit further out
24 beyond the immediate area. We looked at some projects
25 as far away as Waikoloa. There were projects in the

1 Kona area to look at as well. But we had to look as
2 far as Waikoloa. And we also considered a proposing
3 pricing on some of the planned development.

4 Secondly, the prices I just gave you are in
5 2009 dollars. Obviously dollar figures would reflect
6 the market that they're in at the time the project is
7 marketed.

8 Finally, these prices apply to the market
9 units. The developer will, of course, comply with
10 county agreements to be made on affordable housing.
11 So there will be a segment of the development that is
12 priced at affordable housing prices. That would
13 bringing the overall average down.

14 Q Clearly this isn't resort development.

15 A No.

16 Q These aren't planned to be 2 and-a-half
17 million dollar lots or anything like that?

18 A No. Not at all.

19 Q So how do you respond to -- there's been
20 some critics in the press pointing to projects,
21 adjacent projects like Kohanaiki or other projects in
22 the Kona area that have maybe gone on hold, and say
23 well, if that project's moving slowly why should could
24 'O'oma be reclassified?

25 A Well, particularly considering Kohanaiki

1 that's a very, very different project from 'O'oma.
2 People will always need a place to live. And 'O'oma
3 will provide a wide variety of housing opportunities
4 in a complete community setting. However, in
5 uncertain times like now people are more likely to do
6 without a second or third home. And that's a key
7 reason why Kohanaiki and many resort projects aren't
8 seeing good sales these days.

9 Q And what about projects -- and I understand
10 that it was hard to find, almost impossible to find a
11 fair comparable because of our ocean side location --
12 what about other primary residential projects that are
13 maybe moving more slowly right now too?

14 A Well, for instance, two other primary
15 residential projects that had been looking like they
16 were going to move ahead are Palamanui and Kaloko
17 Heights. They're both now stalled in their cases
18 because of current market conditions as well as the
19 difficulty of obtaining developer financing.

20 However, I expect them both to come back on
21 the market once the cycle turns. And I expect that
22 once the cycle takes off both of those projects, along
23 with 'O'oma, could all be on the market successfully
24 simultaneously. They're, again, different from 'O'oma
25 by product type. Those are both mauka-oriented

1 projects whereas 'O'oma would offer a different kind
2 of lifestyle.

3 Q Thanks, Ann. I want to turn from talking
4 about just the residential product and now talk about
5 the commercial space. How much commercial space is
6 planned for 'O'oma?

7 A Well, there's 55,000 square feet of
8 commercial planned in the Petition Area within the
9 makai area and 200,000 over all.

10 Q That's good. And how do you see the
11 absorption of the commercial space?

12 A Well, beginning with the Petition Area.
13 Based on projected populations within the primary
14 trade area and the commercial area, this is a larger
15 trade area that's considered than for residential
16 because we believe that shopping and trade does occur
17 over a broader area than residential choices.

18 But within that primary trade area and
19 considering also historical spending patterns and real
20 estate market performance in that area, Mikiko
21 anticipated demand for up to 7.6 million square feet
22 of commercial/retail and office spaces in that area
23 between now and 2030.

24 So the initial developments of makai village
25 would be a very small portion of that.

1 Q Thanks. Out of the other 150,000 square
2 feet of commercial space, how do you see that being
3 absorbed over the next 10 to 20 years?

4 A Well, the 7.6 million square feet I
5 mentioned is total demand. We looked at what's
6 already out there and also what is entitled and
7 planned in the commercial retail and office areas.
8 And we concluded that there are 1.7 million square
9 feet demand for net additional commercial and retail
10 office uses.

11 'O'oma's total of 200,000 square feet could
12 represent about 3 percent of the marketplace in 2030
13 if all of that demand is satisfied. Or it could be
14 seen as just 11 percent of the net additional needs in
15 the area.

16 So, again, it would be a relevant supply to
17 meeting that future need but not one of the major
18 commercial developments in this area.

19 Q Who do you see taking up the commercial
20 space? What kind of lessees or user do you think
21 we're going to have in that Project?

22 A 'O'oma is surrounded by significant
23 populations of residents and daytime visitors. The
24 types of establishments that we see at 'O'oma would
25 target those markets, including product services and

1 conveniences. The key markets would be 'O'oma's own
2 residents up to 1200 homes there, shoreline park
3 users, visitors and part-time residents who stay in
4 North Kona or South Kohala and airport users.

5 Also there are a number of businesses that
6 support the part-time resident community of the entire
7 West Hawai'i region. And these often like to be
8 located near to the airport or in the central business
9 areas of Kona. And this would be an appropriate area
10 for them.

11 Also off-island enterprises that frequently
12 do business in West Hawai'i may be looking for branch
13 offices here. And again being near to the airport,
14 being near to the center of commerce in Kona would be
15 a very attractive location for those types of
16 businesses.

17 Q Thanks, Ann. I'm going to turn from talking
18 about market now and talk about economic and fiscal
19 impacts. You know that the Commission is required to
20 consider the economic impacts of a project before it
21 grants a reclassification.

22 A Yes.

23 Q Did you assess those impacts?

24 A Yes, we did.

25 Q Can you go ahead and tell me what you found

1 in your report?

2 A Sure. Once 'O'oma's completely built out
3 the net additional county operating revenues are
4 estimated to be on the order of \$2.7 million per year.
5 The net additional state government operating revenues
6 are estimated at 1.9 million per year in the first
7 half of the development period, and 1.5 million per
8 year in the second half of it, during its buildout/
9 sellout. For the state most of those fiscal benefits
10 do occur during its development and buildout/sellout
11 period.

12 Q So the Project's going to bring a lot of
13 money into the county and the state. How about
14 impacts on employment?

15 A Considering an average annual estimate over
16 the course of development 'O'oma's estimated to
17 support a hundred forty direct fulltime equivalent
18 jobs. These are development-related jobs.

19 The total employment impacts including
20 direct, indirect and induced jobs would be about 330
21 fulltime equivalent jobs per year for each year during
22 its development.

23 Q So that's during the development period.
24 What are we looking at once the Project's developed?

25 A The Project's facilities themselves are

1 estimated to host about 480 direct permanent full-time
2 equivalent jobs. About 470 of those might be located
3 on site at the commercial and office spaces.
4 Additionally they would support positions in real
5 estate brokerage which may or may not be located on
6 site.

7 This does not include communities --
8 employees at community facilities such as the parks or
9 any employees at the planned charter school on site.
10 So that would be additional employment at 'O'oma.

11 Another view of operational employment
12 impact is the net new employment that can be generated
13 by a project islandwide.

14 And to estimate that rather than just
15 looking at the employment that might exist on site or
16 that is support by the facilities developed there,
17 what we do is to estimate the new expenditures that a
18 project can be expected to bring to the island and
19 look at the number of jobs at that level of increased
20 economic activity could be expected to promote.

21 And Mikiko concluded that 'O'oma should be
22 associated with some 200 fulltime net new operational
23 positions by doing that analysis. So those are jobs
24 that could be located throughout the island.

25 About half of those would be directly tied

1 to 'O'oma expenditures and half supported by indirect
2 and induced impacts. And they would be throughout all
3 sectors of the local economy.

4 Q Some of the Project critics have lodged the
5 complaint that whatever jobs this Project's going to
6 bring are just more dead end, low-paying jobs.

7 What do you say to that?

8 A Well, again, when you consider those 200 net
9 new jobs they'd be distributed throughout the economy.
10 They would be in all industries that these new
11 expenditures 'O'oma could bring to the island would
12 support.

13 You could expect to see them in the air
14 lines, in real estate leasing and management,
15 marketing as well as retailing. But also wholesaling,
16 professional and personal services and so on.

17 We have estimated that wages from those
18 fulltime equivalent jobs would average about 7,000 per
19 FTE job in the period up to 2020. And 53,000 after
20 that. Since most of those households, though, are
21 going to have more than one wage earner, of course
22 associated household incomes for those families
23 affected by these jobs would be expected to be higher.

24 Q Thanks. And you know that this isn't the
25 first time that this property has been before the

1 Commission, correct?

2 A That's true.

3 Q In fact you testified for Kahala Capital
4 back a number of years ago. And Commission denied
5 that request for reclassification.

6 A Yes.

7 Q Can you describe, just based on whatever you
8 recall from that, what kind of project it was that
9 Kahala Capital planned for this property?

10 A Sure. I don't recall every deal but --
11 every detail, but basically the project Kahala Capital
12 was proposing was a resort. It was anchored by an
13 ocean front, first class hotel and golf course. It
14 also included a marine exploratorium, a water park, a
15 conference center, residential lots and condominium
16 units located around the golf course.

17 Q It was huge.

18 A It was.

19 Q Sounds huge. What sort of market support
20 did you find? Again, as best you can remember.

21 A Well, there was less support for the
22 residential product than you would see today. The
23 population of the Big Island -- this was back in the
24 early '90s I think -- really hadn't taken off the way
25 it has in recent years.

1 And another big concern for Kahala Capital
2 frankly, was the ocean front hotel. Its location
3 within the noisier area of the site towards the north
4 and close to the ocean they didn't have the kind of
5 setbacks that Mr. Moresco is honoring now. Those
6 really called into question the viability of that
7 hotel.

8 Q You weren't here at the last hearing when
9 Yoichi Ebisu testified about the noise. However, what
10 impact do you think from a marketing perspective the
11 proximity to the airport's going to have on 'O'oma
12 Beachside Village?

13 A I did read the transcripts of Mr. Ebisu's
14 testimony so do have -- I'm a bit informed about his
15 insights. But obviously the proximity to the airport
16 I think would be a concern to -- or something that
17 would be considered by anybody looking at a home.

18 However, the sales prices and the pricing
19 that we projected for 'O'oma take that into account.
20 They take into account the proximity to the airport.

21 The reason 'O'oma's being built as planned
22 is because of its proximity to the airport. Just one
23 property south at Kohanaiki is an extremely high-end
24 resort development. North of the airport there's
25 other very high-end resort developments.

1 If this site weren't somewhat impacted by
2 its proximity to the airport, it's very likely that
3 someone else would come along and would again be
4 proposing this site for resort development.

5 So in addition, that very unprecedented
6 setback from the shoreline means that all of the homes
7 will be built outside of the most noise sensitive
8 areas of the property.

9 And many of those towards the mauka side of
10 the property would be in noise levels that are really
11 quite average for suburban communities in Hawai'i and
12 throughout the United States.

13 Finally, the airport proximity has some very
14 positive impacts for the Project particularly for its
15 commercial uses.

16 Q Ann, how long have you been a real estate
17 marketing consultant in Hawai'i?

18 A About 24 years.

19 Q So have you seen a few property bubbles?

20 A Yes.

21 Q Okay. When knowing what you know with the
22 experience you have watching bubbles grow and burst
23 and grow and burst, again do you in your professional
24 opinion think that 'O'oma is a viable Project?

25 A Yes, I do. There's clearly a need for more

1 housing and commercial development on this side of the
2 island. There's a tremendous imbalance currently
3 between the location of jobs on this island and the
4 location of housing.

5 And that's felt and that price is paid for
6 every day by the residents of this island who have to
7 commute long distances and experience great hardships
8 because of that.

9 So this Project will help to address some of
10 the housing need. And just as importantly, though, I
11 think 'O'oma will bring a very welcome kind of
12 diversity to housing in retail shopping, dining
13 opportunities that are available to regular residents.

14 This is the first time I've seen an ocean
15 front project proposal that's mostly directed to the
16 primary resident market in my 24 years or more of
17 consulting.

18 It would give local residents an opportunity
19 to live in an ocean front community at prices that are
20 competitive with other primary residential
21 communities.

22 And for those who don't want to live at
23 'O'oma it also would offer ocean view dining,
24 entertainment opportunities that are not associated
25 with a resort or visitor area. This is something that

1 I think is embarrassingly absent throughout Hawai'i.
2 That sort of opportunity is really not very often
3 available to us local residents.

4 In summary, I think it offers more
5 opportunities for a makai-oriented lifestyle in the
6 Kona area without infringing on public access to the
7 oceanfront.

8 MS. BENCK: Thanks very much, Ann. With
9 that I open Dr. Bouslog up for cross-examination.

10 PRESIDING OFFICER JUDGE: County, do you
11 have any questions for this witness?

12 MR. GONZALEZ: No questions, thank you.

13 PRESIDING OFFICER JUDGE: Mr. Yee?

14 CROSS-EXAMINATION

15 BY MR. YEE:

16 Q You mentioned some of the concerns some
17 people may have in being located near an airport. Did
18 you also look at whether people may have concerns
19 being located near a light industrial area?

20 A Are you referring to the HOST Park?

21 Q NELHA.

22 A Or the NELHA? Yes, that was also
23 considered. The NELHA is somewhat like the airport in
24 that they're both light industrial type uses. We were
25 focused on the airport because of the concern for

1 noise. But I think they have a similar impact being
2 industrial type uses.

3 Q So it would be a similar analysis in your
4 mind?

5 A Right.

6 Q Do you think it's important, then, that any
7 purchasers be notified of the potential impacts or
8 consequences of being located near an airport or light
9 industrial area?

10 A I think the proximity is obvious to anybody
11 shopping there. And my understanding there's some
12 agreements already made at least with respect to the
13 airport on the urban areas about aviation.

14 Q With respect, though, to the light
15 industrial nature of the NELHA property, would it be
16 important that perspective purchasers be informed of
17 the possible impacts in being located next to NELHA?

18 A I think, just as in marketing any other
19 project, it's important to show a buyer what the
20 neighboring proposed uses are and of course that would
21 include NELHA and the HOST Park.

22 Q Because you would want anyone who purchased
23 the property to be fully informed and know what
24 they're getting into before they actually purchased,
25 correct?

1 A Yes. Any real estate marketing it's
2 standard operating procedure to disclose what the
3 plans are in the surrounding areas.

4 MR. YEE: I have no further questions.
5 Thank you.

6 MR. LIND: No questions.

7 PRESIDING OFFICER JUDGE: Commissioners, any
8 questions? Commissioner Lezy.

9 COMMISSIONER LEZY: Good morning,
10 Ms. Bouslog. Thank you for your testimony. Just a
11 couple of brief questions. And one may be a little
12 bit off the wall. I'm just wondering as part of the
13 assessment that your firm was commissioned to do
14 whether there was any assessment done of what the
15 marketability would be if this were a purely
16 commercial project with no residential component?

17 THE WITNESS: No. I didn't look at that
18 scenario.

19 COMMISSIONER LEZY: Okay. Then the other
20 question I had for you is touching on the issue of the
21 airport noise factor. You had testified that in your
22 opinion the sales pricing for the residential units
23 takes into account the fact that there is going to be
24 some intrusive noise from the airport.

25 As part of your assessment did you factor in

1 for marketability purposes, the fact that it's
2 possible that there may be an easement imposed on the
3 residential properties that would prevent owners and
4 future owners from pursuing a claim against the state
5 if there were to be an increase in noise because of a
6 change in airport operations?

7 THE WITNESS: We assumed that something like
8 that any time you're located next to an international
9 airport it's part of the concern of being near to an
10 airport. So, yes, we assumed that something like that
11 might occur.

12 It is my understanding, though, that the
13 proposed airport changes and modifications might
14 actually lower the DNL rating on this property because
15 it's moving, tending to move the noise impacts further
16 north away from 'O'oma.

17 COMMISSIONER LEZY: But as part of your
18 assessment of the marketability of the residential
19 component you did consider the fact that it's possible
20 that an owner would have to sign away their right, or
21 future owner would have to sign away their right to
22 pursue a claim related to the noise exposure?

23 THE WITNESS: Right. We assume that that
24 would be part and parcel of buying a property within a
25 certain distance of an airport.

1 COMMISSIONER LEZY: Thank you.

2 PRESIDING OFFICER JUDGE: Commissioner
3 Kanuha.

4 COMMISSIONER KANUHA: Thank you,
5 Commissioner Judge. Morning, Ann. In your analysis
6 of the marketplace for this particular Project, did
7 you also look at whether or not this Project could be
8 successful with or without this additional area, and
9 if this entire Petition Area is absolutely necessary
10 in order to make the Project a success?

11 THE WITNESS: You mean did we look at it for
12 just the urban area?

13 COMMISSIONER KANUHA: Yes.

14 THE WITNESS: I didn't do an analysis on
15 that per se. But obviously it wouldn't be the same
16 Project. It would be far more oriented towards
17 commercial development, far more oriented to the
18 highway and the proximity to the highway.

19 COMMISSIONER KANUHA: The residential
20 component, the proposed residential component in the
21 Petition Area is -- what is it, about 600 units?

22 THE WITNESS: In the Petition Area, yes.
23 The actual number...

24 COMMISSIONER KANUHA: I guess 555 to 680.

25 THE WITNESS: 550 to 680.

1 COMMISSIONER KANUHA: Okay. Would it still
2 be a viable Project if the Petition Area was only
3 enough to accommodate half of that, in other words 300
4 units?

5 THE WITNESS: Within the Petition Area?

6 COMMISSIONER KANUHA: Right.

7 THE WITNESS: Well, you know, much of the
8 analysis that I did the point I kept coming back to is
9 this Project is really different from other projects
10 being planned on this island. That's one of the
11 reasons why we had such confidence in its ability to
12 be marketed.

13 And a big part of that is its relationship
14 to the ocean front setback area and the ability of it
15 to have the ocean access incorporated in a project.

16 So the further you get away from that the
17 more it starts to look like the other projects on the
18 mauka side of Queen Ka'ahumanu Highway. And/or like
19 another strip industrial/retail type of development
20 along Queen Ka'ahumanu Highway which I think there's
21 already plenty of.

22 But the opportunities to build an integrated
23 master planned community and to bring a variety of
24 types of residences in here I think really come about
25 by using the areas in the makai area.

1 In particular those, the lots along the
2 front as you know are at a higher price than the other
3 projects. So it's an important part of the overall
4 financial feasibility of the development.

5 COMMISSIONER KANUHA: So if this Project had
6 the same proposed density but on half of the acreage,
7 how would that affect your analysis?

8 THE WITNESS: You mean half of the -- you
9 have the urban area but half of the Petition Area?

10 COMMISSIONER KANUHA: No. The Petition Area
11 is X acres. And the proposal for the Petition Area is
12 600 units. If you take half of the Petition Area, 300
13 units, how does that affect the marketability of the
14 Project?

15 THE WITNESS: That's something I'd really
16 prefer to answer with a planner to see where you're
17 talking about putting that. Are we talking about the
18 same density in moving it back? How could you lay it
19 out? What types of housing could you then reasonably
20 put on the site?

21 I don't know if you could achieve the same
22 mix of units if it were substantially back. I don't
23 know if you could expect to sell the custom lots. So
24 it's not a question I'm really prepared to answer now.
25 But it would definitely be a different market and a

1 different Project.

2 COMMISSIONER KANUHA: Okay. Thank you.

3 PRESIDING OFFICER JUDGE: I have just a
4 couple questions. Could you refresh -- I think you've
5 already testified, but what is the number of the
6 currently entitled residential units in your study
7 area and the likely future supply based upon your
8 research?

9 THE WITNESS: If you will give me a moment I
10 will fish out my plans. As of March 2009 we
11 identified 12,500 more units that were entitled in,
12 again, what we call the competitive residential market
13 area. That's census tract 215.01 and census tract
14 217.01.

15 That's basically the North Kona -- the
16 southern part of North Kona so we're excluding Waimea
17 and the northern part -- excuse me -- southern part of
18 South Kohala -- so it would be excluding Waimea -- and
19 the northern part of North Kona.

20 So that census tract actually cuts off just
21 before Kailua Town. So you don't get into the visitor
22 type inventory you have in Kailua Town.

23 But to qualify that 12,500 units, when we
24 looked at each project one-by-one and the types of
25 markets they're looking at or they could be expected

1 to realize, they're about 9,200 resident, primary
2 resident type units that could be expected to be
3 produced from that.

4 A number of these projects since March '09
5 have been stalled or withdrawn from the marketplace.
6 So, again, this is a moving target. If anything since
7 then the number has gone down.

8 PRESIDING OFFICER JUDGE: Of these 9,200
9 does that include the proposed Kamakana Villages
10 Project proposed by Forest City and HHFDC?

11 THE WITNESS: No. That was not in there at
12 the time because it's urban. But I understand it's
13 now being processed for 2330 units.

14 PRESIDING OFFICER JUDGE: So if we add those
15 you're closer 1,400, is that correct? So you would
16 add those to your 9,200 and add the 2200 or 2300
17 because that's that same area?

18 THE WITNESS: Right. If you're looking at
19 the numbers that were used in our study, the 7,300 or
20 7,400 net additional units that I mentioned came about
21 from 8,300 more units -- excuse me 7,900 more primary
22 resident-oriented units becoming available between
23 2009 and 2030. And a total demand over that period of
24 14,500 units.

25 PRESIDING OFFICER JUDGE: Okay, just got

1 lost there. You just said seven thousand nine net
2 additional versus previously you said nine thousand
3 two.

4 THE WITNESS: Right. There are a number of
5 projects, as I mentioned, that were withdrawn from the
6 market from this inventory I was looking at.

7 PRESIDING OFFICER JUDGE: But they're still
8 entitled. We're looking at entitled properties.

9 THE WITNESS: Entitled or exempt such as --

10 PRESIDING OFFICER JUDGE: Or exempt.

11 THE WITNESS: Exactly.

12 PRESIDING OFFICER JUDGE: So if entitled or
13 exempt are we back to the 9,200 plus the Forest City?

14 THE WITNESS: Well, and then there's an
15 adjustment for a vacancy because we assume that the
16 market, the functioning marketplace needs about a
17 5 percent vacancy rate. So that takes you down to the
18 7,900.

19 PRESIDING OFFICER JUDGE: Okay. So the 7900
20 that's assuming with the 5 percent vacancy.

21 THE WITNESS: Right.

22 PRESIDING OFFICER JUDGE: So you're just
23 looking at purely entitled or exempt you've got the
24 9,200 plus whatever the Kamakani Villages has.

25 THE WITNESS: Ah, correct.

1 PRESIDING OFFICER JUDGE: Okay. And if you
2 were to include -- I know you said you didn't -- your
3 market area, you just defined your market area -- but
4 what if you were to take your market area down to
5 include South Kona, how do those numbers shift?

6 THE WITNESS: Into South Kona. You mean
7 taking all of Kailua-Kona, Ali'i Drive, Hokulia... all
8 the way down through South Kona?

9 PRESIDING OFFICER JUDGE: Well, I guess in
10 my mind I'm thinking like to Keauhou and those areas
11 that are urbanized, probably not Hokulia. It's not
12 apples to apples either. But I would assume there's
13 some primary market down in South Kona as well.

14 THE WITNESS: There is more in South Kona.
15 But the southern part of North Kona tends to be more
16 resort oriented. It is Keauhou, Hokulia, Ali'i Drive,
17 Kailua-Kona. That's one of the reasons I wanted to
18 take that out of the marketplace. It's just extremely
19 different, dynamic.

20 The developments that have occurred there --
21 there are some Stanford Carr, for instance, did one a
22 few years ago. There are some there that have
23 produced inventory for the primary market. D.R.
24 Horton, of course, was doing a project in that area.

25 So, I'm sorry, what was your question?

1 PRESIDING OFFICER JUDGE: If you were to add
2 the entitled -- entitled residential units in that
3 area.

4 THE WITNESS: Mm-hmm.

5 PRESIDING OFFICER JUDGE: If you were to go
6 to the area where you just described where the D.R.
7 Horton and the Stanford Carrs, how would that number
8 increase for entitled residential units?

9 THE WITNESS: You mean if we took out the
10 resort properties?

11 PRESIDING OFFICER JUDGE: Yes.

12 THE WITNESS: I am not aware of as many.
13 There are a few planned residential, primary
14 residential developments in that area, but I'm not
15 aware of as many as there are in the areas the
16 northern part of North Kona and the southern part of
17 South Kohala.

18 So I would think that your shortage may be
19 greater, that there's fewer primary residences being
20 developed. But there would still be great population
21 growth in that area. I did not do that analysis,
22 though, so I'm answering off the top of my head.

23 PRESIDING OFFICER JUDGE: Okay. So don't
24 really have those numbers.

25 THE WITNESS: No.

1 PRESIDING OFFICER JUDGE: Okay.
2 Commissioners, any other questions? I think that's
3 it. Thank you very much. Any redirect, Petitioner?

4 REDIRECT EXAMINATION

5 BY MS. BENCK:

6 Q Just, I think, try to wrap up on the point
7 that Commissioner Judge may have be -- one of her
8 points that she may have been making. Kamakana
9 Villages wasn't included in your studies because it
10 still isn't entitled.

11 If you were to add that roughly 2300 --
12 again it's primary residential, so in some respects
13 it's similar to 'O'oma. If you were to add that into
14 the mix, how do you think that would affect the
15 absorption at 'O'oma? Would we be sitting with a
16 project that's built and nobody there to buy our
17 units?

18 A Well, again, we saw a deficit of over 7,000
19 units over the period. So there is a need for this
20 Project and other projects as well including something
21 like Kamakana.

22 But as for the other mauka-oriented projects
23 I talked about it's a very different market. 'O'oma
24 offers something that no other project is really
25 offering. It offers a different type of housing and

1 living experience. And I think they should be on the
2 market at the same time. They address different parts
3 of the need in this area.

4 MS. BENCK: Thank you very much. No further
5 questions.

6 THE WITNESS: Thank you.

7 PRESIDING OFFICER JUDGE: We're going to
8 take just a short 5 minute break.

9 (Mr. Mayer is now present)

10 (Recess was held.)

11 PRESIDING OFFICER JUDGE: Back on the
12 record. Ms. Benk, would you like to call your next
13 witness.

14 MS. BENCK: Thank you, yes. Our next
15 witness is Tom Schnell from PBR Hawai'i.

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

19 THE WITNESS: I do.

20 PRESIDING OFFICER JUDGE: If you can state
21 your name and address for the record and please
22 proceed.

23 THE WITNESS: My name is Tom Schnell. I'm
24 with PBR Hawai'i & Associates. Our address is 1001
25 Bishop Street, suite 650 Honolulu, Hawai'i, 96813.

1 DIRECT EXAMINATION

2 BY MS. BENCK.

3 Q Tom, how long have you been a planner with
4 PBR Hawai'i?

5 A I've been a planner for approximately 16
6 years. With PBR going on 11 years now.

7 Q Thanks. When did you start working on the
8 'O'oma Beachside Village Project?

9 A In 2005.

10 Q Did you prepare or help prepare the HRS
11 Chapter 343 environmental impact statement for 'O'oma
12 Beachside Village?

13 A Yes, I did. I was the primary Project
14 manager for the EIS. As indicated in my written
15 testimony, that's Petitioner's Exhibit 79, the Draft
16 EIS was published on May 23, 2008 and the comment
17 period ran from July 7th to -- sorry, the comment
18 period ran to July 7th. So May 23 to July 7.

19 The Petitioner then voluntarily extended the
20 public comment period for another 45 days to
21 September 7th, 2008. Then on January 8, 2009 the
22 Commission accepted the Final EIS.

23 Q Were there any legal challenges to the EIS?

24 A No. There were no legal challenges during
25 the 60-day challenge period.

1 Q Thanks. Tom, can you tell us what studies
2 were prepared for the EIS?

3 A Yes, I can. A number of studies were
4 prepared. You've heard from most of our experts so
5 far but I'll just run through who you have heard from
6 already. We have Tom Nance who's an expert in
7 groundwater quality; Steve Dollar who's a marine water
8 quality expert; Rob Rechtman who's an archeologist;
9 Martin Nakasone who's our Project civil engineer;
10 Yoichi Ebisu who's our acoustic engineer; Ann Bouslog
11 who you just heard from, our marketing economic
12 expert. And you'll hear from Warren Yamamoto later
13 today, who's our traffic expert.

14 There were a couple other studies that were
15 done in the EIS that we're not planning to have
16 experts here for because their conclusions were pretty
17 concise.

18 And I'm going to go over four technical
19 studies that are in the EIS but we're not planning to
20 have those experts here today. I'll go over botanical
21 resources. I'll go over mammals and birds. I'll go
22 over invertebrates, and air quality. And I'll also
23 touch on soils and natural hazards.

24 So just to start out with the soils. The
25 U.S. Soils Conservation Soil Survey classifies

1 basically two types of soils on the property. They're
2 lava flows, primarily pahoehoe, and a'a and also
3 beaches near the shoreline. The University of Hawai'i
4 Land Study Bureau designates the parcel, the makai
5 parcel that's the Petition Area is rated E. And E is
6 the lowest productivity class.

7 And parcel 22, the parcel near the highway
8 that's already in the urban district is not
9 classified. The entire property is not classified
10 under the ALISH system indicating that it's not
11 important agricultural land.

12 Based on the poor soil conditions and the
13 fact that no agricultural activities are taking place
14 on the property development at 'O'oma isn't expected
15 to impact any agricultural production in the area.

16 Going on to natural hazards. The flood
17 insurance rate map, the FIRM map, a majority of the
18 property is located outside the 500-year flood plain
19 in an area of minimal flooding.

20 Small portions of the property along the
21 shoreline are in zone A-E and zone V-E which are
22 subject to wave action.

23 Q If I could just interpret. If the
24 Commissioners are interested that FIRM map was filed
25 as Petitioner's Exhibit 52. Sorry, Tom. Go ahead.

1 A The tsunami evacuation zone that's figure 16
2 in the EIS. And the majority of the property is
3 outside of the tsunami evacuation zone. Part of
4 property located along the shoreline is within the
5 tsunami zone, but all buildings except for the beach
6 pavilion at the shoreline park will be set back from
7 the shoreline outside of the tsunami evacuation zone.

8 Moving on to flora. There are no threatened
9 or endangered plant species that have been identified
10 on the property. There's one plant called the pilo
11 plant. It's a native plant. It's common on the
12 property and it's considered a Species of Concern by
13 U.S. Fish and Wildlife Service and is often listed
14 among rare plants in Hawai'i.

15 The densist concentrations of the pilo are
16 within the shoreline area. And this is the area
17 that's going to be preserved as part of the coastal
18 preserve.

19 Moving on to fauna. There's no threatened,
20 endangered bird, mammal or invertebrate species
21 identified on the property. The Hawaiian Hoary bat
22 was not identified during the survey. However, bats
23 have been seen along the Kona coast so it's possible
24 they my roost on the property.

25 The invertebrate survey did not identify any

1 threatened or endangered invertebrate species on the
2 property. Invertebrate species identified include
3 snails, slugs, scorpions, spiders, shrimps, bees,
4 wasps, moths, dragon flies and centipedes.

5 According to the invertebrate survey the
6 shoreline area is the most biologically diverse area.
7 It supports a native bee colony, dragonflies and
8 several types of ants.

9 The anchialine pond in the shoreline area
10 supports snails, red shrimp as well as native crane
11 shrimp. The native crane shrimp is listed by U.S.
12 Fish and Wildlife Service as a candidate endangered
13 species.

14 However, in 2009 the review of its status
15 was assigned a rating of 5 with 1 being the most
16 urgent, 12 the least as they appear to be relatively
17 safe from destruction of habitat and introduction of
18 fish to their ponds.

19 A survey of lava tubes on the property did
20 not yield any native invertebrates. The lava tubes,
21 which are caves, are too dry and lack an overhead
22 vegetation, and thus a strong root system that'd be a
23 food source. There are many skylights. Subsequently
24 the tubes do not support a health lava tube ecosystem.

25 The Blackburn Sphinx Moth was not found on

1 the property and host plants are not present.

2 The coastal preserve and shoreline park --
3 let me start over. The coastal preserve and shoreline
4 park, approximately 75 acres total, will include the
5 anchialine pond which contains the praying shrimp and
6 habitat of the bee population.

7 Moving on to air quality. In the short-term
8 the construction of 'O'oma Beachside Village will
9 unavoidably contribute to air pollutant concentrations
10 due to dust from construction. Mitigation areas
11 include frequent watering of exposed surfaces to help
12 reduce and control dust.

13 Air quality modeling analysis of estimated
14 humidity-related traffic indicates that over the long
15 term predicted concentrations of pollutants will
16 remain well below federal and state standards.

17 Q Thanks, Tom. Tom Witten gave us an overview
18 at the first hearing and told us what the Project is
19 going to be all about. But that was already a couple
20 of months ago. Could you just briefly go over the
21 components of 'O'oma Beachside Village.

22 A Sure. The Petition Area is approximately
23 101 acres of vacant undeveloped land. It's shown on
24 this exhibit which is also figure 1 in the EIS
25 outlined in the red area.

1 The Petitioner filed a petition for
2 reclassification because the urban reclassification is
3 necessary to support the proposed uses of 'O'oma
4 Beachside Village.

5 'O'oma will be a master planned community
6 with up to 1200 homes and 200 square feet of
7 commercial space. There are five areas within 'O'oma.
8 I'm going to feel a little bit more comfortable if I
9 can walk around.

10 The five areas are makai village over here.
11 There's the residential villages which is right here.
12 There's the mauka village. There's also the shoreline
13 preserve which is this area and the shoreline coastal
14 park.

15 PRESIDING OFFICER JUDGE: Tom, could you
16 just identify what exhibit you're using.

17 THE WITNESS: Yeah. This is the -- it's in
18 the EIS. It's figure 1. I'm not sure what exhibit
19 the EIS is.

20 Q (By Ms. Benck): The EIS is Exhibit 5?

21 PRESIDING OFFICER JUDGE: I believe it's 3B.

22 MS. BENCK: Thank you, Commissioner Judge.
23 Yes, it is 3B.

24 PRESIDING OFFICER JUDGE: It's 3B Figure 1
25 that you're using. Okay. Thank you.

1 MS. BENCK: For the record should Tom
2 verbally identify the areas he was just pointing to on
3 that figure? Sorry, Tom. Could you do that again.

4 Just identify where on that picture you're
5 talking about when you say "the residential village is
6 located here," if you could explain where it is on
7 that picture you're describing.

8 A Sure. The residential village is located
9 approximately -- well, I would say it's totally within
10 the Petition Area. And it's to the mauka part of the
11 Petition Area, but primarily in the middle also.

12 Q Thank you. And how about the makai village.
13 Where's that?

14 A The makai village is located towards the
15 makai portion of the Petition Area but is set back
16 from the shoreline by at least 1100 feet.

17 Q Terrific. Then the mauka mixed-use village
18 is located where?

19 A The mauka mixed-use area is outside the
20 Petition Area but it's part of the Project -- part of
21 the total Project and it's located near the highway.

22 Q Thanks. And just two more questions. The
23 shoreline park area you would describe as being where?

24 A The shoreline park area is along the
25 coastline.

1 Q That makes sense. Sorry. And the coastal
2 preserve?

3 A The coastal preserve is between the
4 shoreline park and Petition Area. Well, more
5 accurately between the shoreline park and the mauka
6 village -- I'm sorry, makai village.

7 Q Okay. On the northern portion of the
8 property the coastal preserve area.

9 A The coastal preserve runs north to south.

10 Q Thank you. So with that cleared up, if you
11 want to give us some details on what those different
12 components are going to consist of, Please.

13 A Sure. The residential village is mostly
14 within the Petition Area, as I stated. It's planned
15 to have a mix of multi-family and single-family homes
16 approximately 520 to 620 homes.

17 The makai mixed use village is planned to
18 have homes and approximately 50,000 square feet of
19 commercial uses including restaurants and retail uses.

20 The mauka mixed use village, which isn't
21 part of the Petition Area, is organized around a
22 village green and will have homes approximately 395 to
23 520 multi-family, and approximately 150,000 square
24 feet of commercial space. And three acres have also
25 been set aside for a charter school site.

1 The shoreline park is approximately 18 acres
2 and it will include a parking area, comfort station,
3 community pavilion, and public use facility. I should
4 correct myself and say community pavilion or a similar
5 public use facility.

6 All improvements within the shoreline park
7 will be located outside of the shoreline setback area.

8 The coastal preserve is approximately
9 57 acres and contains archaeological and cultural
10 sites including burials.

11 Therefore, the intent is to keep the lands
12 within the cultural preserve undisturbed except for
13 the trails that may run between the villages and the
14 shoreline.

15 'O'oma Beachside Village may look at putting
16 public access from the shoreline directly to the makai
17 village.

18 Q So, Tom, out of the Petition Area and then
19 the mauka currently urban piece we've got roughly
20 300 acres worth of land. How many acres are planned
21 for open space at 'O'oma?

22 A Out of the approximately 300 acres about a
23 third, about 103 acres is proposed for open space.
24 That includes the shoreline park 18 acres, the coastal
25 preserve 57 acres, Mamalahoa Trail and the buffer is

1 about 7 acres; a buffer along Queen Ka'ahumanu Highway
2 is about 9 acres; and internal community parks are
3 about 12 acres. It totals up to 103 acres.

4 Q Thanks very much. Even some of the Project
5 critics during the first couple hearings mentioned
6 that it's a beautiful plan.

7 Why don't you tell us if anybody else has
8 talked about it being a beautiful plan? Have any
9 awards been granted?

10 A This plan won the APA Hawai'i Chapter
11 Outstanding Planning Award in 2009 for the design of
12 'O'oma Beachside Village. And coincidentally the Kona
13 CDP also won the award for APA for that same year.

14 Q So in addition to the American Planning
15 Association Hawai'i Chapter have any other notable
16 planning agencies or groups commented on the 'O'oma
17 Beachside Village Project?

18 A Well, I think it's notable to note that
19 PlaceMakers which was the County's planning consultant
20 for the Kona CDP, sent its congratulations to PBR in
21 winning the APA award. PlaceMakers also analyzed the
22 'O'oma design and determined that the Project is
23 consistent with the Kona CDP.

24 Q Thanks. And for the Commissioners'
25 information the Placemaker's letter is Petitioner's

1 Exhibit 55 if you care to look at it.

2 Now, we're going to sort of segue into
3 talking about the Kona CDP because, again, the
4 Commissioners have heard a lot of people from the
5 public say that the Project isn't consistent with the
6 CDP. What's your assessment of that?

7 A Well, when the Project was in the planning
8 stages the Kona CDP was also underway and it wasn't
9 finalized yet. We were very conscious of the work
10 that was being done by the Kona CDP committees.

11 And we consciously planned the Project to
12 conform with the goals and objectives that were coming
13 out of the Kona CDP process.

14 But when I got to the EIS, Chapter 5 of the
15 EIS describes the Project's conformance with the Kona
16 CDP. That's also described -- in section 18 of the
17 Petition I also read the County's testimony in support
18 of the Project which affirmatively states that the
19 Project conforms to the Kona CDP and is consistent
20 with the guiding principles and major strategies.

21 Q Thanks, Tom. Filed as Petitioner's Exhibit
22 87 are just select portions of the Kona CDP. And I'd
23 like to turn our attention to that right now with the
24 fundamental question: is 'O'oma Beachside Village
25 within the Kona urban as designated by the Kona CDP?

1 A I'm going to slow town a little bit here. I
2 do have the Kona CDP in front of me. So I'm going to
3 actually refer to those figures. I think, Jennifer,
4 you're talking about the Kona urban area?

5 Q That's correct, Tom.

6 A And actually the Kona urban area is in the
7 Kona CDP it's Figure 4-7. It's the official Kona land
8 use map. And 'O'oma is clearly within the urban area.

9 Q What significance does the Kona urban area
10 have? Why is it important that we're in the Kona
11 urban area?

12 A Well, I'll read from the plan. Hold on. So
13 policies LU 1.2 titled "urban area" of the Kona CDP
14 says, "The majority of future growth in Kona shall be
15 directed to the Kona urban area as shown on the
16 official Kona land use map. See figure 4-7," which
17 we just talked about, "which spans from the Kona
18 International Airport to Keauhou subject to the
19 policies set forth under objective LU2 urban area
20 growth management."

21 Q Okay. So we're definitely in the Kona urban
22 area. Now, you got to tell us what is LU2 "urban area
23 growth management." Are we consistent with that?

24 A I thought we would get to that. Okay. LU2
25 is -- objective LU2 is titled "urban area growth

1 management." And it states "Recognizing that the Land
2 Use Pattern Allocation Guide urban area is larger than
3 what is need in order to accommodate the proposed" --
4 sorry, I'll start over.

5 "Recognizing that the LUPAG urban area is
6 larger than needed in order to accommodate the project
7 growth within the planning horizon, future growth
8 within the urban area shall be encouraged in a pattern
9 of compact villages at densities that support public
10 transit."

11 Q Okay. Would you call 'O'oma a high density
12 or low density Project?

13 A Well, it's been designed as a compact
14 village. The name kind of speaks that it's -- 'O'oma
15 Beachside Villages with the two villages. The land
16 use plan is a pretty dense project. I would say it's
17 a compact project.

18 I wouldn't say it's a dense project. There
19 are smaller lot sizes like the residential area is 5
20 to 6,000 square foot lots. So this is not a sprawling
21 project.

22 Q Thanks, Tom. In the Kona CDP are you aware
23 of any prohibition on developing makai of Queen K
24 Highway?

25 A I'm not aware of any prohibition. Actually

1 the urban growth area is designated makai of Queen
2 Ka'ahumanu Highway. So I don't see any prohibition of
3 developing makai of the highway. The Kona CDP states
4 that it's the county policy to maintain a minimum
5 thousand foot open space setback on lands adjacent to
6 the shoreline, which we're doing.

7 Q In fact the setback at 'O'oma....

8 A Well, it ranges from about 1100 square feet
9 to 1700 square feet in places.

10 Q Thanks very much, Tom. You know, the Kona
11 CDP also talks about guiding principles. It's got
12 eight guiding principles. Can you address this
13 Project's conformance or consistency with those
14 guiding principles?

15 A Yeah, I can. The guiding principles are set
16 out on the first page after the title page of the Kona
17 CDP. I'll run through them. Principle No. 1 is
18 "Protect Kona's natural resources and culture." Okay.

19 So how we comply with this guiding
20 principle, all residential and commercial development
21 within 'O'oma Village will be set back at least 1100
22 feet from the shoreline.

23 To get an appreciation of that setback we
24 have provided Exhibit 88 which analyzes or shows
25 various examples of where the shoreline setback 1100

1 square feet (sic) or where that would be on various
2 areas such as in Kona and Kailua-Kona.

3 Q Tom, if I could just interrupt. It's
4 actually 1100 lineal feet?

5 A 1100 lineal feet. Sorry.

6 Q Thank you.

7 A Also 'O'oma Beachside Village will include a
8 57-acre coastal preserve, and 18-acre shoreline park,
9 75 acres total which will protect natural and cultural
10 resources.

11 Principle 2 is "Provide connectivity and
12 transportation choices." And 'O'oma is on the
13 secondary transit corridor identified as the makai
14 frontage road. 'O'oma includes a network of
15 interconnected streets to disburse vehicle traffic
16 throughout the community.

17 'O'oma will have a secondary circulation
18 system of linked pedestrian bike trails to provide
19 another option of traveling throughout the community.

20 And the traditional neighborhood design of
21 'O'oma is aimed at encouraging residents to rely less
22 on cars for transportation and more on walking and
23 bicycling.

24 Principle 3 is "Provide housing choices".
25 'O'oma Beachside Village will include 950 to 1200

1 homes including affordable homes, multi-family homes,
2 live-work units and single-family homes and lots.

3 The residential area will provide a broad
4 range of mixed housing types with a variety of price
5 ranges.

6 The mixed use villages are intended to
7 provide for the commercial and business needs of the
8 community.

9 Principle 4 is "Provide recreational
10 opportunities". And as I stated before a total of
11 103 acres of 'O'oma will remain in open space
12 including the shoreline park and the coastal preserve
13 area.

14 Principle 5 "Direct future growth patterns
15 towards compact villages preserving Kona's rural
16 diverse and historic character".

17 'O'oma Beachside Village is located within
18 the Kona CDP urban area and is planned to consist of
19 three compact villages: The residential village, the
20 mixed-use village and the makai mixed-use village.

21 The higher density mixed-use village will
22 provide a variety of housing choices as well as shops
23 and places of employment all with an interconnected
24 pedestrian and bike-friendly setting. It has an
25 infill development -- the Kona CDP urban area --

1 within the Kona CDP urban area.

2 'O'oma Beachside Village will reduce the
3 pressure to develop rural land for housing.

4 Kona's historical character and host culture
5 will be preserved within 'O'oma. Archaeological sites
6 will be preserved within the coastal preserve area.
7 And the Mamalahoa Trail will be preserved in place
8 with large buffers and setbacks.

9 Moving on to principle 6. "Provide
10 infrastructure and essential facilities concurrent
11 with growth".

12 Creation of 'O'oma requires some expansion
13 of existing facilities and structures or
14 infrastructure. Some infrastructure expansion such as
15 the widening of Queen Ka'ahumanu Highway is already
16 underway and would be required regardless if 'O'oma
17 was developed.

18 Additional school facilities may be required
19 but the Petitioner will satisfy all requirements of
20 the Department of Education. In addition, the
21 Petitioner has identified a 3-acre public charter
22 school site within the Project for construction of a
23 charter school.

24 Principle 7 "Encourage a diverse and vibrant
25 economy, emphasizing agriculture and sustainable

1 economies". The property is not appropriate for
2 agricultural production. Therefore the creation of
3 'O'oma will neither support or detract from
4 agricultural interests under this principle.

5 'O'oma Beachside Village will include a mix
6 of uses of buildings along a main street kind of a
7 setback -- or, sorry, along a Main Street kind of
8 setup with primarily commercial uses on the ground
9 floor and may contain commercial uses or offices on
10 upper floors.

11 Commercial uses may include general stores,
12 restaurants, coffee shops, bakeries, professional
13 offices and other neighborhood-serving uses.

14 Principle 8 "Promote effective governance".
15 This principle I think is primarily aimed towards
16 county government.

17 However, the type of community that we're
18 building here it's an interconnected community where
19 people can walk, where people can get to know their
20 neighbors, where they can enjoy recreational
21 opportunities and hopefully actively engage in civic
22 life.

23 Q Thanks, Tom. So we're clearly within the
24 Kona urban area. And it seems like the Project is
25 consistent with many factors of all eight principles.

1 What I want to know right now is does a
2 project have to be designated as a TOD, a transit-
3 oriented development, in order to be reclassified or
4 rezoned?

5 A No. The Kona CDP identified 10 TOD's and
6 located those TOD's on the official land use map.
7 They are located in such a way as to control the
8 spacing of a transit station.

9 'O'oma is not a TOD. However, the CDP
10 allows for rezoning of non-TOD projects also.

11 Q Can you tell me where in the Kona CDP you're
12 getting that information?

13 A Yeah, I can.

14 Q Thanks.

15 A On Page 4-46 of the Kona CDP it says "Any
16 project greater than 20 acres within the Kona urban
17 area may apply for TND floating zone."

18 Q That's a TND.

19 A TND. Not TOD.

20 Q So is 'O'oma going to be a TND?

21 A Well, 'O'oma has been designed consistent
22 with traditional neighborhood design concepts which
23 include the compact villages, promoting walkability, a
24 mix of land use open space, street types that work
25 together to create a livable community.

1 Q Thanks very much, Tom. I think that we've
2 pretty thoroughly addressed the Kona CDP.

3 Going to turn now somewhat more briefly to
4 talk about the General Plan. You're aware the
5 Commission has to review a petition to see if the
6 Project conforms with the General Plan.

7 A Yes.

8 Q Okay. And did you do an assessment of this
9 Project's conformance with the General Plan?

10 A I did that as part of the EIS in Chapter 5.

11 Q Could you describe briefly what your
12 determination on that is?

13 A Well, the Petition Area is within the urban
14 expansion area of the, I'll say it out loud and then
15 I'll refer to it the as the LUPAG, but it's the Land
16 Use Pattern Allocation Guide map.

17 There's a small portion of the property
18 that's designated as open but that area's by the
19 shoreline so it's not part of the development area and
20 will be included in the shoreline park and coastal
21 preserve.

22 Q So the Petition Area, the developable area
23 or the planned development area of the Petition Area
24 is within the urban expansion designation?

25 A That's correct.

1 Q What is urban expansion meant for?

2 A Well, according to the General Plan it
3 explains that the urban expansion area allows for a
4 mix of high density, medium density, low density,
5 industrial, and industrial-commercial and/or open
6 space designations in areas where new settlements may
7 be desirable but where specific settlement patterns
8 and mix of uses have not yet been determined.

9 Q Thanks very much. So with our high or
10 medium density residential development we're
11 consistent with the urban expansion designation?

12 A Yes. We're consistent with that. And we're
13 now determining where those areas should be.

14 Q Thanks, Tom. Okay. Let's turn away from
15 the General Plan, briefly touch on the Hawai'i State
16 Plan 'cause please confirm to me, but I believe you
17 know the Commissioners also have to assess a project
18 for its consistency with the Hawai'i State Plan.
19 You're aware of that?

20 A I'm aware of that.

21 Q And did you do an assessment of this
22 Project's conformance with the State Plan?

23 A Yes. We also did that as part of the EIS.
24 It's in Chapter 5.

25 Q And your determination is what?

1 A Um, well, I assessed in Chapter 5 of the EIS
2 the Project's conformance with the themes, goals and
3 objectives of the Hawai'i State Plan. I've also
4 reviewed the testimony of the county of Hawai'i
5 Planning Department in support of the petition, that's
6 county Exhibit 1, and note that the county determined
7 that the requested reclassification conforms to
8 various objectives and policies of the Hawai'i State
9 Plan.

10 Finally, I reviewed the testimony of the
11 Office of Planning in support of the petition with
12 conditions which states that: "With the appropriate
13 conditions the proposed reclassification is generally
14 consistent with the goals, objectives and policies of
15 the Hawai'i State Plan and promotes the creation of
16 economic opportunities and encourages the development
17 of market-priced as well as affordable housing."

18 Q Thanks, Tom. So it seems like the county,
19 also the State Office of Planning agree, at least
20 partially, with your determination that the Project is
21 consistent with the Hawai'i State Plan.

22 A Yes, it seems that way.

23 Q Thanks. The same way that I spoke a little
24 bit with Dr. Bouslog about the Kahala Capital project
25 I want to talk about that with you. I know you

1 weren't a planner on that project. But are you
2 somewhat familiar with what Kahala Capital planned for
3 this property?

4 A I'm slightly familiar with it. I, I've
5 looked at the plan and I've looked at the Land Use
6 Commission D&O on that project from 1993.

7 Q And was Kahala Capital looking to leave the
8 archaeological significant areas of the property in
9 tact like we are?

10 A No. As far as I can tell it looks like they
11 planned to use what we're calling the coastal preserve
12 area as what they were calling a marine exploratorium.
13 I don't know how to say that. I don't even know
14 exactly what that is. But when I looked at it on the
15 plan it looked like a big water park. It was going to
16 have a restaurant, underwater views of the lagoon,
17 wave machines, things like that.

18 Q So it was a very different plan. Would you
19 have looked at Kahala Capital and said that that
20 supported the Hawai'i State Plan?

21 A Well, I'm sure somebody could find something
22 that's supported in the State Plan but it's not as
23 complete support as 'O'oma Beachside Village is.

24 Q Other than the inconsistencies with the
25 Hawai'i State Plan, do you think there were any other

1 reasons that the Commission may have denied Kahala
2 Capital's request for reclassification?

3 A Well, when I looked at the D&O it says that
4 the petitioner, and his name was Norbert Schlei, had
5 been indicted by a federal grand jury in Tampa on
6 criminal charges. So I don't really know the details
7 but it appears there were a lot of questions about the
8 petitioner.

9 Q Thanks, Tom. Okay. We talked a little bit
10 about the amount of open space that we've got planned
11 for 'O'oma Beachside Village. So I don't want to go
12 over everything.

13 I just want to make sure we get on the
14 record the description of the Mamalahoa Trail, the
15 buffers and approximately how much area is going to be
16 left in open space related to the Mamalahoa Trail.

17 A I'm sure I can talk about the trail and the
18 buffer area. The trail is approximately 10 feet wide.
19 It runs north and south through the property.
20 Actually you can see it on this exhibit that I'm
21 showing here. It's roughly makai of the mauka village
22 area, runs this way.

23 Q Tom, if we could, again, let's identify that
24 this is figure 1.

25 A It's figure 1 in the EIS, yes.

1 Q Thanks very much.

2 A So the trail is about 10 feet. What we're
3 proposing to do is put 50-foot buffers on each side of
4 the trail. Then beyond the buffers will be a 60-foot
5 no-build zone. So essentially it's 110-foot no-build
6 buffer area on each side of the trail. The total area
7 running throughout the Project would equal about
8 7 acres.

9 Q Thanks, Tom. Do you know the Commission,
10 again, when they're looking at a project proposed for
11 reclassification they have to see if it's consistent
12 with the standards for urban reclassification set
13 forth in the Hawaii Administrative Rules 15-15-18?

14 A Yes, I know that.

15 Q And are you familiar with those standards?

16 A I am familiar with the standards and we did
17 analyze those in the EIS in Chapter 5. And I note
18 that we've also done the same thing in the section 10
19 of the petition.

20 Q Thanks, Tom. Could you briefly go over your
21 assessment of this Project's conformance with those
22 standards?

23 A I'll try to briefly go over them without
24 reading them all. But let's just say that the
25 standards that are set forth we believe that 'O'oma

1 conforms to those standards. Let me just go through a
2 few.

3 One of the standards is: "It shall include
4 lands characterized by city-like concentrations of
5 people, structures, streets, urban level of services
6 and other related land use.

7 "And it shall take into consideration
8 specific factors, proximities to centers of trading
9 and employment, availability of basic services such as
10 schools, parks, wastewater systems, sufficient reserve
11 area for foreseeable urban growth."

12 And how we comply with those standards: The
13 Petition Area is located close to Kailua-Kona,
14 approximately 5 miles. The area around the Petition
15 Area is well developed and/or slated for future
16 development especially along Queen Ka'ahumanu Highway.

17 And we're very, in close proximity to the
18 Kona Airport which will ensure the area's continued
19 reputation as commercial and industrial heart of
20 Hawai'i, West Hawai'i.

21 Another standard of reclassification is that
22 "The area shall include lands with satisfactory
23 topography, drainage and reasonably free from a danger
24 of any flood, tsunami, unstable soil condition."

25 The topo of the site is relatively level.

1 Average slopes are about 0 to 5 percent. The majority
2 of the property is outside the 500-year flood plain.
3 All buildings are going to be set back from the
4 shoreline out of the tsunami inundation zone.

5 Another standard is "Land contiguous with
6 existing urban areas shall be given more consideration
7 than noncontiguous land, particularly when indicated
8 for future urban use on the county or county general
9 plans:

10 The Petition Area is contiguous with the
11 urban district already to the east and the south.
12 Parcel 22, which is located east of the Petition Area
13 which is where the mauka village will be, is already
14 in the urban area or urban district.

15 And to the south there's Shores of Kohanaiki
16 which is in the urban district. To the north the
17 Natural Energy Lab, NELHA, occupies the conservation
18 district land immediately north of the Petition Area.
19 However, part of that is also the Hawaiian Ocean
20 Science and Technology Park, HOST, which is within the
21 urban district immediately north of parcel 22.

22 And directly north of NELHA and HOST is the
23 Kona Airport.

24 Another standard, "It shall include lands in
25 the appropriate locations for new urban concentration

1 and shall give consideration to areas of urban growth
2 as shown on the state and county General Plans."

3 We kind of went over this already. The
4 majority of the property is designated for urban
5 expansion on the county General Plan Land Use Pattern
6 Allocation Pattern Guide map.

7 Urban expansion allows for a mix of high
8 density, medium density, low density, industrial and
9 commercial uses. The entire property is within the
10 Kona CDP urban area.

11 The last standard for reclassification: "It
12 shall not include lands the urbanization of which will
13 contribute towards scattered spot urban development."

14 And we would say that the urbanization of
15 the Petition Area will not contribute to scattered
16 spot urban development. The Petition Area is
17 surrounded by urban lands already. The development of
18 'O'oma will not necessitate unreasonable investment in
19 public infrastructure or support services.

20 Q Thank you, Tom. As you know the Commission
21 also has to analyze petitions to see if it's
22 consistent with the Coastal Zone Management Program.
23 Now, I know that you did an analysis and you provided
24 that in the EIS. You also wrote about that in the
25 petition.

1 You're not a water quality expert, but could
2 you give a few sentences on your determination of the
3 Project's conformance with the Coastal Zone Management
4 program?

5 A Could you restate the question again.

6 Q Sure. In your professional opinion is the
7 Project consistent with the Coastal Zone Management
8 program?

9 A Yes.

10 Q Thank you. And I know that you're basing
11 that both on your professional opinion and then also
12 on studies that were done by Dr. Steve Dollar?

13 A Right, Dr. Dollar, who is a coastal marine
14 expert. And I think it's also worthwhile to note that
15 the UH Sea Grant College and the director of the UH
16 Center for Smart Building and Community Design
17 reviewed 'O'oma and the Petitioner's agreement with
18 the National Park. And they support the Project.

19 Q Thanks very much. That letter, for the
20 Commissioners' information, was submitted as
21 Exhibit 89.

22 Tom, in addition to UH Sea Grant College has
23 any other agency expressed support for Petitioner's
24 agreement with the National Park Service?

25 A DLNR Division of Aquatic Resources sent a

1 letter stating that they had no objection to the
2 reclassification and expressing appreciation of the
3 Petitioner's efforts and the agreement with the
4 National Park.

5 Q Thanks. And that was submitted as
6 Petitioner's Exhibit 75.

7 I want to talk a little bit now if we may
8 about the conservation district. Some people during
9 public testimony said because this land is in the
10 conservation district it absolutely should not be
11 reclassified.

12 Could you tell us a little bit more about
13 what kind of conservation lands we are talking about
14 in the Petition Area?

15 A I can. First, let me note that the Hawai'i
16 County Data Book states that there are over
17 1.3 million acres within the conservation district on
18 the Big Island. The Petition Area is currently within
19 the conservation district general subzone and the
20 resource subzone.

21 The general subzone is primarily the
22 Petition Area towards the makai part of the Petition
23 Area. And the resource subzone is part of the makai
24 part of the Petition Area.

25 The majority of the Petition Area is in the

1 general subzone approximately 130 acres and the
2 Petition Area is 181 acres.

3 Q What's the objective of the general subzone?

4 A The objective of the general subzone is to
5 designate open space where specific conservation uses
6 may not be defined but where urban use would be
7 premature.

8 Q As far as you know this land was put into
9 the resource -- I'm sorry. This land was put into the
10 general subzone when?

11 A My understanding, and I'm not really a
12 hundred percent sure of the history of this, but in
13 the early '60s when the Chapter 205 was enacted there
14 was an effort to classify all the lands in the state
15 into urban, conservation, ag or rural and it was a
16 pretty broad brush attempt.

17 So that included lands -- basically my
18 understanding was that land that was put into the
19 conservation zone didn't fit into the other
20 categories. It wasn't urban. It probably wasn't
21 already used for agricultural uses. So the
22 conservation district became somewhat of a holding
23 area.

24 Q And to specify within the conservation
25 district the general subzone was even more of a

1 holding area?

2 A That was the purpose of the general subzone,
3 yes.

4 Q So if it was a holding area where premature
5 urban uses would have then been considered premature,
6 do you think it's appropriate for reclassification now
7 in 2010?

8 A I think the time has come. And that's part
9 of the reason why we're here now is that it's
10 appropriate at this point to consider reclassification
11 of the conservation district, yes.

12 Q Why do you think that?

13 A Well, let me go through some of the points
14 that I have. Reclassification of the Petition Area
15 from the conservation district to the urban district
16 would not be premature for this area.

17 As discussed previously the Petition Area is
18 contiguous to the urban district to the east and
19 south. To the north NELHA and HOST properties contain
20 a mix of commercial, public, quasi-public and
21 industrial uses.

22 Directly north of NELHA and HOST is the Kona
23 Airport which is primarily in the urban district. The
24 majority of the property is designated as urban
25 expansion on the county General Plan LUPAG map. The

1 entire property is within the Kona CDP urban area.

2 And we can talk about the portion of the
3 property that's in the resource subzone also. The
4 portion of the property that's in the resource subzone
5 is primarily the makai portion of the property. It's
6 similar to the broad brush designation of the general
7 subzone. The portion of the property was designated
8 resource subzone in the makai area.

9 However, the areas proposed for
10 reclassification currently do not contain the sorts of
11 natural resources that the resource subzone is
12 intended to protect.

13 Q So, Tom, just to make that a little more
14 meaningful. The significant archaeological sites that
15 are located in the northern makai portion of the
16 property, not the Petition Area, is that designated as
17 resource subzone or general subzone?

18 A State the question again. I'm sorry?

19 Q The north makai portion of the property
20 where there's some significant archaeological sites,
21 is that resource subzone or general subzone?

22 A My understanding it's resource subzone.

23 Q That's correct. Thank you. The last thing
24 I'd like to talk about with you, if I may before we
25 open you up to cross-examination, during one of the

1 Commissioners had some questions being 'O'oma being a
2 low carbon community.

3 We have filed -- PBR prepared Petitioner's
4 Exhibit 90 describing how 'O'oma's a low carbon
5 community. I don't know if you have a copy of that in
6 front of you. If you could just touch on a few key
7 factors in that write-up further explaining how
8 'O'oma's a low carbon community, please.

9 A Well, the basic premise of the low carbon
10 community is to reduce carbon output to the
11 environment.

12 The way 'O'oma does that is by linking
13 housing and work in close proximity to encourage
14 walkability and reduce vehicle miles traveled,
15 integrating a mixture of land uses together with a
16 compact development in building patterns.

17 MS. BENCK: With that I'd like to open
18 Mr. Schnell up for cross-examination, please.

19 PRESIDING OFFICER JUDGE: Thank you, Ms.
20 Benk. I think before we go to the cross-examination
21 we're just going to take a five-minute break, give Mr.
22 Schnell a rest.

23 (Recess was held.)

24 PRESIDING OFFICER JUDGE: Okay. We're going
25 to go back on the record. And we will start with the

1 cross-examination of Tom Schnell. Does the county
2 have any questions for Mr. Schnell?

3 MR. GONZALEZ: Yes, thank you.

4 CROSS-EXAMINATION

5 BY MR. GONZALEZ:

6 Q Good afternoon, Mr. Schnell.

7 A Good afternoon.

8 Q Thank you for your testimony today. I don't
9 know if I misheard or not, but I want to get some
10 clarification. I think you made a statement earlier
11 during your testimony that PlaceMakers were the
12 consultants for the Kona CDP. Did you make such a
13 statement?

14 A Yeah. And I can clarify that. My
15 understanding was that Wilson Okamoto was the
16 consultant for the Kona CDP. PlaceMakers was the
17 consultant for the TOD Honokohau design guidelines.

18 Q Okay. Thank you. And they also came up
19 with -- they're also working on the village design
20 guidelines, correct?

21 A Correct.

22 Q Thank you for that clarification.
23 Additionally, in your opinion would you say that this
24 proposed Project would increase accessibility to the
25 shoreline for the general public than it currently

1 exists?

2 A I think it would, yes. I mean we went on
3 the site visit last time and even though it's a pretty
4 good road down there it's still a bumpy road. And our
5 Project would provide multiple ways to access the
6 shoreline from within the Project to the coastal
7 preserve area of the shoreline trails. Yes.

8 Q Could you also give us a better idea what
9 type of beach park facilities you would be providing?

10 A Well, the beach park facilities are fairly
11 simple in nature. There's a parking area of which
12 there's no designated parking area now. And there
13 would be a beach pavilion which would be a community
14 pavilion.

15 Q Are these facilities going to be within
16 walking distance to your retail/commercial areas
17 that's part of the conceptual plan?

18 A Well, the whole -- the width of the
19 shoreline area is about half a mile right now. So
20 conceivably everything is within walking distance
21 along the shoreline, yes.

22 MR. GONZALEZ: Thank you, sir. No further
23 questions from the county.

24 PRESIDING OFFICER JUDGE: Mr. Yee, do you
25 have questions for the witness?

1 MR. YEE: Yes, I do, a few.

2 CROSS-EXAMINATION

3 BY MR. YEE:

4 Q Hi. Let me first start with a few
5 clarification questions just for the record. I
6 understand that you've concluded that although this
7 Project is not within the TOD zone it could qualify as
8 a TND, is that correct?

9 A Correct.

10 Q And just for the record TOD stands for what?

11 A Transit orientated development.

12 Q And TND stands for what?

13 A Traditional neighborhood design.

14 Q And PBR prepared the EIS for this Project,
15 correct?

16 A Correct.

17 Q As in most cases a variety of experts were
18 hired to prepare certain sections of the EIS and it
19 was all put together by PBR, correct?

20 A Correct.

21 Q And as is also common the format of the EIS
22 contains both a description of the action, a
23 description of the potential impacts and if there are
24 potential impacts, then a description of mitigation
25 measures.

1 A Correct.

2 Q Would it be you or should I be directing my
3 question to Mr. Moresco as to whether or not this
4 Petitioner will be implementing those mitigation
5 measures?

6 A You can ask Mr. Moresco also. But I mean
7 during the EIS process we didn't put anything in the
8 EIS that we were not willing to implement.

9 Q So it would be your understanding that with
10 respect to the consultant's recommendation for
11 mitigation measures, those measures will be
12 implemented for this Project?

13 A Yes.

14 Q You concluded, I believe, that this Project
15 will be consistent with the Coastal Zone Management
16 criteria, correct?

17 A Right.

18 Q This would be based, I assume upon, or at
19 least partially based upon the agreement to impose
20 certain conditions upon the development and the
21 Project such as the National Park Service conditions?

22 A I don't really understand the question.

23 Q Okay. You concluded that the Project would
24 be consistent with the CZM. And I just want to be
25 sure that this conclusion is partially based upon the

1 agreement by the Petitioner that the Project will be
2 operated in a certain way such as following the
3 agreement with National Park Service?

4 A The Petitioner does intend to follow the
5 agreement with the National Park Service, yes.

6 Q And that's a part of your conclusion or a
7 basis for your conclusion that this Project will be
8 consistent with CZM because following those conditions
9 would ensure the quality of the water, for example?

10 A Well, at the time that we did the EIS the
11 agreement with the National Park Service was not in
12 place yet. So we analyzed the CZM policies
13 independently from the National Park agreement.

14 Q Okay. Fair enough. You mentioned the DLNR
15 letter. Do you remember that?

16 A Yes, I do.

17 Q And the DLNR letter in addition to what you
18 described also contains a request that the National
19 Park Service agreement be amended somewhat to include
20 certain provisions to include DLNR issues, correct?
21 Do you remember that?

22 A I don't remember.

23 Q You don't remember that.

24 A No.

25 Q If I were to ask you about those conditions,

1 would you be -- is that better addressed to you or
2 Mr. Moresco?

3 A The conditions of the National Park
4 agreement?

5 Q No. Actually let me backtrack. Maybe I
6 can't if you don't know. But I will represent to you
7 that DLNR has asked that the National Park Service
8 conditions be amended to include, for example,
9 providing the information to not only the Park Service
10 but also DLNR. Do you remember that at all?

11 A I'm not familiar with that, no. If you have
12 letter I could probably look at it.

13 Q In that case if you're not familiar with
14 that I won't ask you the questions. That's okay.

15 I don't recall if you discussed the General
16 Plan in your testimony. Are you generally aware that
17 the County General Plan includes -- I won't get into
18 the details -- but it includes provisions that provide
19 for the -- that supports the continued operation and
20 improvement of the Kona International Airport at
21 Keahole?

22 A I'm aware of that, yes.

23 Q And are you aware that the Petitioner and
24 the Office of Planning have discussed conditions
25 relating to the airport?

1 A Yes.

2 Q And are you aware there's been an agreement
3 on four conditions relating to the airport?

4 A I know it's been discussed. I don't know
5 there's a formal agreement in place. But I know it's
6 been discussed.

7 Q Okay. So you wouldn't be able to answer the
8 question as to whether these conditions relating to
9 the airport would contribute to a conclusion that this
10 Project is consistent with the County General Plan.
11 Or can you answer that question?

12 A I'm not sure I quite understand. I'm sorry.

13 Q There are some conditions that are being,
14 that I will represent have been agreed to between the
15 Petitioner and the Office of Planning relating to the
16 airport.

17 And I guess the question was: Do you think
18 that adopting these conditions would contribute to a
19 conclusion that this Project is consistent with the
20 county General Plan's provisions regarding the support
21 of the Kona International Airport?

22 A Well, I think we're already consistent with
23 the Hawai'i County General Plan. So are you asking if
24 the conditions would further that support of the
25 county General Plan?

1 Q Yes.

2 A I haven't seen the specific conditions, but
3 I'm sure that you can find something in the general
4 plan that would support the conditions also.

5 MR. YEE: Okay. I have nothing further,
6 thank you.

7 PRESIDING OFFICER JUDGE: Does the National
8 Park Service have any questions?

9 MR. LIND: No questions.

10 PRESIDING OFFICER JUDGE: Okay. At this
11 point we're going to break for lunch and we'll come
12 back at 1:30.

13 (Lunch recess was held.)

14 PRESIDING OFFICER JUDGE: (1:40) Good
15 afternoon, everyone. We'll go back on the record.
16 Commissioners, any questions for Mr. Schnell?
17 Commissioner Kanuha.

18 COMMISSIONER KANUHA: Thank you, Madam
19 Chair. Good afternoon, Tom. How involved were you in
20 the creation of this master plan?

21 THE WITNESS: I merely step in as the master
22 plan processes is midway or so. I mean Tom Witten and
23 our other physical planners do the basic design. I
24 step in when we start getting the environmental
25 consultant reports.

1 So if we find archaeological sites then we
2 can modify the plan after that. So I'm mainly in
3 charge of the EIS process.

4 COMMISSIONER KANUHA: Okay. Thank you.

5 PRESIDING OFFICER JUDGE: Commissioners?
6 Okay. Tom, I had a couple questions about the Kona
7 Community Development Plan. Were you around when they
8 were doing the plan, creating the plan?

9 THE WITNESS: I was not participating in the
10 Kona CDP meetings, but we were aware of the meetings
11 and we knew what was going on with the meetings or
12 what was coming out of the meetings.

13 PRESIDING OFFICER JUDGE: Okay. I'm not
14 familiar with their process. And I'm just wondering
15 in that process did they discuss the potential
16 developments that were in the areas? Or did they know
17 about this development, 'O'oma Beachside Village? Was
18 that discussed during the Kona Community Development
19 Plan process?

20 THE WITNESS: I'm not certain that it was or
21 wasn't. I'm not sure.

22 PRESIDING OFFICER JUDGE: Okay. You're
23 familiar with the Kona land use map, the exhibit?

24 THE WITNESS: Yes.

25 PRESIDING OFFICER JUDGE: Why I bring it up

1 is because we heard a lot of public testimony about
2 the Kona Development Plan. During that process there
3 was discussion all the new development should go mauka
4 of the highway.

5 And I didn't hear -- I didn't see that in
6 the actual physical writings of the plan. But when I
7 look at this map that tends to be where they have put
8 their bubbles for residential development and regional
9 centers, neighborhoods and regional centers.

10 And I'm just wondering if they had known
11 about 'O'oma why wouldn't they have put one of these
12 little, I guess, blue neighborhood bubbles down in
13 that area?

14 THE WITNESS: My understanding of the
15 traditional or the TOD bubbles that you're probably
16 referring to on the mauka side of the highway, the
17 pink bubbles on the plan --

18 PRESIDING OFFICER JUDGE: It says regional
19 center.

20 THE WITNESS: Yeah. I think those are the
21 TODs. My understanding is that there was a second --
22 there's the mid-level road that's planned to go mauka
23 of the highway. And those regional centers or TODs
24 are meant to be transit centers to make it convenient
25 for transit stops along the way.

1 So the main transit route was supposed to be
2 mauka of the highway. So these regional TOD centers
3 are put mauka of the highway. Although there's a
4 secondary transit route that runs makai of the highway
5 which we are part of.

6 PRESIDING OFFICER JUDGE: Okay. Switching
7 over to the EIS. In the EIS I looked at the different
8 alternatives that you looked at. And I'm just curious
9 why an all industrial wasn't considered in making --
10 since you have the industrial park right next door
11 looking at it as just sort of a continuation of an
12 industrial use.

13 THE WITNESS: Right. Well, I can't recall
14 exactly why that wasn't considered at the point. But
15 I know that the parcel near the highway that's not
16 part of the Petition Area can have industrial spaces
17 on it now. I don't think it would be very attractive
18 to have all industrial from the airport all the way
19 down to Kohanaiki.

20 I don't know if there's a demand for that
21 much industrial either. Because industrial use can
22 also go at the NELHA and HOST park too.

23 PRESIDING OFFICER JUDGE: Okay. But that
24 wasn't one of the things -- that was not an
25 alternative that you looked at.

1 THE WITNESS: Not to my recollection, no.

2 PRESIDING OFFICER JUDGE: One of the
3 alternatives that you looked at was the no-action
4 alternative existing zoning designation alternative,
5 are you familiar? Do you remember that?

6 THE WITNESS: Yes.

7 PRESIDING OFFICER JUDGE: And you discussed
8 the potential benefits of just using the urban
9 designation that you have and just leaving the state
10 conversation district as is.

11 And the statement was that "This alternative
12 has been rejected because it does not meet several of
13 the 'O'oma Beachside Village objectives and does not
14 implement the Kona CDP."

15 I'm kind of confused by that. If you have
16 vacant land how does that not implement the Kona CDP?
17 Is vacant land forced to do something to do the CDP?

18 THE WITNESS: Well, it's zoned already. And
19 it's urban already. So industrial uses could go there
20 if we wanted to. But I don't think that was -- the
21 goal of the Kona CDP was not to have disconnected,
22 scattered kind of industrial developments or any other
23 kind of developments.

24 It was more for compact development and
25 neighborhood kind of uses, and more of a traditional

1 neighborhood design instead of another strip mall kind
2 of thing along the highway or, you know, something
3 like the Costco site is my understanding.

4 PRESIDING OFFICER JUDGE: So you're saying
5 that if you were to use the existing zoning for
6 industrial uses -- well, this is not in the Petition
7 Area -- but I guess we're just talking mostly about
8 leaving it in conservation.

9 What I'm getting at is the no-action
10 existing zoning alternative was rejected because it
11 doesn't implement the Kona CDP. I'm just kind of not
12 understanding why leaving something as is doesn't
13 implement -- what forces you to implement the Kona
14 CDP?

15 THE WITNESS: Well, I think specifically
16 putting industrial uses on the urban area already
17 would not implement the Kona CDP. Would not. It's
18 not what was envisioned in the Kona CDP in a general
19 way I think.

20 Maybe not -- I mean if you have zoning for
21 that parcel I guess you can already go ahead and do
22 whatever it's zoned for regardless of the CDP. But I
23 don't think it would implement the spirit and intent
24 of the CDP.

25 MS. BENCK: If I may. If we were to leave

1 the parcel 4 the Petition Area in conservation --

2 PRESIDING OFFICER JUDGE: Excuse me. But
3 we're just asking him the questions so I just prefer
4 him to answer the question. Thanks. Okay.

5 So just as a follow up. If we're just
6 talking about the conservation area, just the Petition
7 Area there is no requirement to -- well, how do I say
8 this?

9 If a piece of land is vacant, then there's
10 no requirement for it to implement the Kona community
11 development plan. It just stays as is.

12 THE WITNESS: I would say that's correct,
13 right? But I should clarify. The Kona CDP does offer
14 a process for people to propose projects within the
15 urban area. And that's what we're doing.

16 PRESIDING OFFICER JUDGE: Right. I
17 understand that. But when you're saying you're
18 rejecting that plan it's because you don't feel that
19 the use of the industrial zoning in that area is
20 consistent. It does not implement --

21 THE WITNESS: Correct.

22 PRESIDING OFFICER JUDGE: -- the Kona, not
23 leaving, the conservation district doing nothing with
24 it.

25 THE WITNESS: Well, doing nothing with the

1 conservation district doesn't implement or not
2 implement the Community Plan.

3 PRESIDING OFFICER JUDGE: Right. Thank you.
4 One last question about the Community Plan and
5 providing the housing choices. I noted that you
6 testified that there's lots of different housing
7 choices, a range of housing choices: Market gap or
8 affordable.

9 There's also a sentence that talks about
10 accommodating populations with special needs: seniors,
11 disabled persons and homeless. Is there any --

12 THE WITNESS: I don't know if we have a
13 statement that we are going to accommodate homeless.

14 PRESIDING OFFICER JUDGE: In the Kona CDP.

15 THE WITNESS: Okay.

16 PRESIDING OFFICER JUDGE: It's guiding
17 principle No. 3.

18 THE WITNESS: Okay.

19 PRESIDING OFFICER JUDGE: And I'm just
20 wondering if you had addressed that anywhere in the
21 document.

22 THE WITNESS: Well, generally I think I
23 could say that the 'O'oma plan does provide for
24 special needs perhaps because you have -- I mean I
25 guess it depends on how you're classifying special

1 needs.

2 What I'm thinking of along the lines of you
3 have a range of housing types and a range of housing
4 prices. So different economic groups can live in
5 'O'oma.

6 Also if you're talking about the needs of
7 seniors we have a compact community where there are
8 many daily needs within a walking distance. So a
9 senior that perhaps couldn't drive could live in
10 'O'oma, be able to get to the store, get to some sort
11 of professional office that they might need to go to.

12 PRESIDING OFFICER JUDGE: Thank you.
13 Commissioners, any other questions? No. Did you want
14 to do any redirect Ms. Benck?

15 MS. BENCK: If I may, thank you.

16 REDIRECT EXAMINATION

17 BY MS. BENCK:

18 Q A couple of quick things. The Draft EIS was
19 published when? You said it earlier in your
20 testimony.

21 A Let me just double check. I think it was in
22 2007. Yes, published May 23rd, 2008, excuse me.

23 Q Thank you. Could you read the date on the
24 Kona CDP, the front cover of the Kona CDP?

25 A The Kona CDP was adopted September 2008.

1 Q So the Kona CDP was adopted after the Draft
2 EIS was published.

3 A Correct.

4 Q Thanks. Could I ask you to read from
5 Page 4-39 of the Kona CDP down at the bottom "Land use
6 2-1". I want to make sure that everyone's clear on
7 the distinction between a TOD and a TND. So it's page
8 4-39 at the bottom.

9 A Policy LU 2.1.

10 Q LU 2.1 please?

11 A Okay. Policy LU 2.1 says "Village types
12 defined. Transit-Oriented Developments, TOD, versus
13 Traditional Neighborhood Developments, TNDs.'

14 Both TOD's and TND's are compact mixed use
15 villages characterized by a village center with a
16 higher density urban core roughly equivalent to a five
17 minute walking radius quarter mile surrounded by
18 secondary mixed use, mixed density area with an outer
19 boundary roughly equivalent to a 10 minute walking
20 radius from the village center half mile.

21 "The distinction between a TOD and a TND is
22 that the approximate location of a TOD is currently
23 designated on the official Kona land use map," that's
24 figure 4-7, "along the trunk or secondary transit
25 route that contains a transit station.

1 "While TND locations have not been
2 designated and may be located off the trunk or
3 secondary transit route at a location approved by a
4 rezoning action.

5 MS. BENCK: Thank you very much. I don't
6 have any other questions.

7 PRESIDING OFFICER JUDGE: Thank you,
8 Mr. Schnell. Your next witness?

9 MS. BENCK: Thanks. For our next witness
10 we'd like to call Warren Yamamoto who prepared the
11 Traffic Impact Analysis Report.

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

15 THE WITNESS: I do.

16 PRESIDING OFFICER JUDGE: Thank you. If you
17 can just state your name and address for the record
18 then proceed.

19 THE WITNESS: Warren Yamamoto. AECOM, 1001
20 Bishop Street, Suite 1600 Honolulu, Hawai'i.

21 MS. BENCK: Thank you. Mr. Yamamoto, like
22 our other witnesses, has been stipulated as to his
23 expert qualifications.

24 xx

25 xx

1 DIRECT EXAMINATION

2 BY MS. BENCK

3 Q Hi, Warren. Good afternoon.

4 A Good afternoon.

5 Q How long have you been working on the 'O'oma
6 Project, Warren?

7 A Since the Fall of 2006.

8 Q I know I already said you prepared a report.
9 Could you tell us the name and date of the report,
10 please.

11 A The name of the report is Traffic Impact
12 Analysis Report 'O'oma Beachside Village May 2008.

13 Q Thank you. What geographical area did you
14 include in that Traffic Impact Analysis Report that
15 I'll just refer to as the TIAR?

16 A The area along Queen Ka'ahumanu Highway from
17 Hina Lani Street to Ka'iminani Drive.

18 Q And in your TIAR what did you anticipate our
19 Project access to be?

20 A A right turn in/right turn out roadway onto
21 Queen Ka'ahumanu Highway approximately midway in the
22 Project site.

23 Q Could you point to where that is on the
24 exhibit which is figure 1 in the EIS?

25 A (off mic) It would be at this location here.

1 This shows the full intersection. It was done prior
2 to the report.

3 Q Okay. So you would describe that as being?

4 A (off mic) It's in our report. It's assumed
5 there will be a right turn in/right turn out roadway.
6 Although this map show a whole -- it was pointed out
7 before, it shows a full intersection but that's not
8 correct.

9 Q So we're not planning to have a full
10 signalized intersection at Queen K Highway.

11 A Yes.

12 Q Can you tell us a little bit about what we
13 are to anticipate with respect to maintaining that
14 right turn in/right turn out? Is that anticipated to
15 remain for the duration of the Project?

16 A The Department of Transportation, Hawai'i
17 Department of Transportation has indicated that we can
18 start with this right in/right out access, but it will
19 have to be removed as the frontage road is developed
20 and access, full access at Ka'iminani Drive --

21 PRESIDING OFFICER JUDGE: Excuse me,
22 Mr. Yamamoto, could you get closer to the microphone.
23 Thank you.

24 THE WITNESS: Thank you. The DOT, Hawai'i
25 DOT has indicated that we can begin the Project with a

1 right in/right out facility.

2 But as the frontage road is developed and
3 access -- which provides access to the Ka'iminani
4 Drive and the Hulikoa Drive intersections and
5 eventually the right turn, right in/right out
6 facilities will be removed.

7 Q (By Ms. Benck) Who has to pay for removing
8 the right turn in/right turn out?

9 A The 'O'oma Beachside Village.

10 Q Thank you. And as for the construction of
11 that parallel frontage road within our Project
12 boundary?

13 A The 'O'oma Beachside Village will provide
14 their fair-share, prorated share of the cost of the
15 facility.

16 Q When we talk about prorated share for the
17 construction of the frontage road could you just
18 explain what you mean by that?

19 A This is generally based on the different,
20 the traffic generated by the different users of the
21 facility. And they'll come up with a formula to
22 determine how much each of the users of that facility
23 will be paying.

24 Q So that's based upon how much traffic is
25 generated?

1 A By each of the facilities, user facilities
2 along the roadway. And the three major ones would be
3 the NELHA, the Shores at Kohanaiki and this 'O'oma
4 Project.

5 Q Thanks, Warren. Are you familiar with the
6 County's concurrency requirement? It's section
7 25-2-46 of the Hawai'i County Code?

8 A Yes.

9 Q Can you tell me what the concurrency
10 requirements are with respect to preparation of
11 traffic reports?

12 A One is that the TIAR must be updated within
13 the previous six months of any change of zone. And
14 also that we have to prepare traffic forecasts for 5,
15 10 and 20 years into the future based on what we have
16 traffic from the proposed development. And also that
17 we have to provide mitigation measures so we have at
18 least a Level of Service D condition.

19 Q So when you prepared your TIAR, at the time
20 was it consistent with the County's concurrency
21 requirements?

22 A Can you say again?

23 Q I'm sorry. When you prepared the TIAR was
24 that consistent with the County's concurrency
25 requirements?

1 A Yes.

2 Q In that you looked at what years, please?

3 A Our forecasts were for 2015, 2020, 2029.

4 Q And do you anticipate that we'll be
5 preparing an updated TIAR sometime in the future?

6 A Yes, we will.

7 Q Okay. Thanks. What roadway improvements,
8 area roadway improvements did you anticipate would
9 take place in the area when you were preparing your
10 report?

11 A We assumed that the Queen Ka'ahumanu Highway
12 would be widened from 2 to 4 lanes by the first
13 forecast period, which is 2015. And the second phase
14 of the widening is from Kealakehe Parkway to the
15 airport. And the State DOT expects the construction
16 to be completed by about 2014.

17 We also assumed that there will be a
18 mauka -- after the 2015 forecast year that there will
19 be a network of mauka roadways parallel to Queen
20 Ka'ahumanu Highway that will divert traffic off of the
21 main highway.

22 Q Thanks. Warren, I know that your TIAR
23 presented some mitigation measures to address traffic
24 that is anticipated to be generated due to the 'O'oma
25 Project. Did it also take into account traffic from

1 other projects?

2 A Yes, it did. And many of the improvements
3 are required for the so-called 'ambient conditions'
4 because of traffic generated by the other proposed
5 projects in the area.

6 Q Thanks. We all understand that the DOT has
7 the discretion to eliminate the right turn in/right
8 turn out as soon as there's a connection either to the
9 north or to the south.

10 But assuming that the right in/right out was
11 maintained, what is the level of service that we
12 should expect to see by completion of the Project?
13 I'll just say by 2029.

14 A We can expect to see Level of Service B in
15 the morning peak and Level of Service C in the
16 afternoon peak. And there's no difference in these
17 traffic operations between the ambient without Project
18 versus the forecast with Project numbers.

19 So in other words, the traffic generated by
20 the proposed 'O'oma Project should not have an adverse
21 impact upon the highway operations.

22 Q I see. So maintaining the right in/right
23 out should have --

24 A Minimal effect.

25 Q Minimal effect?

1 A Yes, on the level of service of the Queen
2 Ka'ahumanu Highway.

3 Q Thanks, Warren. As you know O'oma Beachside
4 Village is not a traditional subdivision in that
5 there's mixed uses; people are intended to live and
6 work at the Project.

7 What impact do you think that has on traffic
8 generation?

9 A There should be fewer traffic leaving the
10 Project and onto the highway system and other roadway
11 system as much of the traffic will be contained within
12 the Project. So we can expect as a result lower
13 external trips because the residents don't have to
14 travel offsite.

15 Q So when you prepared your report did you
16 adjust your traffic expectations accordingly?

17 A We maintained the trip generation rates from
18 the Institute of Transportation Engineers trip
19 generation report.

20 What we did do was assume there will be a
21 higher proportion of internal trips within the
22 Project.

23 MS. BENCK: Okay. With that I'd like to
24 make Mr. Yamamoto available for cross-examination.

25 PRESIDING OFFICER JUDGE: Mr. Gonzalez, does

1 the county have questions for this witness?

2 MR. GONZALEZ: Thank you, Madam Chair.

3 CROSS-EXAMINATION

4 BY MR. GONZALEZ:

5 Q Mr. Yamamoto, assuming that the Applicant
6 gets a favorable decision by the LUC and you have to
7 come before the county, an updated TIAR would be
8 completed, right, correct?

9 A I hope so, yes.

10 MR. GONZALEZ: Thank you. No further
11 questions.

12 PRESIDING OFFICER JUDGE: Thank you. Mr.
13 Yee?

14 CROSS-EXAMINATION

15 BY MR. YEE:

16 Q With respect to the timing of the
17 contribution for the makai frontage road, would I be
18 correct in understanding that the timing of that
19 contribution would be pursuant to the request of the
20 county of Hawai'i?

21 A I didn't understand what you said.

22 Q Okay. I'm trying to figure out when you're
23 going to contribute to the makai frontage road either
24 through development yourself or through a monetary
25 amount.

1 A I cannot answer that.

2 Q Would that be determined by the county of
3 Hawai'i?

4 A I would assume so.

5 MR. YEE: Thank you. I have nothing
6 further.

7 PRESIDING OFFICER JUDGE: Does the Park
8 Service have any questions for this witness?

9 MR. LIND: No questions.

10 PRESIDING OFFICER JUDGE: Thank you.
11 Commissioners, any questions? No questions, thank
12 you. Next witness?

13 MS. BENCK: Our next witness is Dennis
14 Moresco.

15 PRESIDING OFFICER JUDGE: Good afternoon,
16 Mr. Moresco. May I swear you in?

17 THE WITNESS: Yes. Good afternoon.

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

21 THE WITNESS: I do.

22 PRESIDING OFFICER JUDGE: If you could just
23 state your name and address for the record and then
24 you can begin your testimony.

25 THE WITNESS: My name is Dennis Moresco. My

1 address is 7305 Morrow Road, Suite 200, Atascadero,
2 California, 93422. Okay.

3 Um, I'm sure that there will be a lot of
4 questions, but I'd like to start by explaining how I
5 came to be involved in this Project, and how the
6 proposal that is before you I feel is the right
7 Project in the right place at the right time. A lot
8 of thought went into it.

9 Then also I'd like to explain why, contrary
10 to a lot of the speculation that I've heard in
11 testimony by the public and what I've read in the
12 newspapers and on the blogs, we really have no
13 interest in selling this property if and when we
14 should be fortunate enough to get it approved.

15 With regard to how I got involved. Right
16 after Clifto's Kona coast proposal for the mauka piece
17 was denied I was asked my Cliff Morris' financial
18 partner, a fellow by the name of Arnold Volny, to get
19 involved.

20 Arnold and I, we go back about 25 years.
21 He's -- I think he's approaching 80. We both have
22 similar backgrounds. We both graduate from the School
23 of Architecture at Cal Poly San Luis Obispo. We both
24 went into our business, our respective business right
25 out of college. We never worked for anybody.

1 Most of our focus was in construction and
2 development separately, not together. But when we
3 started working together he was an investor in several
4 projects with us.

5 We partnered in properties that we bought,
6 real estate office buildings and such. So he's been a
7 long-time friend, an investor with me and a mentor.
8 He's taught me a lot about what I know today.

9 So when he came to me and asked me -- he was
10 Cliff's partner, Cliff Morris' partner. He came to me
11 and asked me to get involved, it was hard for me to
12 refuse him.

13 One of the first things I did when I came
14 over here I met with a lot of the decision-makers, a
15 lot of the leaders. Angel Pilago was one of 'em. He
16 had been recently elected to the county council. The
17 common theme that I heard from most of 'em, all of 'em
18 actually, was that they wanted to see a proposal for
19 the entire property.

20 Cliff Morris' proposal, Clifto's Kona coast
21 was just for that mauka parcel. They wanted to see
22 what the whole thing would look like, a master plan.
23 And while this was really contrary to our business
24 plan -- and I'll explain what I mean by that -- I
25 understood that that was perhaps the best way to go.

1 For us in our business plan it would have
2 been a lot easier for us to develop the mauka parcel.
3 It was already zoned. The entitlement process would
4 have been a lot less cumbersome.

5 And financially it would represent a lot
6 less risk because we would have put a lot less money
7 into it. And the money that we made from that we
8 could have used to develop the makai parcel.

9 But understanding the history of 'O'oma, the
10 failed projects of the past, I came to feel that it
11 was probably best to put all the cards on the table.
12 "This is what we want to do. This is how we want to
13 do it."

14 And also in assessing what the
15 infrastructure needs were going to be to do any
16 development on this parcel, I thought it was best to
17 have a master plan so the infrastructure could be
18 built in a timely fashion, rather than if we just
19 develop the mauka parcel and did infrastructure for
20 that. We'd have a big problem when we tried to
21 develop the makai parcel, again assuming it got
22 approved.

23 The original concept that we came up with
24 was for a golf course community. It was going to be a
25 public course, and it was going to have large estate

1 lots on it that would probably be secondary homes. It
2 was about half the density.

3 As I was developing this parcel and trying
4 to flesh out what it was to get my hands around it, I
5 had the opportunity to sit down and meet with Mayor
6 Harry Kim. He was mayor at the time. And it was
7 probably one of the more interesting meetings I have
8 probably ever had with a public official.

9 He told me that he felt that the island had
10 a lot of frustration with the public. The public were
11 very frustrated, that there was a lot of needs that
12 the island had that government couldn't provide.

13 And he felt like government needed to
14 partner with developers 'cause the development
15 community could provide this infrastructure that the
16 county needed.

17 He told me that -- he used an analogy of
18 straws on a camel's back. He said to the extent that
19 my Project removes straws I would be -- he would be
20 our greatest supporter.

21 But to the extent that we added one more
22 straw he would be our greatest opponent. That made a
23 big impact on me. And it made me sit back and rethink
24 about what we were doin' and the approach we were
25 taking. Obviously we did something right because I

1 think the mayor's satisfied. He sent in a letter. I
2 think you have a letter that was submitted to the LUC
3 by him.

4 It was about that time that the Kona
5 community development process, planning process was
6 getting underway. What we heard through that process
7 was the community wanted more mixed-use, live-work
8 walkable projects as opposed to resort projects.

9 The Kona community wanted higher density,
10 more affordable to residents, local residents. And
11 higher density would also take off the development
12 pressure for the outlining areas around Kona. That
13 made sense. That's good planning. In theory that's
14 good planning.

15 But the fact is that mixed-use development
16 has some measure of success in urban settings, very
17 risky venture in rural settings. And Hawai'i is to my
18 knowledge fairly rural.

19 So I was sceptical about -- it's nice to
20 talk about planning in theory but the reality is I'm
21 sceptical that the market would really want that type
22 of product.

23 So at that point I heard what the leadership
24 had to say, the community had to say, and the
25 stakeholders had to say. And I was kind of confused,

1 "What should we really do here?"

2 So I went out to the land. I stood on the
3 land and I looked. And what I saw was it had one
4 great asset and one slight liability. And it's been
5 talked about. The asset is the beach. The liability
6 is the airport.

7 If 'O'oma had a beach and no airport, it
8 would tend to be developed, I would want to develop it
9 more like Kohanaiki. It's easier and the airport
10 wouldn't be a nuisance.

11 If it didn't have a beach but it had an
12 airport it would be NELHA. And we would develop it
13 more like NELHA industrial use.

14 But it had both. But what it also had was a
15 need for very expensive infrastructure. It didn't
16 have water, doesn't have sewer. Water's a long way
17 away. So what you need to spread that cost to make
18 this an affordable community is you need density.

19 So we go back to the Kona Community
20 Development Plan, the process that was going on. They
21 talked about mixed-use villages, they talked about
22 having density as a tenet to affordability.

23 And if there was ever a project that
24 screamed for this 'O'oma was it. It had that beach.
25 The beach made me feel more comfortable about doin' a

1 mixed-use village.

2 It also made me feel more comfortable
3 knowing that 'O'oma, instead of being one of several,
4 if we did it industrial it would be one of several
5 industrial parks, and if we did it resort it would be
6 one of several resorts -- this could be one of a kind.
7 And in my business it's always better to be one of a
8 kind than one of several. You have a leg up.

9 So that is how we came to have this proposal
10 that's in front of you today. PBR did a great job
11 with the plan.

12 And I really feel like I gave it a lot of
13 thought, went down, opened a lot of doors and did a
14 lot of thinking about what needs to be done here. And
15 I think we have got a great project in the right
16 place.

17 I want to talk about timing. As I mentioned
18 this Project has got a lot of upfront costs to it.
19 And a project like that needs a long period of
20 positive economic growth.

21 I'm thankful -- in my business -- I've been
22 at this for 35 years. And the difference between a
23 successful developer and an unsuccessful developer is
24 timing. The bottom line if you're lucky with the
25 timing then you've probably got a good chance of being

1 a successful developer.

2 'O'oma's timing couldn't have been better.

3 If we had gotten this approved in 2005 I'd probably be
4 giving it back to the bank. The economy turned south.

5 But we're getting it approved at a time,
6 we're going through the process -- we're trying to get
7 it approved, we're going through this process at a
8 time when the economy is at bottom.

9 Being in the industry for as long as I have
10 and talking with people across the United States, the
11 sense is, the consensus of opinion is in many things
12 that I read that we are at a bottom. And we're going
13 to be on this bottom for a while, probably another
14 couple years. Then things will start to get better.
15 And things will start to ramp back up.

16 That's about the time 'O'oma, if things go,
17 will be coming out of the ground and it will give us a
18 long, I'd like to say, runway to take off with the
19 Project.

20 So in terms of timing I couldn't, I couldn't
21 be more pleased for myself. I'm a very conservative
22 developer.

23 Now I want to talk about what our goals are
24 for this property and why we have no desire to sell
25 it, should we get it approved. Both Mr. Volny and I

1 invested in this property to provide for our families
2 in the future.

3 That is to say Mr. Volny it's about his
4 grandchildren. He's already provided for his
5 children. He has three daughters. He wanted to
6 provide for his grandchildren. Like I said he's 80
7 years old.

8 In my case it's for my son. My son Jim is
9 here. This is going to be a long project. Jim is
10 here. He's been to a lot of these meetings 'cause I
11 told him, "You're the one that's gonna have to finish
12 this. This Project is going to take longer than I
13 will probably want to be in this business." So he's
14 here to take over.

15 We have taken a long-term view with this
16 investment. We have no debt against the property. We
17 own it free and clear. We have spent considerable
18 amount of money going through this process all cash
19 out of pocket.

20 The idea from the beginning to the end is
21 this is a long-term investment. There's no desire for
22 a quick profit. And there's no pressure on us to have
23 to sell it.

24 I think what we propose for 'O'oma is a
25 perfect fit for both the land and the local community.

1 I think it reflects the values the community has
2 expressed through the Kona Community Development
3 Planning process. We spent a lot of time and effort
4 engaging the community.

5 You heard a lot of these consultants. I was
6 sittin' over here listening, god, these guys have been
7 working for me since 2006. I've been at this for a
8 long time. A lot of consultants have been at this for
9 a long time.

10 We spent a lot of time engaging the
11 community, finding out what their desires are,
12 explaining to them what our goals were for the
13 property.

14 And I think that this proposal that you have
15 before you represents our very best efforts and I'm
16 very proud of it.

17 I would like to thank the team that we
18 assembled to help guide us through this process. Not
19 being from Hawai'i I had a lot to learn about the ways
20 and the cultures of Hawai'i. I think the team taught
21 me well.

22 Needless to say we are very proud of the
23 recognition we received with the 2009 APA Hawai'i
24 Award for our plan.

25 I look forward to our questions.

1 DIRECT EXAMINATION

2 BY MS. BENCK:

3 Q Thank you, Dennis. We at the start of the
4 hearing qualified you as an expert in land use and
5 development, in construction, in architecture. But if
6 you would please tell the Commissioners a little bit
7 of your background, a little bit more than what you
8 told us in the beginning.

9 A Okay. I was born and raised in a
10 construction family. My dad was a general contractor.
11 I had a hammer in my hand when I was a baby. My dad
12 was convinced that there was no money in contracting
13 so he wanted me to become an architect. So I went to
14 the Cal Poly School of Architecture. I graduated in
15 1975.

16 In 1975 there was a recession on, much like
17 this one, probably not as bad but bad enough. There
18 was no jobs. There was 150 kids that I graduated
19 with, three of them had jobs.

20 So I ducked back into graduate school. And
21 in the process of going to graduate school I had an
22 opportunity to go build a house for my wife and I.
23 And that started our business. So Midland Pacific was
24 basically started in 1976 while I was in graduate
25 school.

1 I have served as president of the Home
2 Building Association of the Central Coast. I have
3 served as president of the California Home Building
4 Association. That's a trade association in the state.

5 In 2005 I was inducted into the Home
6 Building Hall of Fame. I'm a past president and
7 chairman of the board of an insurance company.
8 There's about 25 of us local builders, statewide
9 builders that formed our own liability insurance
10 company.

11 I've been at this a long time and I've been
12 through many different aspects of it.

13 Q Thanks. What sort of projects, what sort of
14 development has Midland Pacific been doing over the
15 last 25, 35 years?

16 A When I came out of college the goal for me
17 was to do design/build. I wanted to design and build
18 high-end homes. I learned early on that I didn't have
19 the temperament to do that. It takes a special kind
20 of person. And bless them for that, their patience.

21 So we got into development. We have done
22 medical office condominiums. We have done industrial
23 building. We did commercial buildings. We did a
24 convalescent hospital.

25 But in the early '90s the last recession

1 1990-91, all the commercial money and everything that
2 we were doing up to that time it kind of dried up.
3 There was the RTC and it was really difficult to get
4 financed.

5 So we turned to home building. In 1992 we
6 started building homes on a production basis. What I
7 learned through that process was that it takes a
8 different corporate mentality to be a home building
9 company than it does to be a commercial building
10 company.

11 So once I remade my company to be a home
12 building company I never went back. So we do
13 predominantly, have been predominantly -- well,
14 exclusively home building since 1992 with the
15 exception of one commercial project. We built our
16 office building about two years ago.

17 Q So you're describing a successful and fairly
18 sophisticated development company, but there's also a
19 chartable side to Midland Pacific.

20 A Correct. You're talking about the Midland
21 Pacific Foundation.

22 Q Mm-hmm.

23 A I think about three years ago -- every day
24 I'd go to work and I'm sure anybody's that been in
25 business you get phone calls from people wanting you

1 to donate a hundred dollars to this and a hundred
2 dollars to that. And you realize that you're saying
3 yes because you don't want to say no. You don't even
4 know what the money's for.

5 And I really felt like we could do much
6 better. So my wife and I started the Midland Pacific
7 Foundation. We take the profits, a certain percentage
8 of the profits that we make in whatever jurisdiction
9 we are building in, and we give back to the community
10 in the form of matching grants up to \$25,000.

11 We don't want to just give money away. We
12 want people to have a stake in it. So we make them
13 raise money and we'll match whatever they raise. They
14 have to make an application.

15 And we sit down and go through it, figure
16 out what the causes we would like to support. Usually
17 it has to do with schools. And it's been very, very
18 successful.

19 I remember the first check we gave for
20 \$25,000. The person in charge told me that she didn't
21 know whether she should thank me for the check or for
22 the fact that we brought that community together to
23 raise the matching funds. I said, okay, this has been
24 a very good success for us.

25 Q Do you plan on extending the Foundation's

1 reach to Hawai'i?

2 A Absolutely. Absolutely.

3 Q Great. So that the school site that you've
4 got planned, is that part of the Foundation's reach?

5 A No. That was somethin' in my travels about
6 Hawai'i I got an opportunity to go see the West
7 Hawai'i Exploration Academy. And that school is near
8 and dear to my heart.

9 Cal Poly was such a wonderful experience to
10 me because they teach you by doing projects. That
11 school at an early age teaches kids by doing projects.

12 I wasn't a very good student when I was in
13 school. I got to go to graduate school but that was
14 because I flourished at Cal Poly. But coming out of
15 high school I was a terrible student. And I really
16 want to help that school succeed.

17 Q So the school site that you've identified
18 the three acres for development of the charter school,
19 is that to satisfy our state Department of Education
20 impact fee requirements?

21 A No.

22 Q That's over and above.

23 A Yes.

24 Q Let's talk about money --

25 A I wanted to get the school out of the flight

1 path too.

2 Q Okay. Infrastructure costs. You started to
3 talk about it before and how that was a big concern
4 when you were looking at developing just one piece of
5 the property versus the other.

6 A Mm-hmm.

7 Q What kind of numbers, and what's your sense
8 on your ability to get the financing to do the
9 necessary infrastructure?

10 A The engineer's estimate for the first phase
11 of this development is around \$66 million.
12 Twenty million of that goes to settin' up a water
13 treatment plant and the desalination plant. The rest
14 of it goes for roads, you know, the typical stuff.

15 In terms of financing it as long as we can
16 prove a market, I think we'll be able to do that when
17 the time comes, we will have no trouble getting
18 financed.

19 Q You prepared for me something that we filed
20 as Petitioner's Exhibits 92. It's a loan-to-value
21 ratio. Could you explain for the Commissioners and
22 everybody else what that means?

23 A When you go to buy a house, get a mortgage
24 on a house, conventional mortgages usually go
25 80 percent of value. So if you're going to buy a

1 house for a hundred thousand dollars you have to come
2 up with \$20,000 to do conventional which is 80 percent
3 loan to value.

4 If you're gonna do FHA, you can get a
5 95 percent loan. But when you want to do a
6 development project the threshold's somewhere between
7 70 to 75 percent depending on the banks and what their
8 interests are.

9 I have seen banks do up to 77 percent. I've
10 seen them do 70 percent. What I'm focused on in
11 trying to get this Project off the ground is to make
12 sure our loan-to-value stays below 70 percent. And
13 that was what that exercise was to demonstrate.

14 I had one of the local site contractors take
15 a look at the engineer's estimates because I have been
16 concerned about that. And they've assured me that the
17 engineer's estimates are on the high side of
18 conservative. So I'm feeling good.

19 Q The money supply is tight. I mean
20 everybody's having trouble getting financing. So you
21 prepared this loan-to-value. You showed us a 60/80
22 percent loan-to-value ratio.

23 Do you have confidence that you'll be able
24 to get financing?

25 A Yes, I do. We're one of the last guys

1 standing in our area in California. And I have been
2 approached by venture capitalists. I have been
3 approached by lenders. They recognize that we do know
4 what we're doin'.

5 There's not too many other opportunities out
6 there for them to invest their funds or to -- banks
7 need to make money by lending money. And there's not
8 too many other opportunities.

9 So because we're the last guy standing, you
10 know, we have been approached by other banks that they
11 want to, you know, finance what we do. We've been
12 buying property out of bankruptcy, other finished lots
13 and that sort of stuff. And we have been getting
14 financing for that.

15 Right now Mr. Volny and I are negotiating to
16 buy a large project in San Luis Obispo. It's about
17 140-lot subdivision which is big for San Luis Obispo.

18 And we're going to deal with that when I get
19 back. But we're probably gonna use one of the venture
20 capitalists that approached us about two months ago to
21 purchase that.

22 Q Dennis, a lot of people talk about Cliff
23 Morris and they don't do so with a happy look on their
24 face. But we know Cliff Morris still has an interest
25 in this property. Does Cliff Morris have any

1 decision-making ability whatsoever?

2 A Let me explain a little bit about Cliff
3 Morris' relationship with all of this. Cliff Morris
4 going way back, to make a long story long, he went to
5 school with Arnold's daughters and so he -- and he
6 actually worked for Arnold for a while.

7 And then he moved over to Hawai'i. He loves
8 Hawai'i. And he wanted to be here. So he found this
9 property. And after a period of time he brought it to
10 Arnold and Arnold invested in it.

11 Cliff has a minor interest but he has no
12 say. It's really between Arnold and I what happens
13 and what doesn't happen. And he'll do whatever Arnold
14 wants.

15 Q Thanks.

16 A And Arnold will do pretty much whatever I
17 want.

18 Q Okay. So, in other words, when it comes to
19 development decisions Dennis Moresco --

20 A It's pretty much with me.

21 Q That's consistent with our experience
22 dealing with this Project too. 'O'oma Beachside
23 Village is going to be the master developer. It's a
24 master planned community.

25 A Correct.

1 Q You're the master developer of this Project.
2 Does that mean that you plan on building each and
3 every unit that's going to be built on this property?

4 A No, we don't. Quite the contrary. We have
5 many different product types. We do single-family
6 residential. We don't do mixed-use villages. Our
7 hope would be to bring someone in who's an expert in
8 mixed-use village development.

9 We don't do custom homes, as I explained. I
10 gave up on that 25 years ago. All of the rim lots are
11 custom homesites. We plan on selling those to
12 individuals, to people wanting to build their dream
13 house.

14 We also, in terms of the smaller lots, the
15 residential village, we feel like it would probably be
16 wiser for us rather than to build them all ourselves,
17 to make them available to local developers, or to
18 local home builders to come in there and buy blocks so
19 that we can have a variety of housing even though
20 they're the same type of housing.

21 I think it would make a much richer
22 development Project.

23 Q With that sort of development proposal do
24 you think that there's any risk that there'll be a
25 dramatic change from the concept plan that we've

1 presented to the Commission?

2 A Oh, absolutely not. We'd sell finished and
3 lots finished blocks. And we would control everything
4 that goes on there. We're a master planner. I don't
5 want it to impact anything -- and this is a 20-year
6 Project. There's a plan we have to follow. And I
7 don't want any one entity to mess up what we've got in
8 mind for the future.

9 MS. BENCK: Thanks very much, Dennis. I
10 don't have any further questions.

11 PRESIDING OFFICER JUDGE: Mr. Gonzalez,
12 questions?

13 MR. GONZALEZ: Thank you, Madam Chair, no
14 questions for the county.

15 PRESIDING OFFICER JUDGE: Okay. Mr. Yee.

16 CROSS-EXAMINATION

17 BY MR. YEE:

18 Q Thank you. Let me start with the fact that
19 I noted you had said one of the liabilities of the
20 Project is the airport.

21 A Correct.

22 Q Let me start with the Department of
23 Transportation conditions. Is it your understanding
24 that you and the Office of Planning have come to an
25 agreement on eight Department of Transportation

1 conditions?

2 A Yes.

3 Q And I'm not going to go through the wording,
4 but is it your understanding we have reached an
5 agreement on the wording for conditions relating to an
6 aviation easement, noise attenuation, notification of
7 proximity to the Kona International Airport and as
8 well as the paragraph from the prohibition on
9 interference with airport and aircraft operations?

10 A Can you say that last part again?

11 Q Prohibition on interference with airport and
12 aircraft operations?

13 A Yes.

14 Q Is it also your understanding that we've
15 reached an agreement on the language for a condition
16 relating to the Traffic Impact Analysis Report and
17 road and highway improvements?

18 A Yes.

19 Q As well as a paragraph or condition on
20 access to Queen Ka'ahumanu Highway?

21 A Yes.

22 Q Also a paragraph relating to the continued
23 use of the right in/right out.

24 A Yes.

25 Q And paragraph on notification regarding

1 access to Queen Ka'ahumanu Highway.

2 A Yes.

3 Q Okay. I won't go through them at this
4 point. We'll bring that out more specifically with
5 another witness, just for the LUC's information.

6 Let me then go over some of the other issues
7 that have come up. Are you familiar with the
8 Department of Land and Natural Resources' letter, more
9 specifically of the Division of Aquatic Resources
10 letter regarding this Project?

11 A (Pausing.)

12 Q Let me try to refresh your recollection.

13 A There have been so many letters regarding
14 this Project, I ...

15 Q Do you remember a request by a state agency
16 that your pollution prevention plan be provided not
17 only to the National Park Service but also to DLNR?

18 A I believe so, yes.

19 Q And is that acceptable to you?

20 A Yes, absolutely. If you're going to ask me
21 questions related to sharing the information that we
22 are going to share with National Parks with the DLNR,
23 I have no problem with that.

24 Q There was also a request -- and this is from
25 OP Exhibit 25 -- there was a request by DAR to include

1 within your pollution prevention plan provisions
2 relating to the adjacent coastal resources. Do you --

3 A (Shaking head.)

4 Q Okay. Let's go back. You know you're
5 proposing to have a pollution prevention plan.

6 A Yes.

7 Q And that deals with, among other things, the
8 coastal preserve.

9 A Correct.

10 Q And how to protect the resources in the
11 coastal preserve, correct?

12 A Correct.

13 Q Do you recall the Division of Aquatic
14 Resources wanting you to extend that to ensure that
15 the nearshore waters and the resources in the beach
16 and the waters just outside the property are also
17 protected?

18 A I'm not familiar with that. (Addressing Ms.
19 Benck) Have we looked at that? Did we talk about
20 that?

21 MS. BENCK: Yes, we did.

22 THE WITNESS: Did I agree to it?

23 MS. BENCK: Yes.

24 THE WITNESS: Okay. I agree to it. You
25 forgive me, Bryan, there have been so many...

1 Q (By Mr. Yee): It's all right.

2 A There's been so many I's dotted and T's
3 crossed I can't remember one from the other sometimes.

4 Q By the way, we had a witness testify that
5 you were very close to reach a finalized agreement
6 with the Department of Education. Do you remember
7 that?

8 A Yes.

9 Q Do you have any further update as to whether
10 that agreement was finalized?

11 A (Addressing Ms. Benck) Did we finalize it?

12 Q If you don't know you can just say you don't
13 know.

14 A I don't know.

15 Q All right. That's fine. I know that as you
16 go through the land use process the precise layout may
17 change as you engage in further discussions with the
18 county. But the current layout would place residences
19 right next to NELHA, is that right? On the border of
20 NELHA?

21 A I believe there's a sewer treatment plant.
22 I believe there's some apartments. I think that's all
23 there is. There's some apartments next to it. I'm
24 not sure what's up in the far left corner. But
25 there's not houses next to NELHA.

1 Q Are you aware of NELHA's concern in placing
2 any type of residents right next to the border of
3 their property?

4 A Yes.

5 Q Are you proposing or can you propose any
6 provisions that would mitigate the conflicting,
7 potential conflicting uses between residential and
8 light industrial?

9 A As I understand it right now most of that
10 border is in the same zoning that we have, which is
11 conversation open space.

12 Q Are you aware that NELHA is planning to seek
13 to reclassify that area to urban?

14 A I wasn't aware of that.

15 Q Okay.

16 A But to the extent that they do I'm willing
17 to split the difference with them.

18 Q You're aware of NELHA's concern regarding
19 the location of the feed source for your
20 desalinization plant?

21 A Yes.

22 Q And do you have any proposed mitigation for
23 that concern?

24 A Well, again, they are conversation open
25 space.

1 Q And if they move to reclassify do you have
2 any proposed mitigation?

3 A I don't, no.

4 Q Would you be locating the feed source more
5 than a quarter mile away from the existing urban lands
6 on NELHA?

7 A I believe we will be, yes.

8 Q As I looked at the current layout you appear
9 to have trees on the border between your property and
10 NELHA. Is that your intent? I don't know if that's
11 just a picture or if that's what you actually intend
12 to do.

13 A It's a concept plan. I don't know.

14 Q Do you have any proposed --

15 A I guess if they develop there we'll put
16 trees, tall bushes.

17 Q Okay.

18 A But as for this it's just a concept plan.

19 Q Have you --

20 A -- in terms of the trees. The layout we
21 like, but in terms of the trees. As you said it would
22 be subject to change as we go through the county
23 process but the overall integrity of that plan will
24 remain intact.

25 Q Are you aware of the conditions that the

1 Office of Planning set forth in its written testimony?

2 A Could you be more specific?

3 Q Well, I'm going to be, but I just want to
4 make sure have you seen the OP's testimony.

5 A Okay. Yeah, I'm aware -- if you're asking
6 me the general question the Office of Planning had
7 some conditions, yes I'm aware of them.

8 Q Do you recall what, if any, conditions you
9 were concerned with or opposed to?

10 A To the extent that there were any conditions
11 that I was concerned with or opposed to you would have
12 already been told, and we would have come to some
13 agreement. There might have been changes. But the
14 conditions as of the last draft I was satisfied with.

15 Q I don't meant to trap you into anything.
16 Let me just refresh your recollection --

17 A Okay.

18 Q -- on a couple of issues that you may
19 actually have concern with.

20 A All right. Go ahead.

21 Q You're aware that the Office of Planning is
22 asking for an automatic Order to Show Cause if you
23 fail to construct your infrastructure within 10 years.

24 A Yes.

25 Q Is that an area of concern?

1 A No.

2 Q Or is it acceptable. While I'm on the issue
3 of the deadline, is it your representation that you
4 will be fully developing the Petition Area within 10
5 years?

6 A That's our plan.

7 Q And will you be developing at least the
8 infrastructure for the Project within 10 years?

9 A Yes. We have to.

10 Q And you understand that if you fail to
11 develop -- that if the Office of Planning's condition
12 is adopted and you fail to develop all of the
13 infrastructure for the Project within 10 years that
14 will then place this Project at risk of being
15 downzoned back to ag (sic)?

16 A Well, what do you do about all the stuff
17 that's already built?

18 Q I'm asking are you aware that you're going
19 to take a risk if you fail to develop the
20 infrastructure.

21 A I'm aware.

22 PRESIDING OFFICER JUDGE: Just for
23 clarification, Bryan, it's conservation not
24 agriculture.

25 MR. YEE: I'm sorry. Thank you.

1 Q That it may go back to conservation.

2 A I gotcha.

3 Q And you understand the reason I'm asking is
4 I want to make sure you understand the potential
5 downside if you fail to comply with that particular
6 representation?

7 A We are very much aware of that topic and we
8 have had several discussions about it. And we feel
9 very confident that we will be able to comply with
10 that condition.

11 Q Okay. There's also a provision regarding
12 sustainability and LEED. Are you aware of that?

13 A There is a condition regarding --

14 MS. BENCK: May I give the conditions to
15 Mr. Moresco?

16 PRESIDING OFFICER JUDGE: Yes.

17 (Ms. Benck handing the witness documents)

18 THE WITNESS: Okay. Go ahead.

19 Q (By Mr. Yee): Is that an issue for -- is
20 that an issue of concern for you about that condition?

21 A Are you talking about you want this Project
22 to be LEED Certified?

23 Q Yes.

24 A Okay, yeah, that is a problem.

25 Q Do you have an alternative mitigation in

1 place of that?

2 A The alternative mitigation -- I don't have a
3 mitigation -- I don't know whether it's an alternative
4 mitigation, but I have a philosophy about it. So let
5 me go there if I will and then we can discuss this
6 further.

7 This Project will be green by necessity, not
8 by regulation. We -- we're looking at desal. That's
9 probably going to be the way we go because it's the
10 less expensive alternative than to drill another well
11 mauka and bring the water to 'O'oma. That's in terms
12 of the source.

13 But in terms of producing ongoing water for
14 the residents it's an expensive process. The biggest
15 expenditure is in energy consumption. The cheapest
16 way for us -- we need to be competitive with the local
17 market.

18 So if someone who lives mauka can buy a
19 house for X amount of dollars but their monthly
20 utility bills are much more competitive than ours will
21 be, we're not going to be able to sell.

22 So the only way that we're going to be able
23 to reduce the cost of energy, thus reducing the cost
24 of delivering water is through photovoltaics or some
25 sort of alternative energy source taking us off the

1 grid.

2 There was a discussion about the airport.
3 We were going to have to air condition this Project
4 because of the noise. Well, 'O'oma's a pretty arid
5 climate, local climate.

6 We have felt from the beginning that we're
7 probably going to have to provide air conditioning
8 units to all the houses there.

9 Running air conditioning units is an
10 expensive proposition because the electricity rates on
11 this island are very, very expensive due to their
12 infrastructure costs. We're looking at providing
13 photovoltaics on each house to run a heat pump so that
14 we can cool it in a cost effective manner so we can be
15 competitive with the local market.

16 The problem that I have with LEEDs is there
17 are a lot of other things that you have to do that the
18 buying public, the reality, they don't want to pay
19 for. We looked at everything we could do that was
20 LEED Certified and we figured it would add \$50,000 to
21 the cost of each house.

22 I've seen studies and I've seen within my
23 own area that I work in people don't want to pay for
24 it. Everybody thinks that LEEDs or alternative
25 energies are good for somebody else to do. But when

1 push comes to shove they don't won't to pay for it.

2 They'll buy a Prius but they don't want to
3 pay \$20,000 to put photovoltaics on their roof even
4 though it's going to save them money.

5 So from my standpoint the LEEDs thing it's
6 not necessary. We're going to do this by necessity
7 'cause we need to be competitive in the marketplace.

8 We are also using a gray water system
9 because desal is expensive and we need to get rid of
10 the effluent through our water treatment plant. So
11 we're going to have to do a gray water system to get
12 rid of it.

13 All these things are by necessity. And I
14 think that 'O'oma would probably be a poster child for
15 what green development and technology can do out of
16 necessity, not out of regulation.

17 Q There are many different definitions of
18 "green". Do you have any particular standard that you
19 think you'll be meeting?

20 A No.

21 Q Will all the appliances, for example, be
22 Energy Star?

23 A Yes.

24 Q I think you had mentioned there will be
25 photovoltaics on all houses?

1 A We're looking at it. I'm not -- we're going
2 to try to find the most cost effective efficient way
3 to cool those houses through air conditioning. It
4 might be -- it might be wind.

5 Q Is it your representation that there will be
6 alternative energy for each house?

7 A Yes.

8 Q And whether it's --

9 A In some capacity. I'm not going to take all
10 those homes off the grid.

11 Q Do you have a certain wattage or certain
12 amount of energy that you intend to provide for each
13 home?

14 A No. Again, it's trying to keep the cost to
15 do something that needs to be done to make us
16 competitive with the surrounding marketplace.

17 Q But in some form, in some amount as yet
18 undetermined you will be putting on alternative energy
19 for each house.

20 A Yes.

21 MR. YEE: Chair, if I could have just a
22 brief three-minute break to talk with my clients.

23 PRESIDING OFFICER JUDGE: That would be
24 fine. We'll take a five-minute break.

25 (Recess was held.)

1 PRESIDING OFFICER JUDGE: Mr. Yee, are you
2 prepared to continue?

3 Q (By Mr. Yee): Just to clarify one last
4 issue. You had testified, I believe, that the entire
5 Project may take 20 years but that the Petition Area
6 would be developed within 10 years, correct?

7 A Yes.

8 Q I just wanted to make that -- and that's
9 just because the Petition Area is a portion of the
10 larger Project.

11 A Correct.

12 MR. YEE: That's it. Thank you. No further
13 questions, thank you.

14 PRESIDING OFFICER JUDGE: Mr. Lind, do you
15 have any questions for this witness?

16 MR. LIND: Yes, just a couple.

17 CROSS-EXAMINATION

18 BY MR. LIND:

19 Q I'm going to ask you a leading question.
20 Are you aware of the agreement between your company
21 and the National Park Service?

22 A Oh, yes.

23 Q Is your company going to comply with that
24 agreement?

25 A Absolutely.

1 Q One particular question about the agreement.
2 Are you aware that the agreement requires that you
3 request the development conditions be part of the
4 decision and order in this hearing?

5 A Yes.

6 Q You mentioned the infrastructure that you
7 need to build upfront and how costly it is. Do you
8 have a preference for where the water for the
9 desalinization plant comes from?

10 A No.

11 Q Have you made any decisions about where that
12 might, what that decision would be?

13 A No, we haven't.

14 Q Do you see a timeline when that might be
15 made?

16 A When we get closer, assuming that we make it
17 through the approval process, when we get closer at
18 the county level we'll start exploring that because we
19 are going to have to really start making some
20 decisions.

21 The reason that I have been a little bit
22 ambiguous as to where is because we just don't know
23 the best way to go about doing it. But we're very
24 much aware of our agreement with the National Parks
25 and fully intend to honor or I would never have agreed

1 to it.

2 Q I assume the answer to this, but I'm going
3 to ask it anyway. You don't have a particular
4 preference for where the groundwater wells, if you use
5 that system, would be at this point?

6 A No.

7 MR. LIND: No further questions.

8 PRESIDING OFFICER JUDGE: Okay. Thank you.

9 Commissioners, any questions? Commissioner Lezy.

10 COMMISSIONER LEZY: Thank you, Chair.

11 Aloha. Good afternoon, Mr. Moresco.

12 THE WITNESS: Aloha.

13 COMMISSIONER LEZY: I've seen you sat
14 through all of the prior meetings on this docket.

15 THE WITNESS: Yes, I have.

16 COMMISSIONER LEZY: Obviously, you've heard
17 the public testimony.

18 THE WITNESS: Yes.

19 COMMISSIONER LEZY: And I think you'll
20 probably agree that if there was a single sentiment
21 that could be summed up by the public testimony would
22 be a desire by the folks who testified that this
23 Petition Area stay in the conservation designation.

24 And although there's just a few people here
25 today that testified I would hope there had been more.

1 I guess I'd like to ask you to take this opportunity,
2 how would you respond to the public's concern on that
3 count, that this Petition Area should stay
4 conservation?

5 THE WITNESS: I'm not sure what their
6 concern is. But I think that the plan represents a
7 very fair and generous compromise so that everybody
8 can live in harmony together.

9 The area that we are proposing to develop in
10 this plan people don't go on. They don't -- well, we
11 don't allow camping at this point. We will once we
12 get in the development process. But they don't
13 utilize that land. It's just sitting there.

14 They do utilize the beach. And we spend a
15 tremendous amount of money every year policing that
16 area but no one goes up into -- there's a bluff,
17 there's a natural bluff where this property,
18 development is being proposed. No one touches that.
19 So I really don't understand the nature of their
20 concerns.

21 What I've heard from other people in
22 talking, I've tried to talk with them, is that what it
23 really gets down to for some people -- I'm not -- I'm
24 not going to say that everyone who testified has said
25 this -- but I think they just don't -- they want to

1 keep the beach for themselves.

2 And they're afraid there's going to be too
3 much public because people will be living there, that
4 will utilize the beach as well. That's as near as I
5 can get.

6 But to be honest with you I'm a little bit
7 dismayed by the testimony. I think that we presented
8 a very fair and balanced and thoughtful plan. And the
9 fact is that we're proposing to do the development no
10 one today utilizes other than to dump cars and
11 refrigerators on.

12 COMMISSIONER LEZY: One other question. At
13 the outset of your testimony you indicated that it's
14 your intent to see the development through, assuming
15 that your petition is granted and that there is no
16 intent on your company's part to entitle and then sell
17 the Petition Area for a profit.

18 Would you be open to a condition that would
19 encumber the property to avoid that situation?

20 THE WITNESS: Well, it depends on how it was
21 written. I'm not, I'm not sure how that -- I'd have
22 to develop it? Is that what --

23 COMMISSIONER LEZY: That you would agree to
24 a condition that for some set period of time you would
25 not be able to alienate the property, wouldn't be able

1 to sell the property.

2 THE WITNESS: Well, I'd have to look at the
3 condition. I'm not going to say no categorically. We
4 are planning on selling parts of it to more
5 experienced developers who do that sort of -- like
6 mixed-use. I have no experience with mixed-use
7 development.

8 But I would prefer to bring in experts. And
9 if I need to sell it to them to get that done because
10 of their wishes, I can't be precluded from not doing
11 that.

12 COMMISSIONER LEZY: Sure. I understand
13 that. I understand, too, you would have to see the
14 condition specifically. But you would at least keep
15 an open mind.

16 THE WITNESS: Yes. Absolutely.

17 COMMISSIONER LEZY: Okay. Thank you very
18 much.

19 PRESIDING OFFICER JUDGE: Commissioner
20 Kanuha.

21 COMMISSIONER KANUHA: Thank you, Madam
22 Chair. Good afternoon, Dennis. You know, early in
23 your presentation you made a comment that you needed
24 density in order to make this work. Was that an
25 accurate statement?

1 THE WITNESS: That's an accurate statement.

2 COMMISSIONER KANUHA: Can you tell me what
3 you meant by that? In other words, did you look at
4 this property and say, "I need this many units to make
5 it go"? Can you give us some background on that?

6 THE WITNESS: I can give you a real simple
7 explanation. When we first started looking for water,
8 what are our options for looking for water, one of the
9 things we have explored was drilling a well up mauka.

10 I talked with Roger Harris about that
11 because they were going through with Palamanui. What
12 I found out it's an expensive proposition. And
13 whether you bring one gallon out or a thousand gallons
14 out or 10,000 gallons out it's an expensive
15 proposition.

16 You can't just go up there and drill a well
17 and then deliver enough water for 10 homes and have it
18 pencil. You can't do it for 300. So the more density
19 that you get you divide that number, you know, your
20 cost.

21 So let's say a well cost \$10 million. If
22 you divide that by a hundred you get \$100,000 a house
23 for water.

24 If you divide it by a thousand you got a
25 thousand dollars, or whatever. I don't know. I'm

1 throwing numbers out. It's the denominator. The cost
2 is constant.

3 The same goes for desalinization. When you
4 do a desalinization plant the cost is constant
5 regardless of the amount of residences that you have.

6 The water treatment plant. The water
7 treatment plant for the initial phase is something
8 like \$14 million. It doesn't, it doesn't matter how
9 many homes you have.

10 Now, we're going to be able to expand it but
11 that's a big number unless you can expand the usage of
12 that treatment plant. But the facility is there. You
13 have to have that expense.

14 So when we looked at the golf course
15 community that I mentioned earlier, we had half the
16 density. But the price point was going to be twice as
17 much, but the profit wouldn't be much different.

18 It's just the cost of the infrastructure.
19 If you can divide it by more numbers it brings the
20 housing -- brings your product into a more affordable
21 range so you can sell it and compete with the local
22 market.

23 And our whole goal has been to compete with
24 the local market. I know you asked a question of one
25 of our consultants earlier about reducing the density

1 and pushing it back. We wouldn't be able to compete
2 with the local market. It wouldn't be a financially
3 feasible project to do that.

4 COMMISSIONER KANUHA: Actually what I was
5 getting at there was a reallocation of the density.
6 In other words, my question was whether or not it was
7 possible to accomplish the same kind of density on,
8 you know, less of the Petition Area.

9 THE WITNESS: What that would force you to
10 do is to go vertical. We have a pretty tight plan.
11 If you look at the lots of the residential village I
12 think they're, like, 5,000 square foot lots.

13 The mixed-use is already dense. I think we
14 could be looking at three stories. The only
15 residential component of this that's large would be
16 the rim lots, the estate lots.

17 So to go denser you'd have to go probably
18 five to six stories. I just different think that was
19 suitable for this area or for the marketplace.

20 And I wouldn't be competing with the local
21 market. 'Cause what I'm selling is a condominium
22 project.

23 COMMISSIONER KANUHA: If that's the case, I
24 thought I heard your market consultant state that this
25 is a totally different kind of a project.

1 THE WITNESS: Correct.

2 COMMISSIONER KANUHA: If that's the case,
3 how do you reconcile your statement about being able
4 to compete in the local marketplace if it's a
5 completely different type of project?

6 THE WITNESS: It's a different type of
7 project not by product but by location. It's also a
8 different type of product because it offers many
9 different housing opportunities within a confined
10 area.

11 If you go mauka I think it would be
12 difficult to find a subdivision up there that has
13 apartments, condominiums, mixed-use development and
14 then estate lots in it.

15 They're usually, you know, this is what I do
16 for a living, they're usually, you know, 6,000 square
17 foot lots and tree lined boulevards or streets.
18 That's what you got. This is different.

19 What you're asking about, though, I don't
20 mean to put words in your mouth, but I think you're
21 asking about shrinking the land some more, using the
22 same density, but I have to go vertical. That's --
23 that would be different even more so. Does that
24 explain?

25 COMMISSIONER KANUHA: Yeah. Yeah. I just

1 wanted to hear what the alternatives were. These rim
2 lots, are these the lots the front, the lots that are
3 fronting the ocean side?

4 THE WITNESS: They're fronting the ocean and
5 Kohanaiki.

6 COMMISSIONER KANUHA: And those -- according
7 to your Exhibit 92, those are the most expensive lots,
8 right?

9 THE WITNESS: Correct.

10 COMMISSIONER KANUHA: This exhibit, your
11 first phase loan-to-value ratio based on 1100 total
12 units, is this based on an anticipated value
13 enhancement to the property if it's -- when it's
14 petitioned from conservation to urban?

15 THE WITNESS: I'm sorry, I don't understand
16 the question.

17 COMMISSIONER KANUHA: Is this calculation
18 based on the value of the property in the urban, in an
19 urban category for this type of development? Actually
20 what I'm getting at is is there a number in here that
21 tells us what the enhanced value to this property is
22 going to be if it's petitioned from conservation to
23 urban?

24 THE WITNESS: No. No. Those numbers speak
25 to developed-out property.

1 COMMISSIONER KANUHA: So these numbers are
2 based on the property being in the urban district.

3 THE WITNESS: Oh, absolutely. There's no
4 value to it if it's conservation.

5 COMMISSIONER KANUHA: And also let me see.
6 Your latest discussion regarding LEEDs. Are we to
7 understand that you have some issues with any kind of
8 mandatory compliance with LEED standards?

9 THE WITNESS: I have issues with LEED
10 standards. But I have been given the language that we
11 would agree to, so if you like I will read it.

12 COMMISSIONER KANUHA: I think that will come
13 out with further testimony. That's all the questions
14 I have. Thank you.

15 PRESIDING OFFICER JUDGE: Thank you. I
16 would be interested in hearing your acceptable LEED
17 condition.

18 THE WITNESS: Well, it's not a LEED
19 condition.

20 PRESIDING OFFICER JUDGE: Or just energy
21 condition.

22 THE WITNESS: "Petitioner shall implement to
23 the extent feasible and practical measures to promote
24 energy conversation, sustainable design and
25 environmental stewardship such as the use of solar

1 energy and solar heating consistent with standards and
2 guidelines promulgated by the Building Industry
3 Association of Hawai'i, the U.S. Green Building
4 Council, the Hawai'i Commercial Building Guidelines
5 for Energy Star, and Green Communities into the design
6 and construction of 'O'oma Beachside Village.

7 "Petitioner shall also provide information
8 to home purchasers regarding energy conservation
9 measures that may be undertaken by individual
10 homeowners."

11 In the area that I'm from we are familiar
12 with Energy Star and have done a lot of work with
13 Southern California Gas to promote Energy Star
14 development. They have a program and we get ourselves
15 involved. It's a marketing thing. But it doesn't --
16 it's not as onerous as LEED and it's commercially
17 viable.

18 PRESIDING OFFICER JUDGE: Okay. Thank you.
19 I'm going to go back to the question that Commissioner
20 Kanuha had regarding Exhibit No. 92. That's your
21 first phase loan-to-value ratio that you prepared.

22 You've got two areas, one valuation based on
23 market studies/developed area and then further down it
24 says remaining undeveloped land value. What is the
25 developed area? What do you mean by that?

1 THE WITNESS: The first phase, the developed
2 area would consist of 66 rim lots; 130, that's small
3 lots out of the residential area, the interior, the
4 smaller lots.

5 Then it would include the makai mixed-use
6 village which are 60 condos and the commercial,
7 50,000 square feet of commercial.

8 And then it would include the number of
9 affordable units that would go with the development,
10 the affordable requirement for that much development
11 which you see I have zero value for that.

12 And I go through and I value what that
13 would -- the market value for the developed lots would
14 be. But beyond that we still have the rest of the
15 land. And there's a value to that land.

16 And there is also a value to the sewer
17 treatment plant that we'll be building because it's
18 still usable. And there's a value to the desalination
19 plant. This one here assumes we have a desalinization
20 plant.

21 All of that combined it would be encumbered
22 by a loan. And all of that combined I made the
23 assumption that it would come to a value of about 104
24 million.

25 PRESIDING OFFICER JUDGE: So you're assuming

1 that with this \$66 million you can produce all of
2 these things. But they're have -- you're adding
3 value. So that \$66 million will then be worth
4 104 million.

5 THE WITNESS: No. The 66 million would
6 produce the rim lots, the small lots, the makai con --
7 the mixed-use village and it would also produce the
8 hookup for the not -- it would produce the
9 desalinization plant and the sewer treatment plant,
10 the wastewater treatment plant.

11 PRESIDING OFFICER JUDGE: Okay.

12 THE WITNESS: It would also provide us
13 access to the Queen's Highway.

14 PRESIDING OFFICER JUDGE: The infrastructure
15 to give you access.

16 THE WITNESS: Correct.

17 PRESIDING OFFICER JUDGE: Okay. So
18 basically all of what you're describing as area A on
19 Exhibit 95?

20 THE WITNESS: Correct.

21 PRESIDING OFFICER JUDGE: In Exhibit 95
22 where's the desalinization called out? Is that the
23 water system, the \$8 million?

24 THE WITNESS: I'm not...

25 PRESIDING OFFICER JUDGE: On Exhibit 95.

1 THE WITNESS: There it is right there. This
2 Exhibit 95, the onsite water system.... "Water
3 system." If you go on the first area it says onsite
4 area A and site preparation, roadway, storm drain,
5 wastewater system, water system. I believe that's it
6 there. Let's see.

7 PRESIDING OFFICER JUDGE: So that's that
8 8,700,000 number. If you look across the whole column
9 and you come across to the total you're looking at
10 roughly 12,400,000.

11 THE WITNESS: For water system. That
12 includes -- inside that number includes all the pipes
13 to deliver it, distribute it.

14 PRESIDING OFFICER JUDGE: The distribution
15 system also. Okay. We're just curious. Do you know
16 of any private developers that have constructed such a
17 plant in Hawai'i?

18 THE WITNESS: I believe that Hualalai has
19 one. I believe most of the resorts have desal plants.

20 PRESIDING OFFICER JUDGE: Okay. So there's
21 a clear permitting process for a desalinization plant.

22 THE WITNESS: Yes.

23 PRESIDING OFFICER JUDGE: And do you have a
24 backup plan if you're unable to construct a
25 desalinization plant?

1 THE WITNESS: Well, we'll get one. I don't
2 have one right now. We are planning on a desal plant.
3 Yeah, I guess the backup plant I'd have to go mauka,
4 and drill a well up mauka up in the mountains.

5 PRESIDING OFFICER JUDGE: Okay. My last
6 question is that thank you for explaining earlier the
7 whole flow chart of how you got to this Project.

8 THE WITNESS: I hope I didn't bore you.

9 PRESIDING OFFICER JUDGE: No, it's very
10 interesting. We actually like to get that information
11 to understand who's behind the Project and the role of
12 Mr. Morris and your other partner.

13 My only question is when you did get
14 involved in this development, at that point were you
15 aware that this land was, the Petition Area was
16 designated as conservation land?

17 THE WITNESS: Yes, I was.

18 PRESIDING OFFICER JUDGE: Okay. That was my
19 only question. Commissioners, any other questions?
20 Ms. Benck, any redirect?

21 MS. BENCK: No. Thank you.

22 PRESIDING OFFICER JUDGE: Okay. Thank you.
23 We are going to take a short break to figure out who
24 the next witness will be.

25 (Recess was held.)

1 PRESIDING OFFICER JUDGE: We're going to
2 take one more witness today. And that will be an OP
3 witness, Mr. Baird. And we will start that, we will
4 take that witness at 3:40.

5 (Recess was held.)

6 Presiding Officer Judge: Mr. Yee, you can
7 call your witness now.

8 MR. YEE: Thank you very much for the
9 cooperation, graciousness by all the parties and the
10 Commission. Our first witness is Mr. Ronald Baird.

11 PRESIDING OFFICER JUDGE: Good afternoon,
12 Mr. Baird.

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

16 THE WITNESS: I do.

17 PRESIDING OFFICER JUDGE: Thank you.

18 THE WITNESS: My name's Ron Baird. I'm the
19 chief executive officer of the Natural Energy Lab of
20 Hawai'i Authority, otherwise known as NELHA.

21 DIRECT EXAMINATION

22 BY MR. YEE:

23 Q Mr. Baird, was Office of Planning Exhibit 29
24 prepared by you or on your behalf?

25 A It was prepared by NELHA staff, yes.

1 Q And would you please describe or summarize
2 your testimony in this case?

3 A Certainly. NELHA is a major economic driver
4 on this side of the island that's not tourist related.
5 We have about 870 acres of land. The undeveloped land
6 essentially is all the land lying from the beach up to
7 the Queen Ka'ahumanu Highway borders basically two
8 sides of what's known as OTEC Road.

9 Most of it's on the south side immediately
10 adjoining 'O'oma all the way from the shoreline up to
11 Queen K. Then over aways to where it abuts with the
12 airport.

13 We currently have 44 tenants. We have four
14 coming in. The land, the undeveloped land is
15 obviously the most desirable at this point in time
16 because it is able to really fulfill its
17 classification of industrial land.

18 The land down by the ocean has basically
19 over the past 20 years been developed in agricultural
20 uses.

21 We have a couple of major concerns. And the
22 major concerns are that NELHA is zoned as an
23 industrial area. And the people who come in to NELHA,
24 obviously in an industrial area, there may be sites,
25 sounds, smells, all sorts of things like that that

1 people who might be a resident nextdoor could possibly
2 find offensive at sometime in the future.

3 Another concern we have is that a proposal
4 for a desal plant -- and we hear, understand that
5 there's desire on the part of the developer not to
6 have injection wells within a quarter of a mile of
7 that that would essentially destroy our ability to
8 develop the land that's south of the OTEC road without
9 somehow building a tremendous expensive system to take
10 care of the effluents that would come off those
11 plants.

12 So those are our two very principal
13 concerns.

14 Q Just to clarify. The second concern
15 involved the desire to ensure that the feed source
16 well used by 'O'oma does not interfere with future --
17 with both present and future NELHA activities.

18 A That is correct.

19 Q And how that's accomplished is that a matter
20 of -- you have a proposal that it be located a quarter
21 mile away from NELHA, correct?

22 A That is correct.

23 Q But your primary concern is that somehow,
24 however it is accomplished, that somehow this concern
25 of NELHA's can be avoided.

1 A It not degrade the potential value of the
2 NELHA property, correct. Because we have an
3 obligation as set forth by the Administration and
4 verified by the Legislature we have to be
5 self-sustaining.

6 So we do have to lease our land to the
7 highest and best use which in this case is industrial.
8 It produces more revenue.

9 MR. YEE: That's all the questions we have.

10 PRESIDING OFFICER JUDGE: Does the
11 Petitioner have questions for this witness?

12 MS. BENCK: We do, thank you.

13 CROSS-EXAMINATION

14 BY MS. BENCK:

15 Q Hi, Mr. Baird.

16 A Hi.

17 Q I read quickly through your testimony.
18 Thanks very much for getting that in. I understand
19 you're going through a master planning process right
20 now or an EIS is coming up in the future?

21 A We're going through a master planning
22 process, yes.

23 Q When do you expect the Draft EIS to be
24 available?

25 A The Draft EIS is not going to be available

1 for sometime because the funds that the Legislature
2 appropriated for that expire June 30th of this year.

3 Q So my next question, which was when do you
4 think you'll be before the Commission to ask for
5 reclassification? I would imagine that's a pretty
6 hard question to answer right now.

7 A In the future.

8 Q Okay. Again I looked quickly through your
9 testimony and especially the four provisions at the
10 end that I'll just call conditions.

11 A Okay.

12 Q Let me turn to those now. But one of the
13 first issues that you mentioned is that you don't want
14 residential or school uses constructed within a
15 hundred feet of the NELHA boundary.

16 First, I want to make sure I understand what
17 you're talking about. When we're talking about
18 constructed within a hundred feet you're talking about
19 the actual vertical construction, is that correct?
20 You're speaking about you don't want a house built
21 five feet over the boundary.

22 A Setback. If you want to call it that, a
23 hundred foot setback.

24 Q A building setback?

25 A Yes. 'Cause one thing I want you to

1 appreciate is many of our tenants begin working at 5,
2 or 6 o'clock in the morning.

3 Q Sure. Sure. And that, I'm sure, leads to
4 why we would want to notify our buyers of the location
5 of the industrial uses at NELHA.

6 I understand the planning process is still
7 underway. But do you have an idea what specific uses
8 we might expect to find right over the boundary from
9 'O'oma?

10 A Group 70, who's doing our master plan, has
11 proposed that the entire mauka area above Big Island
12 Abalone and above Moana Technologies would essentially
13 be industrial.

14 By that I mean some of the suggested uses
15 have been that there may be large companies that would
16 want to come in and build things that could be shipped
17 out, containerized instrumentation, things of that
18 nature.

19 Q Do you imagine that those uses would have a
20 similar building setback from the 'O'oma boundary?

21 A I would believe that they would. But
22 whatever the setback there would be would be dependent
23 upon the county planning department, its rules and
24 regulations.

25 So far we have had no, no building within

1 that distance. It's all been right up against our
2 road for ease of access.

3 Q Just a couple more questions. I understand
4 your concern about the injection wells and that the
5 placement of a designated potable water source
6 precludes the installation of any new injection wells
7 within a quarter mile radius.

8 Right now is NELHA -- can you identify where
9 on the NELHA property future injection wells may be
10 installed?

11 A We cannot because this land has not been
12 subdivided. And when it is subdivided then the
13 injection well sites would be designated at that point
14 in time.

15 Q So there's no reason to think that the
16 injection wells would be right up against the boundary
17 with the 'O'oma Project?

18 A The master planned layout shows that
19 assuming that we're successful in getting that
20 conservation land designation changed to industrial
21 that there would be a cul-de-sac that would run right
22 up the middle of it, and there'd be lots going up
23 against the 'O'oma line.

24 Q My last question's going to be: I'm sure
25 you've heard that 'O'oma Beachside Village is part of

1 this process with the LUC. We also negotiated an
2 agreement with the National Park Service.

3 Knowing that NELHA will be before the
4 Commission sooner or later do you intend on entering
5 into a similar agreement with the National Park
6 Service?

7 A There's been no discussion on that matter
8 between the National Park Service and us.

9 MS. BENCK: Thank you. That's all for my
10 questions.

11 PRESIDING OFFICER JUDGE: Mr. Gonzalez, does
12 the County have questions for this witness?

13 MR. GONZALEZ: Yes, Madam Chair. Thank you.

14 CROSS-EXAMINATION

15 BY MR. GONZALEZ:

16 Q Good afternoon, Sir.

17 A Good afternoon.

18 Q I'd like to turn your attention back to OP
19 Exhibit 29. Can you clarify for me who the staff of
20 NELHA is that prepared that for you?

21 A The administrative staff and myself,
22 suggestions, ideas, rough drafts were submitted. I
23 coalesced them and put them into their current form.

24 Q So within OP Exhibit 29 the first full
25 paragraph on the first page, the last sentence where

1 it says "NELHA anticipates that the current planning
2 effort will culminate in the preparation of an
3 environmental impact statement and requests for a
4 district boundary amendment and rezoning of the
5 remaining 83 acres of land for industrial use." Do
6 you see that portion?

7 A Yes.

8 Q Can you explain for me in regards to using
9 OP Exhibit 30 where those 83 acres are generally
10 located?

11 A Those 83 acres run from makai up to, there's
12 10-acre lots on the south side of the OTEC road. From
13 the boundaries of those 10-acre lots over to
14 'O'oma/NELHA property line.

15 And then up there was a government road
16 right-of-way that was never utilized which is actually
17 makai of Mamalahoa Trail. Okay? It runs up to that
18 old government road right-of-way and then over to the
19 property line with 'O'oma.

20 Q Thank you. Within OP Exhibit 29, first page
21 it begins at the bottom of the first page where you
22 state that "Within one quarter mile of our property
23 line a feed source well for the 'O'oma Project within
24 one quarter mile of our property line would prevent
25 the use of injection wells or disposal trenches...."

1 Do you see that? "...by NELHA tenants." And it
2 continues on Page 2.

3 A Mm-hmm.

4 Q Is that present NELHA tenants or assumed
5 future tenants if you get a successful
6 reclassification and rezoning?

7 A It would certainly be assumed future tenants
8 and also probably be at least two current tenants that
9 have expansion plans.

10 For example, Kona Deep Corporation, which is
11 a water bottling company, desals water. It has a
12 5-acre site develops out of its 20 acres. And its 20
13 acres come on to the south towards 'O'oma.

14 Q I want to focus now on the proposed or the
15 anticipated 83-acre reclassification rezoning. Does
16 that 83 acres include, take into account, a 1,000 foot
17 setback from the shoreline?

18 A That 83 acres already takes into account a
19 very large archaeological preserve that has been
20 approached by the State Historic Preservation District
21 which takes it back. And I can't tell you the exact
22 number of feet but it's over 20 acres.

23 So it very well could be within -- or it
24 could very well be up to a thousand feet away, but I
25 cannot swear to it.

1 Q If it isn't up to a thousand feet would
2 NELHA be prepared to provide a thousand foot setback
3 from the shoreline?

4 A On that conservation land, sure.

5 Q Can you tell me if it's true or not that
6 NELHA has a school on its current property?

7 A True.

8 Q What is the name of that school?

9 A West Hawai'i Explorations Academy.

10 Q What's the goal and function of that school?

11 A The goal and function of that school, it's
12 the State's first public chartered school. I would
13 very proudly tell everyone here it has the highest
14 test scores of any school in the state. It educates
15 from 6 through 12 in projects-oriented types of
16 educational system. It's nationally recognized for
17 this.

18 Q So that was grade 6 through 12.

19 A Yes, sir.

20 Q What's the enrollment there?

21 A This past year my understanding 190.

22 Q How long has that school been operating?

23 A Since 1991 or 1994. I'm not sure the exact
24 date.

25 MR. GONZALEZ: Thank you, Madam Chair.

1 Thank you, Mr. Baird. I have no further questions at
2 this time.

3 THE WITNESS: Thank you.

4 PRESIDING OFFICER JUDGE: Mr. Lind, do you
5 have questions for this witness?

6 MR. LIND: Yes, I do.

7 CROSS-EXAMINATION

8 BY MR. LIND:

9 Q I just want to make sure I understand.
10 You're in the planning process now for this parcel of
11 land next to the 'O'oma property, correct?

12 A Correct.

13 Q So there's no specific plans for what would
14 be developed within that quarter mile adjacent to
15 'O'oma at this time.

16 A The master plan proposal shows there would
17 be industrial lands just like the rest of NELHA's
18 already zoned.

19 Q But not specific businesses or operations?

20 A We cannot address specific businesses, no.

21 Q When you talk about injection wells what
22 type of injection wells are you concerned about?

23 A Those would be injection wells that almost
24 every tenant -- I have to confess I think there are
25 two that do not use seawater at NELHA -- but all the

1 rest of the tenants do.

2 So they use that seawater in either their
3 production or extraction of something out of the
4 ocean. Then the wastewater is disposed of in disposal
5 trenches or in two or three cases currently injection
6 wells.

7 Q How deep are the disposal trenches?

8 A They are wider than they are deep, which
9 meets the wastewater Department of Health requirement.
10 And they vary in depth, depending upon a particular
11 location. Every tenant has one.

12 Q And the injection wells as opposed to
13 trenches, how deep are those?

14 A Excuse me?

15 Q The injection wells as opposed to the
16 trenches how deep are those injection wells?

17 A That information I do not have because they
18 were drilled by a company some years ago.

19 Q Would any of these injection wells be
20 drywells for surface water drainage?

21 A Would you please define the drywell concept
22 as you understand it.

23 Q How would stormwater on the property be
24 used, be disposed of I should say?

25 A Stormwater on the property goes into the

1 ground.

2 Q And you don't use drainage wells for those.

3 A No.

4 Q So it's just the injection wells for the
5 wastewater from the businesses there that are onsite
6 now?

7 A That's right.

8 Q And I'm going to paraphrase because I can't
9 exactly remember what you said. But it sounded to me
10 like you said the existence of a feed water well this
11 close to the property line would destroy your ability
12 to use the land.

13 Do you have an analysis of that that
14 supports that conclusion that you wouldn't be able to
15 use it?

16 A What we have been informed is that if there
17 were a feed well that was drilled within that that the
18 'O'oma development could go to Department of Health
19 and ask no injection wells be drilled within a quarter
20 of a mile of that feed well. That's a concern.

21 Q I wanted to clarify. So right now you don't
22 know what type of injection wells per se would be used
23 in this undeveloped area.

24 A No, because those would be dependent upon
25 regulation by the Department of Health on a

1 case-by-case basis as they have in the past.

2 Q Okay. I'd like for you to turn to OP
3 Exhibit No. 30. It's the map that shows the quarter
4 mile, and I'm quoting from the map "potential setback
5 required for proposed feed source well."

6 It looks to me like it almost cuts the
7 'O'oma property in half. And from your request it
8 would put the feed water source on the south half of
9 the property next to, closer to Kohanaiki as opposed
10 to NELHA.

11 Do you have any environmental analysis that
12 would show what direct impacts or cumulative impacts
13 would occur to the groundwater from placing a feed
14 water source there?

15 A Not that I'm aware.

16 Q Would there be -- has 'O'oma approached
17 NELHA about getting feed water from your own desal
18 system? I'm sorry, not feed water, but ocean water
19 from the NELHA system.

20 A I have had no conversations in that regard.

21 Q Would NELHA be amenable to providing that
22 water according to their normal business?

23 A We're always looking for additional sources
24 of revenue.

25 Q Would NELHA have the ability to work out

1 some kind of mitigation for restricting the use of
2 'O'oma's property for feed water source by giving them
3 some kind of advantageous deal on the supply of your
4 water, your seawater?

5 A Let me reiterate, Sir, that we have been
6 directed to become self-sufficient by the
7 Administration of the state of Hawai'i as well as the
8 Legislature. And for the five-year period of time I
9 have been there we have been.

10 But that means we have to continue not to
11 give things away or subsidize businesses. We have to
12 run this as a business itself. That's sometimes
13 considered an alien concept in government, but it
14 works.

15 Q But this would be mitigation for the request
16 to set back.

17 A The fact of the matter, Sir, is that the
18 higher we pump water up the hill the more money it
19 costs.

20 Q I'm not sure if I understand the answer.

21 A We cannot produce more water and lower our
22 costs of production. The more water we produce,
23 especially if it goes up the hill, the more it costs.

24 Q I don't want to paraphrase your answer, but
25 it sounds to me like the answer to my question is, no,

1 you couldn't or wouldn't make some kind of mitigation
2 for supplying 'O'oma with water from their desal plant
3 in exchange for mitigation or their request.

4 A I could not do that. That would be an
5 action that'd have to be undertaken by NELHA board of
6 directors in a publicly announced meeting.

7 Q But under that process could it be done?

8 A The board will consider almost anything.

9 MR. LIND: No further questions.

10 PRESIDING OFFICER JUDGE: Commissioners,
11 questions for Mr. Baird? Commissioner Kanuha.

12 COMMISSIONER KANUHA: Thank you, Madam
13 Chair. Mr. Baird, in looking at your testimony, which
14 is Exhibit No. 29, it seems like your description of
15 NELHA kind a goes between commercial to industrial to
16 research. In your mind what is the, you know, the
17 main types of land uses over at NELHA?

18 THE WITNESS: I'm sorry. The main kind of
19 what?

20 COMMISSIONER KANUHA: What are the main
21 types of uses? I mean because you have here research,
22 you have education, you have commercial activities but
23 yet it's zoned industrial.

24 So what I'm getting at is based on your
25 experiences being the CEO there, how would you

1 characterize generally the 43 businesses that you have
2 in there as being? Are they strictly industrial?
3 Half industrial, half commercial?

4 THE WITNESS: Over 20 them produce
5 aquacultural products --

6 COMMISSIONER KANUHA: Okay. So that's not
7 agriculture then.

8 THE WITNESS: -- in the state. There are
9 four water bottling companies. Water bottling exports
10 from the state of Hawai'i are the greatest source of
11 manufactured product exports in this state.

12 We have one, two, three, four, we've got
13 five active energy research projects that we would
14 hope would result in new kinds of alternative energy
15 being developed for the benefit of the people of the
16 state of Hawai'i. We obviously have public education.

17 We have an active proposal that the board
18 has granted consideration to for a monk seal recovery
19 rehabilitation project to help preserve the Hawaiian
20 monk seals.

21 COMMISSIONER KANUHA: So it sounds like a
22 mixed-use type of an area rather than industrial or
23 commercial or agricultural. Would that be a fair
24 statement?

25 THE WITNESS: That would be a fair

1 statement.

2 COMMISSIONER KANUHA: Thank you. That's all
3 the questions I have.

4 PRESIDING OFFICER JUDGE: I just have one
5 question. I got confused between feed source or
6 injection well. So NELHA's concern is that the
7 desalinization plant where it's located, its feed
8 source or its injection well would affect NELHA.

9 THE WITNESS: No, no, no. It would have a
10 source, a feed source. It would have a well taking
11 water out of the ground to reverse osmosis or
12 desalinate by some manner or means. Okay.

13 The injection wells, disposal wells, those
14 are methods of disposing of water that has been used
15 in an industrial or some other process.

16 PRESIDING OFFICER JUDGE: Okay. So if I
17 understand this properly, the feed source for the
18 desalination plant, if it goes where it is located on
19 Exhibit 1 of the EIS, it could then interfere with
20 potential tenants to the NELHA facility who need to
21 have injection wells.

22 THE WITNESS: That would be correct.

23 PRESIDING OFFICER JUDGE: And that could
24 negatively affect the ability to rent those NELHA
25 lots?

1 THE WITNESS: Yes, Ma'am.

2 PRESIDING OFFICER JUDGE: Okay. I get it.

3 Thank you. Any redirect, Mr. Yee?

4 MR. YEE: Just briefly.

5 REDIRECT EXAMINATION

6 BY MR. YEE:

7 Q Do you consider aquaculture a type of
8 agriculture? Is that the reason you referred to
9 agricultural operations?

10 A Yes. And I apologize for that because I
11 have been in the livestock business myself. But I
12 have a difficult time pronouncing aquaculture and
13 getting it correct all the time.

14 Q Second, with respect to the mixed use, just
15 so we have the terms correct, there's no residential
16 use on NELHA, correct?

17 A Absolutely none. That's prohibited.

18 Q And there is also no retail sales going on
19 at -- well, NELHA is not geared towards retail sales,
20 is it? I mean people don't -- well, how would you
21 answer that?

22 A The agricultural (sic) tenants at NELHA
23 three months ago began a one-time a month farmers
24 market. And, yes, they do sell retail.

25 Q So once a month there's retail activity

1 going on.

2 A Yes. And for them, quite frankly, it has
3 been extremely important source of revenues during
4 this terrible economic downturn. Some producers have
5 actually said that in four hours they sell more than
6 they sell in one year to supermarkets.

7 Q But with respect to commercial, you don't
8 have Walgreens, Walmart, Costco, those kind of
9 commercial activity.

10 A No.

11 MR. YEE: Nothing further.

12 PRESIDING OFFICER JUDGE: Thank you,
13 Mr. Baird. I believe that's going to end the witnesses
14 for today. And we will adjourn till tomorrow at 9:30.
15 But I also wanted to just state we are moving along
16 pretty quickly.

17 And there is a possibility that we will be
18 able to start public witness testimony before 1:30.
19 So we will commence public witness testimony at the
20 completion of the scheduled witnesses tomorrow. So
21 just for the general public we may start earlier than
22 1:30.

23 And we will reconvene here tomorrow at 9:30.
24 Mr. Gonzalez?

25 MR. GONZALEZ: But you do intend to take

1 public testimony at 1:30 as you publicly noticed.

2 PRESIDING OFFICER JUDGE: Yes. We will
3 definitely take 1:30 as it was noticed but we will, if
4 we have the ability and there are people here, we will
5 make use of our time if we can. And I believe we'll
6 start tomorrow morning with the county. Okay?

7 MR. GONZALEZ: Yes, thank you.

8 PRESIDING OFFICER JUDGE: Thank you.
9 Recessed.

10 (The proceedings were recessed at 4:15)

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I, HOLLY HACKETT, CSR, RPR, in and for the State
of Hawai'i, do hereby certify;

6

7

That I was acting as court reporter in the
foregoing LUC matter on the 16th day of June 2010;

8

9

That the proceedings were taken down in
computerized machine shorthand by me and were
thereafter reduced to print by me;

11

12

13

That the foregoing represents, to the best
of my ability, a true and correct transcript of the
proceedings had in the foregoing matter.

14

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DATED: This _____ day of _____ 2010

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HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

